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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

MOTION HEARING

DAY 2

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

**DATE:** JANUARY 19, 2010

MANITOWOC COUNTY  
STATE OF WISCONSIN  
**FILED**

**BEFORE:** HON. JEROME L. FOX  
Circuit Court Judge

**MAR 24 2010**

CLERK OF CIRCUIT COURT

**APPEARANCES:**

KENNETH R. KRATZ  
Special Prosecutor  
On behalf of the State of Wisconsin.

THOMAS FALLON  
Special Prosecutor  
On behalf of the State of Wisconsin.

STEVEN DRIZIN  
Attorney at Law  
On behalf of the defendant.

ROBERT J. DVORAK  
Attorney at Law  
On behalf of the defendant.

LAURA H. NIRIDER  
Attorney at Law  
On behalf of the defendant.

JOSHUA A. TEPFER  
Attorney at Law  
On behalf of the defendant.

**ORIGINAL**

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THOMAS F. GERAGHTY  
Attorney at Law  
On behalf of the defendant.

ALEX HESS  
Law Student  
On behalf of the defendant.

ADAR CROSLEY  
Law Student  
On behalf of the defendant.

BRENDAN R. DASSEY  
Defendant  
Appeared in person.

\* \* \* \* \*

**TRANSCRIPT OF PROCEEDINGS**

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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1 THE COURT: This is State of Wisconsin v.  
2 Brendan Dassey. The Manitowoc County number  
3 06 CF 88. Court of Appeals number is 07 XX 1073.

4 Just for the record, the appearances  
5 this morning.

6 ATTORNEY KRATZ: State appears by  
7 District Attorney Ken Kratz from Calumet County  
8 and Assistant Attorney General Tom Fallon  
9 appearing as special prosecutors.

10 ATTORNEY DVORAK: Good morning, Your  
11 Honor. May it please the Court, Mr. Dassey  
12 appears with Attorney Robert Dvorak. Also  
13 appearing is Attorney Steve Drizin, Tom Daughtery  
14 (sic), Laura Nirider, and Josh Tepfer. And two  
15 students, Alex Hess and Adar Crosley.

16 THE COURT: All right. I believe,  
17 Mr. Dvorak, you were examining the witness when we  
18 last met?

19 ATTORNEY DVORAK: That's correct, Your  
20 Honor. Mr. Kachinsky.

21 THE COURT: Are you going to call him  
22 again?

23 ATTORNEY DVORAK: Yes, we are.

24 THE COURT: Let's do it. Come on up here.  
25 I'll just remind you, Mr. Kachinsky, you've

1           previously been sworn. You're still on oath.

2           THE WITNESS: Yes, Your Honor.

3           THE COURT: Go ahead.

4           CONTINUED DIRECT EXAMINATION

5 BY ATTORNEY DVORAK:

6 Q All set?

7 A Okay.

8 Q Uh, you had initially hired Mr. O'Kelly to do a  
9 polygraph test; right?

10 A Correct.

11 Q And you kept him on -- had him continue on as  
12 your investigator in this case?

13 A Yes.

14 Q So he was working under your direction in that  
15 capacity?

16 A Yes.

17 Q Okay. You were telling him what it was that you  
18 needed done and -- and -- and he would go out and  
19 do it?

20 A Hopefully.

21 Q Okay. Uh, he would report back to you?

22 A From time to time, yes.

23 Q Okay. You -- and -- and you monitored his  
24 activities and -- and what it was that he was  
25 doing?

1 A Best I could, yes.

2 Q Okay. Did you have problems in that capacity?

3 A There were times he was going off on tangents and  
4 expending way more hours than was authorized.

5 And so I had some discussions with him  
6 as to confine your activities to what we need --

7 Q Okay.

8 A -- done, and if you keep running over this -- these  
9 hour limits, don't expect to get paid unless SPD is  
10 going to authorize it.

11 Q All right. Substantively, though, other than  
12 financial and your concern about whether your  
13 relationship with the Public Defender's Office  
14 and their paying his bill, did you -- you were  
15 monitoring his activities?

16 A I didn't give a general directions, um, as -- I -- I  
17 believe, you know, but -- possibly would be defense  
18 in the case in terms of whether I guess the alibi for  
19 the period of time in the late afternoon and early  
20 evening of October 31.

21 Q Okay.

22 A Although there wasn't much work done on that because  
23 the law enforcement officers had already interviewed  
24 most of the key witnesses, and I had -- I had talked  
25 to him.

1                   There was also working on family  
2 matters, possible mitigations to the matter,  
3 proceed to sentencing, uh --  
4 Q    I would --  
5 A    -- and also establishing a rapport with the members  
6 of Mr. Dassey's extended family.  
7 Q    Okay. I -- I -- what I'd like to do is confine  
8 it up to this point up to May 13 -- up and to and  
9 through May 13.  
10 A   Right.  
11 Q   Okay?  
12 A   Okay.  
13 Q   So let's -- that's the period of time that we're  
14 talking about so far unless we say otherwise.  
15 A   Okay.  
16 Q   But I think that's where we're going to confine  
17 ourselves to. So up -- up through that period of  
18 time Mr. O'Kelly was working for you? He was  
19 reporting back to you? You were telling him what  
20 to do? And you were monitoring what he was -- he  
21 was doing?  
22 A   He was my agent, yes.  
23 Q   Okay. Um, now, I want to talk about the --  
24 the -- the May 12 interrogation. Um, you knew  
25 that he was going to tape that interrogation of



1 his; right?

2 A I don't think I specifically mentioned it but I know  
3 that early on he had indicated he taped everything.  
4 So I don't know if we went over the details that he  
5 was going to tape it. We might have.

6 Q Would -- would it -- I'd like you to refer you to  
7 Exhibit 65.

8 A What volume? It must be --

9 THE COURT: Volume two.

10 ATTORNEY DVORAK: Volume two.

11 THE WITNESS: I have it.

12 Q (By Attorney Dvorak) Okay. That's the e-mail  
13 that we had referred to earlier that, um,  
14 Mr. O'Kelly had sent to you about the meeting on  
15 May 12 and that this is an e-mail dated May 7?

16 A Correct.

17 Q And he was telling you that he wanted to bring in  
18 recording devices, etc.; right?

19 A Correct.

20 Q Okay. And I -- I -- I assume that you had to --  
21 to do something to help him get that stuff into  
22 the jail?

23 A I'd notify the jail that he was working for the  
24 defense and, therefore, that as a professional  
25 visitor that those were appropriate things for him to

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bring in.

Q Okay. So getting back to the question, you were aware that he was videotaping this May 12 -- or he had -- he was -- he -- he had the intention of videotaping the May 12 interrogation that he did?

A Yes.

Q Okay. Um, by the way, did you ever view the tape that he made?

A No.

Q All right. Um, did you -- were you aware, for example -- um, were you aware at all of -- of how he was going to go about doing that interrogation? Did you discuss with him, in other words, any -- any tactics that he was going to use?

A We talked about how he had gained rapport with Brendan over time and that he was basically to go over the evidence that was there at this point, uh, and the extent to which it showed that he was involved in the Teresa Halbach homicide and sexual assault.

Um, and to see if -- knowing now that that statement was going to be admissible into evidence, that, in my opinion, at trial he was likely to be found guilty, and from that to see

1           whether or not he was going to change what he was  
2           telling us as to whether or not he was involved  
3           in the Teresa Halbach homicide and sexual  
4           assault.

5   Q       All right. And up until this point, um, that is,  
6           up until the -- Mr. O'Kelly called you on the  
7           evening of the 12th, Brendan had always  
8           maintained his innocence with you; correct?

9   A       Well, he never used the word maintain innocence, but  
10          he was nonresponsive to questions whether he did it  
11          or the -- I think, initially, he wrote down, of  
12          course, on that polygraph Easter weekend, you know  
13          that he --

14                   COURT REPORTER: One moment, please.

15                   THE WITNESS: -- he was not involved  
16          in -- in the offense, yes.

17   Q       (By Attorney Dvorak) Okay. So he had  
18          consistently denied involvement in the offense to  
19          you up to May 12, including May 12, I guess,  
20          until you got the call from Mr. O'Kelly that  
21          evening?

22   A       It was during the times the issue had been raised,  
23          yes.

24   Q       Okay. Um, now, were you aware that Mr. O'Kelly  
25          had, in preparation for Brendan arriving in the

1 room where he was going to be questioned, that he  
2 had laid out a number of items, um, including the  
3 original poster -- um, missing person poster --  
4 for Terese (sic)?

5 A I don't recall him telling me about that, no.

6 Q Okay. Uh, that he had a photo of Teresa's  
7 website laid out on the table?

8 A That I didn't know about.

9 Q That he had a -- photos of Teresa's family?

10 A I didn't know about that.

11 Q Okay. That he had a photo of a -- of a "dead  
12 end" sign on the Avery property and -- and told  
13 Brendan that that was the last thing that she saw  
14 and told him that it was pretty prophetic?

15 A I don't recall anything like that.

16 Q That there was a -- a bow and a picture of that  
17 bow on a tree near her house?

18 A I didn't know anything about that.

19 Q Okay. There were two pieces of ribbon from  
20 Teresa's church?

21 A Unaware of that.

22 Q You were aware of that?

23 A Not aware of that.

24 Q You're not aware of that. Okay. That there were  
25 photos of Steven's trailer, bedroom, and hallway?

1 A I don't recall that, specifically, but that was a  
2 sort of thing I would have expected him to have in  
3 terms of discovery that we had from the State that he  
4 had access to because of me.

5 Q Sure. And -- and for the same reason, I suppose  
6 it wouldn't surprise you that he had a photo of  
7 the RAV4?

8 A Right. That -- that would make sense.

9 Q Okay. Um, were you aware that also on the table  
10 was a -- a laptop that he pointed to as probably  
11 one of the first things that he did, and --  
12 and -- and pointed to it and told Brendan that he  
13 had failed the polygraph test?

14 A Well, I knew he had the laptop with him. I didn't  
15 know that he was going to display the polygraph  
16 results. And as I indicated on Friday, I believe I  
17 was told the results were inconclusive. So that  
18 would have been something I didn't know --

19 Q Okay.

20 A -- from the --

21 Q So either he would have -- either Mr. O'Kelly  
22 would have lied to you about the results or would  
23 have lied to Mr. -- or lied to Brendan about the  
24 results of the polygraph test?

25 ATTORNEY FALLON: Objection. This

1 witness has already indicated that he hasn't seen  
2 that tape and didn't know that there was a tape.

3 So a lot of the accusations attributed  
4 to Mr. O'Kelly are hearsay at this particular  
5 point and beyond the scope of this witness'  
6 knowledge because he said, "I didn't see the  
7 tape."

8 THE COURT: Objection is sustained.

9 ATTORNEY DVORAK: And I'm -- I'm just  
10 asking if he was aware of those things, and if he  
11 was, my follow up question was going to be would  
12 he have approved those things.

13 I can, um -- and it -- it'll get tied up  
14 later. Or else I can play the tape right now.  
15 And he can identify Mr. O'Kelly. He can identify  
16 Brendan. Um -- and -- and we can take it from  
17 there.

18 THE COURT: It's up to you.

19 ATTORNEY DVORAK: Um, if -- all right.  
20 Well, let's play the tape, then. Or --

21 ATTORNEY FALLON: How's this witness  
22 going to authenticate something they haven't  
23 seen?

24 ATTORNEY DVORAK: It'll get -- it'll get  
25 tied up later with Mr. O'Kelly, Judge.

1                   ATTORNEY FALLON: Well, then, Counsel,  
2 just -- my -- I guess my question is just ask the  
3 with witness, would you have approved the --  
4 that -- the tactics I just discussed.

5                   ATTORNEY DVORAK: Okay.

6                   ATTORNEY FALLON: And let's move on.

7                   ATTORNEY DVORAK: All right.

8                   ATTORNEY FALLON: You can have Mr.  
9 O'Kelly when he gets here.

10                  THE COURT: I think that's fair.

11                  ATTORNEY DVORAK: I -- I thought he was  
12 objecting to me even doing it. Maybe I  
13 misunderstood.

14                  ATTORNEY FALLON: It's the phrasing of  
15 the questions.

16                  ATTORNEY DVORAK: Okay.

17 Q                (By Attorney Dvorak) Would you have approved  
18 of -- of Mr. O'Kelly doing -- doing the tactics  
19 as -- any of the tactics that I've described up  
20 to this point?

21 A                It's a rather broad question. I would not have  
22 approved of lying to Mr. Dassey about the results of  
23 the polygraph. I certainly would not have --  
24 certainly would have approved of showing him basic  
25 crime scene sort of photographs.

1                   Um, I don't know else, specifically  
2                   you're -- it -- well, it's kind of a broad  
3                   question.

4    Q    Okay. Well, were you aware that during this in--  
5           interrogation by Mr. O'Kelly that throughout it  
6           Mr. O'Kelly conveyed the impression that he had  
7           superior knowledge about the case and that he  
8           knew Brendan was guilty, and -- and that anything  
9           other than an admission of involvement would not  
10          be acceptable? That he would not believe it?

11   A    Would I -- the question is would I have approved  
12          that? Or did I know about that?

13   Q    Yeah. Well, for example, let me -- let me give  
14          you an example. You said, I know everything I  
15          need to know except two things: Are you sorry?  
16          And will you do it again?

17                   And, then, in reference to his previous  
18                   statement he said, I know that -- the -- the  
19                   previous survey that was filled out at the  
20                   polygraph part that you had referred to moments  
21                   ago, uh, he said that he knew that that was a  
22                   lie?

23                   THE COURT: So the question is?

24   Q    (By Attorney Dvorak) The question is, um,  
25          would -- would you have approved of a tactic that



1           would -- where -- where Mr. O'Kelly claims to  
2           have superior knowledge of his guilt, and -- and  
3           would not allow Brendan, and would not accept any  
4           statement from Brendan, that anything other than  
5           that he was involved in this?

6       A     Well, I certainly wanted -- just to answer that, I  
7           certainly wanted Mr. O'Kelly to convey to Brendan the  
8           facts of the case and the evidence that would lead  
9           any jury to find he was guilty based on what we had.

10                   That, I suppose, implies superior  
11           knowledge of the events, uh, to what Brendan had  
12           told us at that point.

13                   Um, as to whether or not being  
14           acceptable, I -- I guess I wouldn't have really  
15           strong opinion one way or another. I mean, what  
16           was acceptable it was ever Brendan ultimately  
17           came up to.

18                   He hadn't -- we hadn't proceeded in the  
19           case to the point where what would you call a --  
20           a final answer to whether we were going to pursue  
21           plea negotiations or we were going to prepare for  
22           trial.

23                   So I was looking to kind of come to the  
24           point in the case, once we knew what all the  
25           evidence would be that would be admissible at

1 trial, whether Bren -- where that was going to  
2 convince Brendan that we ought to be seeking a  
3 plea agreement or whether, in spite of that, it  
4 was his desire to prepare for trial. That the  
5 confession wasn't true.

6 So we were looking -- and that happens,  
7 of course, in almost any type of criminal case.

8 Q Another tactic that he used, that I'm -- I'm  
9 wondering if you feel is appropriate for your  
10 client, is that he asked him a series of  
11 questions, um, and repeatedly told Brendan that  
12 he couldn't help him if he -- if he lied, and by  
13 that he meant if he stuck by his story that he  
14 was only by the fire, and that Michael O'Kelly  
15 repeatedly told him that he would spend the rest  
16 of his life in prison?

17 ATTORNEY FALLON: I'm going to object to  
18 the phrasing of the question as a -- a --  
19 alleging a fact yet to be established as to what  
20 Mr. O'Kelly intended when he said to him, I want  
21 you to say the -- the truth here or something to  
22 that effect.

23 THE COURT: Well, these are all becoming at  
24 least compound questions and, I think, no real  
25 foundation. Can you rephrase the --

1                   ATTORNEY DVORAK: Yeah, I'll rephrase  
2                   it. It was very -- I agree it's compound. I --  
3                   I'm just trying to cover ground quickly, Judge,  
4                   and I apologize.

5                   Q    (By Attorney Dvorak) Um, Mr. O'Kelly repeatedly  
6                   told Brendan that if he essentially didn't admit  
7                   the offense, um, that there was nothing that he  
8                   could do for him. Do you have a problem with --  
9                   with a tactic involving that type of ploy?

10                  A    That would be a -- I would say too harsh, um, even --  
11                  even for a confidential attorney/client sort of  
12                  conversation.

13                                I mean, the -- I guess it's not a  
14                                question we can't do anything for him, it's  
15                                just -- what I think I put in the letter to him,  
16                                it was -- the jury's going to have a heck of a  
17                                hard time finding reasonable doubt in this case.

18                                I mean, I would have -- I had certainly  
19                                faced life in prison, and I had -- I think in a  
20                                previous letter, we testified about, uh, Friday,  
21                                told him that, um, it was certainly a  
22                                possibility.

23                                I didn't want to minimize it even though  
24                                I was certainly thinking in terms that he would  
25                                probably get twice as much incarceration time if

1 he was -- went to trial and claimed he didn't do  
2 it, was found guilty, than he would if he had  
3 cooperated with the State and entered a plea  
4 agreement.

5 Q Okay. And, for example, if he said, if you lie  
6 to me, guess what I have to do? I have to stand  
7 up, put everything away, and leave, because you  
8 are going to prison for the rest of your life.

9 And then followed up with, and -- or if  
10 you say even one single lie, I cannot help you at  
11 all.

12 That's something you would not have  
13 approved of I take it?

14 A Too harsh.

15 Q Yeah. Did you tell or authorize, either one,  
16 Mr. O'Kelly to have Brendan write out another  
17 statement?

18 A I didn't give any specific direction as to whether  
19 they should give a -- a written statement or not.

20 Q Are you aware that he did on that evening?

21 A I believe he did, yes.

22 Q Okay. Are, um -- now, I want to talk about the  
23 decision to have Brendan give another  
24 interrogation with, uh, the Fassbender and  
25 Wiegert the next day.

1                   When Mr. O' Kelly called you that  
2 evening, um, he did not give you the details of  
3 the statement; right?

4 A   As far as I remember, that's correct.

5 Q   Okay. He had not at any time that evening  
6 reviewed the tape, um, or any written statement  
7 that Brendan had made; correct?

8 A   He hadn't reviewed it with me. That's correct.

9 Q   Okay. And you sent an e-mail to Fassbender that  
10 you copied with -- to Mr. Kratz and -- and  
11 Mr. Wiegert that evening confirming the meeting  
12 for the next day; right?

13 A   Yes.

14 Q   And -- and I refer you to Exhibit 356, please.

15 A   I have it.

16 Q   Okay. Have you had a chance to review it? And  
17 is that the e-mail that you sent out to  
18 Mr. Fassbender?

19 A   Yes.

20 Q   Okay. I want to -- I want to back up a minute.  
21 I forgot one other question. I'm sorry. Um, the  
22 other thing that -- were you aware that Michael  
23 O'Kelly told Brendan that if he did not confess  
24 he would never have a family?

25 A   I was not aware of that.

1 Q Okay. Would you have approved that?

2 A I would have thought that is too harsh.

3 Q Um, on -- all right. Getting back to Exhibit

4 356. Now, in this exhibit you authorized Michael

5 O'Kelly to provide copies of his work product;

6 correct?

7 A Yes.

8 Q Okay. Had you ever talked to Brendan about that?

9 A I don't believe so. But I don't think we ever

10 ultimately provided those anyway.

11 Q Okay. And you authorized the interrogation of

12 Brendan without your being present; correct?

13 A Unfortunately, that is correct.

14 Q You also authorized the interrogation without

15 Michael O'Kelly being physically present at the

16 discretion of the officers?

17 A Initially, yes. Later that was changed.

18 Q I'm sorry?

19 A Initially, yes. Later we changed it so that O'Kelly

20 was supposed to be present, yes.

21 Q He was not supposed to be present?

22 A Was supposed to be --

23 Q He was --

24 A It was changed later on as -- as I think -- well, I

25 think the record shows, but...

1 Q Well --

2 A Initially, I said, no --

3 THE COURT: Here. Why don't you let him  
4 ask it?

5 THE WITNESS: Oh, yes, Your Honor.

6 Q (By Attorney Dvorak) Okay. Well, what -- were  
7 you aware of the physical layout of the  
8 interrogation setting?

9 A I knew simply it was going to be a interrogation room  
10 typically used by law enforcement officers for things  
11 like this that was videotaped. So it would be  
12 relatively small. A table, a chair for Brendan,  
13 chair for investigators, and, hopefully, a chair for  
14 Mr. O'Kelly.

15 Q Okay. Were you aware that Mr. O' Kelly was not  
16 present in the room when he was being  
17 interrogated?

18 A Not until afterwards.

19 Q Okay. So you're saying -- but -- but in this  
20 e-mail, now, you're saying that his -- you --  
21 you -- you authorized the interrogation without  
22 Mr. O'Kelly being physically present.

23 And then you add, if they believe it  
24 would be better that way. So long as it is  
25 videotaped; right?

1 A At the time I said that I think later on that evening  
2 that was changed to a different arrangement.

3 Q Well, who did you have this discussion with?

4 THE COURT: Which discussion?

5 Q (By Attorney Dvorak) The discussion about  
6 changing whether or not Mr. O'Kelly was going to  
7 be physically present in the interrogation room?

8 A Uh, it was a phone call. And I'm not sure who that  
9 call was -- was with. If it was with Mr. Kratz or  
10 Mr. -- somebody from the DCI, or -- but -- but I know  
11 it -- there was discussion and, ultimately, the final  
12 plan that evening was that Mr. O'Kelly would be  
13 present during the questioning of Mr. Dassey.

14 Q Was that ever memorialized in any way? In  
15 writing? An e-mail? Confirmed in an e-mail? Or  
16 anything like that?

17 A That part I don't believe. I think the initial part  
18 was my phone would be on while I was at drill so that  
19 my -- something came up I could be contacted by  
20 O'Kelly.

21 Q All right. Well --

22 A I don't believe that was ever though confirmed in a  
23 written e-mail, no.

24 Q Okay. And do you recall when you had that  
25 discussion with anybody?



1 A That would have been, later that night after the time  
2 of the e-mails.

3 Q Did you talk with Mr. Kratz personally that  
4 night?

5 A I don't -- I don't recall. I have to look at my time  
6 records to see if I did or not. If I did, it would  
7 be on my time --

8 Q Exhibit 55?

9 A Yes. Oops. I think that would have been me talking  
10 to O'Kelly. If there had been something later --

11 THE COURT: Hold on. To the camera folks,  
12 the court reporter is having a lot of trouble taking  
13 this with the clicking of the cameras.

14 Now, obviously, you have a right to take  
15 pictures. I ask you do it -- I ask you to do it  
16 during periods of silence, okay? Go ahead. I'm  
17 sorry for the interruption.

18 THE WITNESS: Sure. I believe there was  
19 something after -- something came back from one  
20 of the investigators, and I talked to Kelly  
21 (sic), and said, well, be there, and any problems  
22 come up, let me know. I'll have my phone on  
23 while I'm at drill.

24 Q I'm sorry, I -- I --

25 A So I was in the -- yeah. I talk -- I think I talked

1 to O'Kelly.

2 Q Okay. You said up -- some problem came up with  
3 one of the investigators or something, but --

4 A No. No. If a problem came up during the -- during  
5 the interview, itself, Mr. O'Kelly was supposed to  
6 contact me. Or if Mr. Dassey wanted to talk to me  
7 during it, um, Mr. O'Kelly was supposed to contact  
8 me. And I could stop -- I was doing duties. I could  
9 stop what I was doing, and take a call for a few  
10 minutes, and deal with what -- with what the problem  
11 was.

12 Q Okay. That was the plan from the beginning;  
13 right?

14 A Yes.

15 Q That was the reason for having Mr. O'Kelly there?

16 A Right.

17 Q Are you saying that something else came up after  
18 you got the phone call from Mr. O'Kelly? And  
19 after you sent this e-mail, did something else  
20 come up that caused you to change your mind?

21 A No. I think I thought -- thought the situation  
22 through a little bit more, and then I thought it was  
23 essential, after thinking it over a little bit more,  
24 that a member of the defense team be present there,  
25 and able to contact me immediately when these -- the

1 interview was taking place, you know, in case  
2 Mr. Dassey wanted to talk to me, or if problems came  
3 up, or whatever the situation would be. So it's  
4 something I probably thought of some time after the  
5 e-mail.

6 Q Okay. Now, you said "present there." Um, I  
7 guess that could mean monitoring it remotely or  
8 actually being in the room. What -- what message  
9 did you convey to Mr. O'Kelly?

10 A I don't know what message I conveyed. I -- I don't  
11 think I was specific as to whether he should be in  
12 the room or be elsewhere. So I wasn't specific.

13 Q Okay. So did -- I -- I -- I'm just trying to  
14 understand what Mr. O'Kelly's instructions were  
15 at this point.

16 He was -- he was to be -- you --  
17 you'll -- you expected him to be in the building  
18 when the interrogation was happening; right?

19 A Uh, correct. And it's such a situation that Brendan  
20 knew he was there, that Brendan knew that he could  
21 contact O'Kelly to get a hold of me for at any point  
22 during the -- the interview.

23 The id -- and that was the way it was  
24 left at the end of the evening. The plan by the  
25 end of the evening was O'Kelly was to be there.

1           Brendan was to know that O'Kelly was there. To  
2           know that O'Kelly could get a hold of me if  
3           needed to talk to me about anything.

4    Q       Okay. So it was just that if Brendan had wanted  
5           to talk to somebody, he knew that somebody was  
6           there?

7    A       Correct.

8    Q       It was nothing more than that?

9    A       I don't think there was anything more that was said  
10           about it than that, no.

11   Q       Okay. So getting back to the question about his  
12           being physically present in the room, that was  
13           left to the discretion of -- of Fassbender and  
14           Wiegert?

15   A       I suppose in retrospect, yes.

16   Q       Okay. Now, had you also communicated with Agent  
17           Fassbender the conditions of the interrogation  
18           that you had agreed to here? In other words,  
19           you -- you -- one of your conditions was that it  
20           be videotaped; right?

21   A       Absolutely.

22   Q       Okay. And in terms of the -- the content of the  
23           interview, did you -- you -- had you talked to  
24           Agent Fassbender about filling in gaps or  
25           something like that?

1 A No.

2 Q You had not?

3 A No.

4 Q Okay. Um, what -- had you had any discussion  
5 with Agent Fassbender about how -- about the  
6 subject of the -- of the interrogation or -- or  
7 limits about the subject of the interrogation?

8 A It was -- it was limited to the offenses that  
9 Mr. Dassey was charged with. The primary purpose was  
10 to see whether or not Dassey would be a cooperative  
11 witness, if necessary, in the Avery case.

12 (Exhibit No. 363 marked for identification.)

13 Q I'm showing you what's been marked as Exhibit 363  
14 and I particularly want to draw your attention to  
15 the second paragraph on the second page.

16 THE COURT: Excuse me, Counsel, do you have  
17 an extra copy that I could have?

18 ATTORNEY DVORAK: Sorry, Judge.

19 THE COURT: Okay. Thank you.

20 Q (By Attorney Dvorak) Have you had a chance to  
21 review that second paragraph?

22 A Yes.

23 Q Okay. Um, this is a -- a -- this purports to be  
24 Agent Fassbender's report of his conversation  
25 with you that evening, and he reports in his --

1 in this exhibit that you advised him that the  
2 interview on Saturday had something to do with  
3 filling in gaps and such.

4 Does that refresh your recollection at  
5 all about whether you had said that or were  
6 thinking that at the time?

7 ATTORNEY FALLON: Objection, Your Honor.  
8 It's asking for this witness to comment or  
9 speculate on another witness' interpretation of a  
10 conversation. He can certainly ask, is that your  
11 understanding, but --

12 ATTORNEY DVORAK: I'm just asking if it  
13 refreshes his recollection about it at all. And  
14 if it doesn't, I'm -- I'm fine with it. If it  
15 does --

16 THE COURT: That -- that's -- that's a -- a  
17 fair question. You can answer that, Mr. Kachinsky.

18 THE WITNESS: I believe that was at  
19 least part of the purpose of it, yes.

20 Q (By Attorney Dvorak) Okay. Had you discussed  
21 a -- a -- gaps with anybody from the State  
22 previously?

23 A I don't believe so. I know -- as I recall there was  
24 one particular piece of evidence that Brendan knew  
25 about that he hadn't previously disclosed. That was

1 going to be part of it.

2 Q Okay. Um, and you had also approved Michael  
3 O'Kelly to -- to talk with the agents about his  
4 conversation with Brendan on the 12th and to  
5 share any of his work product with him; is that  
6 right?

7 A Yes.

8 Q Okay. Um, other than your -- your -- did you  
9 have any phone calls with Michael O'Kelly, um,  
10 other than the ones when he was at the jail? Did  
11 you talk with him later in the evening? Do you  
12 know?

13 A I don't know where he was, but I didn't talk to him  
14 any later than about 9:15 or 9:30.

15 Q Okay. Okay. You did talk to him while he was at  
16 the jail though? You were aware of that?

17 A At least afforded -- represented he was, yes. And --

18 Q Okay.

19 A -- Brendan was on the phone so it would have had to  
20 have been in the jail.

21 Q Right. Right. And you had actually talked to a  
22 guard there to -- to confirm that it was you on  
23 the cell phone so that he could pass it to --  
24 right?

25 A Pass to Brendan. I believe so, yes.

1 Q Yeah. Okay. Now, regarding May 13, I want to  
2 talk about you -- any discussions you had with  
3 the State, um, regarding the May 13  
4 interrogation.

5 Had you discussed with Kratz --  
6 Mr. Kratz -- on the -- on the 12th, um, either  
7 during, before, or immediately after the hearing  
8 in court, did you have any discussions with him  
9 about the O'Kelly interrogation that night?

10 A I said I don't know if I'd call O'Kelly's an  
11 interrogation because I wasn't -- wasn't there. But  
12 I know I certainly told Ken a number of points prior  
13 to that that really the tipping point as far as  
14 making any final decision as to the direction we're  
15 going to go would occur after the decision on the  
16 motion to suppress, and that we'd be talking with  
17 Brendan shortly thereafter and let him or his agents  
18 know what direction we were going in.

19 So it was something I certain -- um, I  
20 had informed him that we had dissipated coming to  
21 pretty much a final decision on the direction of  
22 the case shortly after the Judge's ruling on the  
23 motion to suppress.

24 Q All right. At around this time, say, after  
25 May 7, between May 7 and May 13, had you had any



1 discussions with Mr. Kratz about specific  
2 information that he was interested in getting  
3 from Brendan?

4 A I don't believe so.

5 Q Okay. What about any communication with any of  
6 the other agents or law enforcement personnel?  
7 Did you have any conversation with them about  
8 specific information that they were interested in  
9 hearing about?

10 A There was one thing -- and I don't remember what it  
11 was -- that Kratz had asked me about at some point.  
12 But I -- I don't even recall what it was now at this  
13 point. But certainly nothing between that week  
14 before the 12th of any specificity.

15 Q Okay. Well, there was the -- the e-mail that you  
16 had received very early on, which we already  
17 talked about, where he listed a number of things  
18 that he was interested in -- in finding out  
19 about, like Mr. Avery's camera and such?

20 A I -- yes. Now that you remind me, yes.

21 Q Anything -- anything after that?

22 A Not that I recall.

23 Q All right. What about after, um, your -- after  
24 court, between the -- at any time after you left  
25 Mr. Kratz that day at court, did you speak with

1           him at all personally that evening on the 12th?

2    A       I don't believe so.

3    Q       What about on the 13th at any time during the

4           day?

5    A       No.

6    Q       What about with law enforcement? Did you have

7           any conversation with law enforcement other than

8           your -- your phone conversation with Agent

9           Fassbender that evening in the jail, uh, making

10          arrangements for the following interview as well

11          as your e-mail? Any other conversations with law

12          enforcement?

13   A       Not that I recall.

14   Q       Okay. On the 12th or the 13th?

15   A       Nothing other than what's in the e-mails and billing

16          records that you've got.

17   Q       All right. Um, did you have a -- now, going into

18          this, um -- going into this meeting you had

19          indicated in the -- in your e-mail to Agent

20          Fassbender that the -- that this would be a --

21          a -- a -- a -- basically a free interview; right?

22          There was no consideration being offered by the

23          State?

24   A       Correct.

25   Q       Okay. Had you discussed the -- the -- had you

1 discussed at all with Mr. Kratz the -- or made  
2 any arrangements with Mr. Kratz about the May 13  
3 interrogation?

4 A Not directly. As I recall, I think Fassbender or  
5 Wiegert had contacted him and gotten some directions  
6 from him that were either authorized (unintelligible)  
7 or conveyed to me. But I'm not totally sure on  
8 the --

9 Q Okay.

10 A -- details of that.

11 Q My -- my question, specifically, relates to any  
12 conversation that you had with Mr. Kratz about  
13 the May 13 interrogation in terms of -- of what  
14 it was.

15 A Nothing directly, no.

16 Q Okay. Um, and up to the point where that  
17 interrogation happened, you still had not been  
18 given any of the specific details of what Brendan  
19 had told Michael O'Kelly; correct?

20 A There's one in particular about the location of some  
21 evidence in the residence occupied by his mother.

22 Q Okay. But you had not reviewed the tape; right?

23 A Correct.

24 Q You had not reviewed Brendan's written statement;  
25 correct?

1 A Correct.

2 Q Okay. Um, did -- did Fassbender -- Agent  
3 Fassbender -- mention to you anything about what  
4 he wanted to have accomplished on May 13  
5 interview that you recall?

6 A I don't recall anything.

7 Q You don't recall anybody say -- telling you that  
8 they wanted to get a -- a pristine statement or  
9 a -- a narrative from beginning to end?

10 A No.

11 Q Okay. Did Brendan know that this was -- that  
12 there were no -- that this was -- that no  
13 consideration was being offered by the State?  
14 Had he had been -- had he been told that?

15 A We had talked about it. Brendan told me on the  
16 phone, you know, he wanted to do the interview with  
17 the -- the police. He wanted to do the interview  
18 even if I wasn't there and not wait for three days  
19 when I could be there.

20 Uh, and I -- as I recall, I would have  
21 told him something to the effect, you know, we're  
22 good -- I guess this is a gesture toward the  
23 police that we're going to cooperate in the -- in  
24 him being a witness against Avery.

25 Q All right. Prior to this interview you hadn't

1 requested any kind of immunity letter or talked  
2 about an immunity letter with Mr. Kratz; right?

3 A Correct.

4 Q Um, where -- are -- were you satisfied going into  
5 this that Brendan understood what was expected of  
6 him on the May 13 interview?

7 A Yes, I -- O'Kelly told me that he had come clean  
8 about what happened. Brendan had confirmed he wanted  
9 to do the interview. He wanted to do it promptly.  
10 Not wait. He didn't particularly care whether or not  
11 I was present, even though I offered to be so.

12 So it seemed to me like he was ready  
13 to -- to do it. To change his perspective of the  
14 whole case and change the direction that we were  
15 going to go in. Or at least establish a  
16 direction. Because we really hadn't established  
17 a direction yet.

18 Q Okay. But you hadn't really -- you -- at --  
19 at -- at the -- at the time that you got that  
20 report you really didn't know what had happened  
21 on the evening of the 12th; right?

22 A Correct.

23 Q Um, and by the way, did you have any discussion  
24 with any of the prosecutors on the case about the  
25 admissibility or future use of the statement that

1           they were about to take on May 13?

2    A       Not before it happened.  I think after it happened,  
3           uh, there may have been some.

4    Q       Okay.  Do you feel that, uh -- well, had you  
5           had -- did you have a conversation with Michael  
6           O'Kelly about the ground rules as you saw them  
7           and his role in May 13 -- in monitoring the  
8           May 13 interrogation?

9    A       Simply that he was to be there monitoring it.  If  
10           something came up, Brendan wanted to talk to me, uh,  
11           or something else, my phone was open.  Call me.

12   Q       Okay.

13   A       That was it.

14   Q       Um, and on the 13th when -- when things were  
15           being set up, were -- were you advised what the  
16           arrangement would be?  In other words, whether or  
17           not O'Kelly would be in the room?

18   A       I was not.

19   Q       Okay.  Did you know on the 13th whether or not  
20           Mr. O'Kelly would be able to monitor the  
21           conversation as it was going on?

22   A       My understanding was he'd be able to monitor it.  I  
23           didn't have a clear understanding as to whether he  
24           was to be in the room or immediately outside the  
25           room.  He was certainly to be in the immediate

1 vicinity.

2 Q All right. Um, did you have any discussion with  
3 him about, you know, if -- if -- if things look  
4 like they're going south, that he ought to pull  
5 the plug or stop the interview?

6 A Not in those sort of words. Just, something came up,  
7 troublesome, please call me.

8 Q Okay. Would you -- did you get any calls from  
9 Michael O'Kelly during the May 13 interrogation?

10 A No.

11 Q Okay. Would it be -- would you agree with me  
12 that a bad proffer is probably worse than no  
13 proffer at all?

14 Let me rephrase the question. If -- if  
15 a client goes into a proffer and, um, is giving a  
16 number of inconsistent statements, um, that's  
17 likely to be more harmful than helpful, wouldn't  
18 you agree?

19 A It'd certainly be -- be a problem, yes.

20 Q Okay.

21 ATTORNEY DVORAK: I would, Judge, at  
22 this point like to play some clips from that tape  
23 of the May 13 interrogation.

24 THE COURT: All right.

25 ATTORNEY FALLON: Would the record

1 reflect our standing objection to the relevance  
2 of the May 13 and the May 12 events?

3 THE COURT: All right. It'll so reflect.

4 Q (By Attorney Dvorak) Had you seen this tape of  
5 the May 13 interrogation?

6 A Yes.

7 Q Okay. When did you first see it?

8 A About a week later. What's ever reflected in the  
9 billing records.

10 Q Okay. Tape No. 1, um --

11 ATTORNEY FALLON: What exhibit are we  
12 watching, Counsel?

13 ATTORNEY DVORAK: Two twelve.

14 ATTORNEY FALLON: Thank you.

15 ATTORNEY DVORAK: Chapter 5.

16 ATTORNEY FALLON: All right.

17 ATTORNEY DVORAK: Clip one.

18 (Wherein tape is played.)

19 THE COURT: Counsel, that's not audible  
20 or intelligible.

21 ATTORNEY DVORAK: Right. It's not. Um,  
22 let's stop it. Let me do it orally.

23 THE WITNESS: Okay.

24 Q (By Attorney Dvorak) Were you aware during  
25 that -- during this interview that Brendan had



1 changed his, uh, story about whether or not he  
2 had cut Teresa's throat on May 13?

3 A After I saw the tape I became aware of that, yes.

4 Q Okay. On May 13 you weren't aware of it though?

5 A Correct.

6 Q Okay. Were you aware that he changed his  
7 sorry -- story about seeing Steve at the RAV4  
8 and -- and what happened to the license plates on  
9 May 13?

10 A No.

11 Q Were you aware that he had changed his story  
12 about whether or not he personally had shot  
13 Teresa on May 13?

14 A No.

15 Q Um, that's --

16 ATTORNEY DVORAK: Just for the record,  
17 Judge, that'd be clip two. The issue on the  
18 RAV4 is clip three.

19 Q (By Attorney Dvorak) Were you aware that he  
20 changed his story four times about whether or not  
21 he cut Teresa's hair on May 13?

22 A No. I -- I don't -- said I don't know what -- if  
23 that was different than what he told O'Kelly on the  
24 12th for that matter.

25 Q Or even during the tape he changed his story

1 about that?

2 A Right. I believe so.

3 Q Okay.

4 ATTORNEY DVORAK: That's clips four,  
5 six, nine, and sixteen.

6 Q (By Attorney Dvorak) Did -- were you aware that  
7 he's getting a call from Blaine's, uh -- that --  
8 that police felt there -- Wiegert, Fassbender  
9 felt that he was not being truthful about whether  
10 he called Blaine's boss that evening? Did you  
11 know that on May 13?

12 A No.

13 ATTORNEY DVORAK: That's clip five.

14 Q Were you aware that he changed his story about  
15 seeing Steve put the -- Teresa's cell phone,  
16 camera, and purse, and stuff in the burn barrel  
17 on May 13?

18 A No.

19 ATTORNEY DVORAK: That's clip seven.

20 Q Were you aware that he changed his story about  
21 ever seeing the stuff in the burn barrel?

22 A No.

23 ATTORNEY DVORAK: That's clip eight.

24 Q About whether or not he saw Steve clean the knife  
25 that was supposedly used?

1 A No.

2 ATTORNEY DVORAK: That's clip 11.

3 Q And about whether or not, um, he had ever seen,  
4 uh, Steven with a key or dropped the key?

5 A No.

6 ATTORNEY DVORAK: That's 12 and 13.

7 Q Um, so going into this interview on May 13, you  
8 had not personally talked to Brendan about what  
9 he was going to say on May 13; right? In detail.

10 A In -- in detail, right. He wanted to do it, and he  
11 wanted to do it fast, and I guess I didn't say no.  
12 So...

13 Q Okay. You had not personally interviewed him  
14 about the details that he was going to -- to  
15 disclose or what he was going to say; correct?

16 A Correct.

17 Q Um, so he was sent into the interview without,  
18 essentially, any preparation from his lawyer?

19 A Not from me directly, no. I -- I was trusting  
20 O'Kelly. Had briefed him.

21 Q Okay. Now, you're -- were you aware that Mr. --  
22 that the agents had requested, or suggested, or  
23 cajoled Brendan into making a phone call to his  
24 mother that night?

25 A I wasn't aware of that until I saw the tape.

1 Q Okay. Um, you're aware that happened when you  
2 saw the tape; right?

3 A Yes.

4 Q Okay. You -- and -- and at what point did you  
5 become aware that that had happened?

6 A When I read the tape. When I saw the tape. I guess  
7 was that the question?

8 Q Yes. When --

9 A I became aware of that at the time that I saw the  
10 tape.

11 Q Okay. Would you have -- if -- had you been  
12 there, would you have approved of that procedure?  
13 To have the -- the detectives, um, try to get  
14 Brendan to make a phone call to his mother that  
15 night over the telephone from the jail?

16 A Certainly not a monitored call, no.

17 Q Okay. Well, that's about the only kind there  
18 is --

19 A Right.

20 Q -- to be outside in the jail; right?

21 A Yeah.

22 Q So the answer's, no, you would not want him to  
23 have another uncounseled -- making another  
24 uncounseled statement talking about the case;  
25 right?

1 A Right.

2 Q Okay. O' Kelly was there and he saw that. If --

3 had you -- had you given any instructions to

4 O'Kelly about limiting in any way what Brendan is

5 saying or to whom he is saying it?

6 A No.

7 Q Did -- did Mr. O'Kelly, after the in -- did you

8 talk to Mr. O'Kelly immediately after the May 13

9 interrogation by Wiegert and Fassbender?

10 A I'd have to look at the billing records to see if I

11 did or not.

12 Q Sure. Go ahead.

13 A I thought I did. Yes. Okay. I did.

14 Q You did. And during that conversation did he

15 tell you how the interview went?

16 A As I recall, he told me the interview went fine and

17 that, you know, Brendan -- Brendan was on board with

18 cooperating in the Avery prosecution and, ultimately,

19 entering a plea agreement.

20 Q Did he tell you that Wiegert and Fassbender

21 had -- did he make you aware that Brendan had

22 been -- agreed to make a phone call to his mother

23 that night and talk about what he had told

24 Wiegert and Fassbender on the 13th?

25 A No.

1 Q Would you have expected O'Kelly to -- to put --  
2 to stop that from happening?

3 A Yes, I would have expected him to do that. I would  
4 have expected him to at least, yeah, have him call me  
5 or something, yes.

6 Q Okay. Now, prior to that May 13 interview, were  
7 you aware of lab results -- the lab results  
8 regarding Steven Avery's -- the DNA -- lack of  
9 DNA on Steven Avery's cuff and the fact that no  
10 DNA had been found in his bedroom?

11 A Yes.

12 Q Or at least of -- of -- of Brendan's? And were  
13 you aware that there was a contamination issue  
14 about Steven Avery's blood on the hood of the  
15 SUV?

16 A I wasn't aware, I think, of the contamination issue.

17 Q Okay. Um, your Guard duty on the 13th, was that  
18 your last -- supposed to be your last meeting or  
19 something?

20 A It was supposed to be. I -- my -- my mandatory  
21 release date was supposed to be 18, May, 2006, and it  
22 was my impression at that time that some orders  
23 automatically would find me at 28 years -- or  
24 conditions -- service minus law school time and then  
25 I would be out.

1                   So I had some drill to do by then or  
2 things just weren't going to get done in terms of  
3 evaluation reports, things of that nature.

4 Q   Was there a party scheduled?

5 A   Not at that time, no.

6 Q   Okay.

7 A   No. There had been one the previous weekend, sort  
8 of, at a -- a drill at Fort (unintelligible).

9                   COURT REPORTER: Please repeat that.

10                  THE WITNESS: Fort Sheridan,  
11 S-h-e-r-i-d-a-n.

12 Q   (By Attorney Dvorak) Okay. I want to limit this  
13 discussion to events prior to May 13 that you had  
14 submitted a voucher to the Public Defender's  
15 Office; correct?

16 A   Prior to May 13?

17 Q   No. No. Um, let me back up. You had submitted  
18 a -- a voucher to the Public Defender's Office  
19 for your time spent on the case?

20 A   Right. The -- the billing record should the --  
21 exhibit whatever number it is.

22 Q   Fifty-five.

23 A   Yes.

24 Q   Right. Okay. And the Public Defender's Office  
25 had cut your bill for time spent on the media?

1 A Correct.

2 Q Correct? Okay. And prior to May 13 is it fair  
3 to say that about 8.2 of those hours were cut?

4 A I don't recall where they took the cuts, but...

5 Q Okay. Now, also, during this time period, that  
6 is in 2006, you were running for an elected  
7 office; right?

8 A Not during the time period I represented Brendan, no.

9 Q Okay. You had run for judge, and -- and --  
10 and -- and lost a primary?

11 A It was a run for circuit judge in Winnebago County,  
12 yes.

13 Q Okay. And -- and then later in 2006 --

14 ATTORNEY FALLON: Objection. Relevance.

15 ATTORNEY DVORAK: I think it has to do  
16 with some of -- perhaps some of his motive with  
17 respect to the press.

18 THE COURT: I thought he just said that his  
19 election campaign predated his representation of  
20 Brendan.

21 ATTORNEY DVORAK: Well, there was -- my  
22 next question was going to be about a recount  
23 that occurred -- that -- that -- that was going  
24 on during that period of time.

25 THE COURT: Objection is sustained.



1 ATTORNEY DVORAK: All right.

2 Q (By Attorney Dvorak) Did you ever turn over  
3 Michael O'Kelly's May 12 tape to Attorneys  
4 Fremgen and Edelstein?

5 A I don't -- I don't think he gave it to me so I don't  
6 think I ever turned it over.

7 Q All right. So you never had it?

8 A I believe that's correct.

9 Q You never saw it?

10 A I know I never watched it.

11 Q Okay. You never re -- also, you never reviewed  
12 the tapes of any of Brendan's statements that he  
13 made to the police with Brendan? Ever actually  
14 went through them with him; is that correct?

15 ATTORNEY FALLON: Objection. Vague and  
16 indefinite as to what statements what day.

17 THE COURT: Can -- can you --

18 ATTORNEY DVORAK: Sure.

19 THE COURT: Rephrase that?

20 ATTORNEY DVORAK: Sure.

21 Q (By Attorney Dvorak) Any -- there's -- all of  
22 the statements that the police made with Brendan  
23 in November, in February, and in March were  
24 either taped and/or video recorded; right?

25 A I'm not sure about the first one shortly after the

1 death of Ms. Halsbach (sic) but subsequent ones I --  
2 I know were --

3 Q Yeah. Did you ever review those tapes or audio  
4 recordings with Brendan prior to May 13?

5 A I had offered to ask him if he was interested in  
6 doing it at various times and he had declined.

7 Q Okay. You didn't -- you didn't insist that this  
8 was something that you -- you should really do?

9 A If he didn't want to do it, I wasn't going to push  
10 him.

11 Q Okay.

12 ATTORNEY DVORAK: I have nothing  
13 further, Judge.

14 THE COURT: Mr. Fallon?

15 ATTORNEY FALLON: Thank you.

16 **CROSS-EXAMINATION**

17 BY ATTORNEY FALLON:

18 Q Mr. Kachinsky, how long have you practiced  
19 criminal law in the state of Wisconsin?

20 A Pretty much since I was released from active duty.  
21 The first time in 1982 it was initially split between  
22 criminal and other -- and other things, but after  
23 that it was -- it eventually evolved into almost  
24 exclusively criminal, traffic, and other cases in  
25 which the State was the opposing party.

1 Q All right. And when did that, um -- the -- the  
2 criminal practice dominate your practice of law?  
3 When did that switch from --

4 A Well, ac -- actually, I should say when I was a JAG  
5 officer in the Army, three of my four years I was a  
6 prosecutor there. And the rules aren't that much  
7 different than civilian practice.

8 Um, I would say by -- by 1990 for sure  
9 criminal traffic came pretty close to exclusive.  
10 I wanted to get rid of divorce cases in the worst  
11 possible way.

12 Q All right. Now, with respect to the suppression  
13 hearing, you were asked some questions regarding,  
14 um, your concession on the presence or absence of  
15 custody and the need for **Miranda**.

16 Could you tell us your thinking or  
17 reasoning on why you conceded that point, please?

18 A Sure. Because at the beginning of the interview, as  
19 I -- I recall for the March 1 interview, uh, Brendan  
20 was informed that he was free to leave. He was  
21 brought there with his mother who was nearby. Nobody  
22 told him he was under arrest. He wasn't handcuffed  
23 or -- or confined in any way.

24 And, further, the **Miranda** rights were  
25 read appropriately from what I observed on the

1 tape.

2 Q And you were aware he was transported in Special  
3 Agent Fassbender's vehicle?

4 A Correct. And that -- that whole thing had been  
5 recorded as well.

6 Q All right. And that vehicle was an unmarked car?  
7 It was a -- it looked like a regular car? The  
8 back doors worked like any other car; correct?

9 A That was my understanding, yes.

10 Q All right. Now, with respect to the two  
11 statements on February 27, which were also  
12 somewhat part of that suppression hearing, there  
13 was a statement at the high school and the  
14 statement at the Two Rivers Police Department.

15 With respect to the statement of the --  
16 at the high school, you, likewise, conceded  
17 **Miranda** to be inapplicable.

18 Could you explain to us your thinking  
19 there?

20 A Sure. It was clearly a noncustodial interrogation.  
21 It wasn't required for the **Miranda** portion of a  
22 suppression motion.

23 Q All right. And how about the -- the subsequent  
24 statement which occurred shortly thereafter at  
25 the Two Rivers Police Department? What was your

1 thinking there?

2 A Same thing a -- applied in terms of that statement  
3 being custodial and requiring **Miranda** warnings.

4 Q In other words, you didn't think that the  
5 circumstances dictated a custodial environment?

6 A Correct. It's obviously different. You know, goes  
7 to -- but it goes to the voluntariness issue, not to  
8 **Miranda** per se.

9 Q All right. Now, in that particular case on that  
10 ride to the Two Rivers Police Department you were  
11 aware that the defendant's mother rode with him  
12 in the back of Agent Fassbender's car; correct?

13 A Yes.

14 Q Now, Counsel asked you about a -- a question, or  
15 an argument you made, or a comment you made, in  
16 that suppression hearing about the presence or  
17 absence of coercion. I think he read something.

18 And in -- in your way of thinking, was  
19 there a difference between psychological coercion  
20 and legal coercion as that term is used in  
21 Wisconsin as it relates to suppression hearings?

22 A Correct. Coercion, at least as I was referring to  
23 it, would have been something in the nature of  
24 threats of -- of some type, of an unlawful nature,  
25 uh, as opposed to, um -- I -- I wouldn't call it

1 coercion. I'd call it a -- more of an inducement  
2 where somebody tries to establish rapport. I guess,  
3 the -- the so-called Reid technique of -- of  
4 interrogation. It's --

5 Q So --

6 A -- different.

7 Q -- that was what you meant in the context of your  
8 comment on coercion when you were talking to the  
9 Court?

10 A Right. No threats, no unlawful promises were made.

11 Q All right. Now, um -- and I believe that was  
12 with respect to the February 27 proceedings? Or  
13 the two statements?

14 A I don't recall what the --

15 Q Okay.

16 A -- the --

17 Q Fair enough.

18 A -- statements were.

19 Q All right. Now, there was a -- a fair amount of  
20 discussion, initially, um -- I think it was  
21 Exhibits 319 and 320 were discussed briefly, in  
22 your comments to the press about a -- a plea  
23 being a possibility. What did you mean by that  
24 at that stage?

25 A Simply it was an option that anyone who's charged

1 with a criminal offense would be open to considering  
2 at any time regardless of the state of the evidence.  
3 I mean --

4 Q Did you think that you were then just stating an  
5 obvious possibility or -- I mean, in terms of  
6 what the facts are? In terms of how these cases  
7 are handled?

8 A Correct. I was -- yeah. I was signaling it was --  
9 could happen at any time. It was always an option  
10 any defendant had to either do that or do the  
11 opposite.

12 Q Which would be to take the case to trial?

13 A Right.

14 Q All right. Um, I also think that there was some  
15 comment in reference about Exhibit -- I think it  
16 was 324. You've consulted someone about, um,  
17 false confessions in this case; correct?

18 A Yes.

19 Q Who did you consult?

20 A Amongst I believe I called Mr. Drizin, D-r-i-z-e-n  
21 (sic).

22 Q All right.

23 A Uh, just to get some names of psychologists that I  
24 might possibly consult. This was done, I believe,  
25 after, uh --

1 Q After the suppression?

2 A After the suppression hearing and after Mr. Dassey  
3 subsequently was not interested in pursuing a plea  
4 agreement. So I think it was sometime in June.  
5 Whatever's reflected on the billing records.

6 Q All right. And at that particular point you were  
7 preparing to try this case?

8 A Correct.

9 Q Now, you mentioned something in -- with respect  
10 to the -- the -- the polygraph and Mr. Dassey's  
11 request for a polygraph.

12 You used a phrase, it seemed like a -- a  
13 question of rote, or seemed to be a matter of  
14 rote. What did you mean by that?

15 A He was talking in such a manner as it appeared it was  
16 some line he was supposed to tell me that had been  
17 memorized, because he had been told that by somebody.  
18 That was just -- that was an impression I got from  
19 Mr. Dassey on a number of things.

20 Q And what was it about the way in which the  
21 request came that -- that led you to that belief?

22 A I guess "polygraph" just seemed to be a word above  
23 his normal vocabulary level and also above his level  
24 of prior experience with the criminal justice system,  
25 which had been zero.



1                   Um, he could have discussed it, quite  
2                   conceivably, with members of his mother's family  
3                   that were a little bit more experienced in those  
4                   things.

5       Q       All right. Um, how many times did Mr. Dassey ask  
6                   you about taking a polygraph?

7       A       Twice.

8       Q       And after the second time you acceded to his  
9                   request?

10      A       Yes.

11      Q       And a -- a polygraph was administered on Easter  
12                   Sunday, April 16?

13      A       From all indications, yes. I, of course, wasn't  
14                   personally there.

15      Q       And I think you said -- and I just want it to be  
16                   clear -- were you advised as to what or how  
17                   Mr. Dassey did by Mr. O'Kelly shortly after the  
18                   test was administered?

19      A       Yes.

20      Q       All right. And did you, then, subsequently relay  
21                   those results to Mr. Dassey at some point after  
22                   April 16 and prior to May 12?

23      A       It would have been my first visit with him as  
24                   reflected in the billing records, um, after the  
25                   polygraph took place. When I talked to him at that

1 point, I'm sure I told him that the polygraph had  
2 been inconclusive or he would have asked me. I --  
3 I -- I can't conceive of any -- any other possible  
4 sequence of events.

5 Q All right. Now, in -- in your discussions with  
6 Mr. Dassey can you describe his -- his  
7 communicative skills with you as you, um, talked  
8 about the case and the matters that you were  
9 trying to work with him on?

10 A Um, yeah. Brendan was very concrete. He under -- I  
11 think he understood the basic processes that were --  
12 were going on at times.

13 There some things he would say that just  
14 seemed like he was -- memorized and been prompted  
15 by somebody to say this -- this to me.

16 So he was definitely introverted, not a  
17 very talkative person. I would end up doing  
18 almost all the talking during the interviews. He  
19 didn't provide a lot of information.

20 Q In terms of -- was your personal experience with  
21 him, did it seem to, um, coalesce with what you  
22 learned from the school, and the school's  
23 individual education plans, and things that they  
24 had worked up regarding Brendan? Did -- did your  
25 personal experience seem to mesh with what you

1 had discovered up to that point?

2 A Yes. Those results from the school appeared to  
3 reflect my experiences with Brendan in terms of his  
4 communicative and understanding levels.

5 Q All right. Now, um, I think you described -- in  
6 response to Counsel's questions about Brendan  
7 maintaining his innocence, I think you described  
8 them as assertions of no or noninvolvement.

9 How would you characterize his -- his  
10 assertions of noninvolvement? I mean, tell us  
11 about that.

12 A It would seem very unemotional. He was very -- had  
13 very flat affect, a-f-f-e-c-t, I think as a  
14 psychologist would -- would say.

15 It didn't seem passion. He didn't act  
16 like somebody that felt he was being terribly  
17 wronged by being in jail.

18 He just -- was just kind of -- he was  
19 telling me that, you know, they put words in my  
20 head, into the -- the May 1 tape. Particularly,  
21 I -- I would ask him about it several times.

22 Q You mean the March 1 --

23 A March 1, yes.

24 Q Right. In terms of the way he was expressing  
25 himself, did that appear to be genuine or was

1           that also a matter of rote?

2    A    Certain portions of it, it looked like they were  
3       rehearsed sort of things.

4    Q    At any time did you ever get a -- a passionate  
5       expression of innocence from Mr. Dassey?

6    A    Not -- not that I personally considered passionate,  
7       no.

8    Q    All right. In terms of Mr. Dassey's ability to  
9       understand his legal predicament, um, was he able  
10      to grasp the concept that he was being charged as  
11      a party to a crime?

12                    ATTORNEY DVORAK: Judge, I'm going to  
13      object. That calls for speculation as to -- with  
14      respect to Mr. Dassey.

15                    THE COURT: Well, we've been asking --  
16      you've been asking Mr. Kachinsky about his opinions  
17      with respect to things. I think this is fair.  
18      Overruled. Go ahead.

19                    THE WITNESS: Mr. Dassey, I think,  
20      clearly understood that even if he wasn't the one  
21      that pulled the trigger, uh, or did something  
22      that would have caused the death of another  
23      individual, such as Teresa Halbach, that if he  
24      assisted somebody else in doing it in some way,  
25      knowing that it was part of a criminal activity,

1           that he was guilty of a criminal offense. That  
2           it was immoral, etc.

3    Q       All right. In terms of his reticence to carry on  
4           a conversation with you, did -- in your ability  
5           to work with him, did he -- did he seem to  
6           function all right and understand your questions?

7                        I mean, were you able to communicate and  
8           work with him?

9    A       Oh, sure. Um, I think he had the ability to  
10           cognitively, that is, intellectually, understand what  
11           I was telling him. I wouldn't -- I would make my  
12           vocabulary in talking to him appropriate.

13                       If I found myself using lawyerly-type  
14           words, I would restate something in a little bit  
15           more basic -- basic terms to him and talk slowly  
16           and understandably.

17                       But he appeared to -- to understand, you  
18           know, what the next court hearing might be. Uh,  
19           what I had seen in terms of evidence I had  
20           reviewed.

21                       And we also, I think, had some  
22           discussions -- I would send him -- he didn't want  
23           to have all of the State's discovery in his cell  
24           to read. And I -- and he was alone, for that  
25           matter, isolated from the world. But he didn't

1 want to have all that stuff in his cell.

2 But he said that I -- I certainly -- I  
3 think I sent -- sent him some letters summarizing  
4 certain points as I had seen them.

5 Q All right. And so he was able to understand them  
6 and at least -- at least on some level discuss  
7 with you their meaning?

8 A Yes. And I think I concentrated on my discussions  
9 with Brendan on -- on the timeline of the late  
10 afternoon and relatively early evening of October 31,  
11 2005.

12 Q All right. In your dealings with Mr. Dassey and  
13 his family, did he appear to be heavily  
14 influenced by family members?

15 A I couldn't --

16 ATTORNEY DVORAK: Ob --

17 THE WITNESS: I couldn't tell from my --

18 ATTORNEY DVORAK: I'm going to -- I just  
19 want to enter an objection, Judge. Unless --  
20 unless there's going to be some foundation about  
21 that.

22 ATTORNEY FALLON: He's --

23 THE COURT: Foundation?

24 ATTORNEY FALLON: Foundation? The  
25 question is the nature of the relationship

1           between Mr. Kachinsky and Mr. Dassey. And the  
2           accusation is, is that Mr. Kachinsky failed in  
3           his representations.

4                     And they're entitled to explore one  
5           as -- aspect of it. I have another angle that  
6           might attrib -- contribute to what the facts  
7           really mean in this case.

8                     And this is what I'm getting at in terms  
9           of my questioning did he have some, um, problems  
10          in -- in working with and communicating with his  
11          client based on outside influences.

12                    They've already talked about Mr.  
13          O'Kelly's influence. There -- there a lot of  
14          influences in this case. O'Kelly is not just  
15          one.

16                    THE COURT: Court believes that's a fair  
17          avenue to explore. You can answer the question if  
18          you remember it.

19                    THE WITNESS: Sure. Our -- okay. I  
20          recall getting the e-mail from O'Kelly -- I  
21          believe it's in evidence -- regarding the  
22          numerous phone calls allegedly made by Avery to  
23          the residence with Barb Janda, and I was also,  
24          during the course of the case, being aware of the  
25          jail conversations between Brendan and his

1 mother.

2 And in talking to him, I mean, it  
3 appeared to me that, based on that, plus the way  
4 he was talking about certain things, that they  
5 were giving him advice and direction.

6 Q All right. And you were aware that there were a  
7 number of jail calls from family members to your  
8 client during this -- this time of March, April,  
9 and May, 2006?

10 A Oh, absolutely.

11 Q And, in fact, um, many family members had told  
12 Brendan, don't take a deal, don't cooperate,  
13 don't testify against Steven; isn't that correct?

14 ATTORNEY DVORAK: Objection. Calls for  
15 hearsay.

16 THE COURT: Well, phrased that way it does.

17 Q (By Attorney Fallon) All right. Were you aware  
18 that there was advice given to Mr. Dassey by  
19 family members that might be inconsistent with a  
20 road that was a possibility in this case?

21 A Right. I reviewed --

22 ATTORNEY DVORAK: I think it still calls  
23 for hearsay.

24 THE COURT: I'll overrule the objection.  
25 You can answer.



1 THE WITNESS: I reviewed the jail tapes  
2 that the State had provided to me I believe after  
3 Mr. Dassey had told me he wanted a new counsel  
4 the first time that that occurred.

5 And in those tapes there were numerous  
6 references to him, or suggestions to him, not to  
7 take a deal, uh, to go to trial, to fire me as  
8 his attorney, things of that nature.

9 Q All right.

10 (Exhibit No. 364 marked for identification.)

11 ATTORNEY FALLON: May I approach the  
12 witness?

13 THE COURT: You may.

14 Q (By Attorney Fallon) Mr. Kachinsky, I'm showing  
15 you what has been marked as Exhibit 364. If  
16 you'd take a moment to examine that?

17 A Yes.

18 Q Does Exhibit 364 -- is that the type of  
19 information that you were just discussing that  
20 you reviewed certain calls from family members?

21 A Yes. I remember this quite vividly.

22 Q All right. And there are quite a few calls on  
23 Exhibit 364, is there not?

24 A Correct.

25 Q And the -- the dates of those calls range from

1 the first ones beginning what date?

2 A First from March 23 of 2006 to May 22 of 2006.

3 Q All right. Now, in terms of your dealing with  
4 your client, and in your review of those calls,  
5 is it your opinion that there was a -- some  
6 coercion being employed on Mr. Dassey by the  
7 family?

8 A I don't know if coercion would be the word but  
9 certainly persuasion.

10 Q And the persuasion was to do what?

11 A The persuasion was not to rat on Steve Avery, to fire  
12 me as his attorney, and to go to trial.

13 Q All right. If we may, I'm going to talk a little  
14 bit about the police strategy that Counsel was,  
15 um, asking you about in this case.

16 Um, I believe you testified, correct me  
17 if I'm wrong, that the serious negotiations would  
18 take place after the Court ruled, which turned  
19 out to be May 12; is that correct?

20 A Correct.

21 Q All right. Now, I would imagine there was some  
22 discussions leading up between yourself, and  
23 Mr. Kratz on behalf of the prosecution, in, um --  
24 from the beginning of May through the suppression  
25 hearing and then shortly thereafter. There was

1           some discussions occurring with him; is that  
2           correct?

3    A    Right. Mr. Kratz would, you know, occasionally make  
4           some statements that we've discussed, you know, what  
5           ultimately the State might be looking at should the  
6           motion to suppress be denied.

7    Q    All right. And, um, I believe you used the  
8           phrase the "Statement of May 13 was to be  
9           considered a proffer towards a possible plea."  
10          Is that correct?

11   A    Yes.

12   Q    Could you explain to us your understanding or  
13          what you meant by that?

14   A    Sure. What a -- what a proffer is, is a statement  
15          given by a person who's charged with a crime to law  
16          enforcement. It's for the purposes of negotiations  
17          and, therefore, not admissible under the -- the  
18          evidence code, uh, where basically you're showing the  
19          State the sort of information and cooperation that  
20          the client would provide in the event that there's a  
21          plea agreement worked out.

22                    In the event the agreement works out, of  
23                    course, the person's normally required to testify  
24                    truthfully against others that might be involved  
25                    in the crime or some other offense, as well as

1 other sort of conditions.

2 It's basically because a prosecutor's  
3 plea offer would normally depend upon the quality  
4 of the testimony given by the client.

5 Q All right. And in this particular case have you  
6 engaged in this -- this proffer approach in -- in  
7 previous criminal cases?

8 A Uh, yes. Primarily in -- in federal court done it a  
9 number of times.

10 Q All right. And I believe you said you had a --  
11 a -- well, let me ask you. Had you had a  
12 long-standing professional relationship with the  
13 prosecutor in this case? Mr. Kratz?

14 A Yes.

15 Q Did you feel you could trust his representations  
16 and his word?

17 A I've also known Mr. Kratz to be a hard-working  
18 adversary but also a very ethical one.

19 Q All right. So you didn't have any concerns about  
20 having any conditions up front in providing the  
21 proffer? In other words, he didn't make any  
22 promises to you of what the State would do until  
23 the -- the proffer was in and you and he could  
24 then discuss what -- what it was?

25 A Yeah. The State -- I think the -- some of the

1           conversations we had Mr. Kratz would make comments,  
2           like, you know, we really don't need any more  
3           evidence against -- against Brendan other than the  
4           statement and surrounding sorts of corroborative sort  
5           of evidence.

6                         We could convict him easily with just  
7           his own March 1 statement. We didn't even need  
8           the May -- February 27 one or anything else.

9                         But that if he would assist in Avery  
10          then certainly he would get a better deal than if  
11          he didn't.

12    Q       All right. Now, with respect to, um, trying to  
13          put your client in the best light to, um -- to  
14          negotiate a favorable deal, did you believe that  
15          the State actually needed Mr. Dassey's testimony  
16          to convict Steven Avery?

17    A       No.

18    Q       All right. So did -- did -- in your view, then,  
19          that made it a little more difficult to -- made  
20          it more difficult to negotiate; did it not?

21    A       It certainly would be a factor. I know Mr. Kratz to  
22          be, as I said, not only a vigorous advocate but a  
23          fair one. Certainly, as a representative of the  
24          State, he would want to establish a pattern  
25          institutionally that person's that cooperated with

1 the State would get better deals than those that  
2 didn't cooperate or obstructed justice.

3 Q All right. And in your experience he had given  
4 consideration in the past for those who  
5 cooperated?

6 A Yes. There is generally for persons that were  
7 remorseful or helpful to law enforcement, like, when  
8 somebody was involved, perhaps, in a -- maybe in a  
9 burglary that, you know, find the stolen property,  
10 things like that.

11 Q All right. In your dis--- in your discussions  
12 with Mr. Dassey, did you -- did you ask him  
13 directly why he told the police what he told them  
14 on March 1? In other words, why he, quote,  
15 confessed, closed quote?

16 A I know I asked him a number of times. I never got  
17 much of an answer.

18 Q Is it fair to say he never directly answered that  
19 question?

20 A That's the way I would characterize it, yes.

21 Q Did he -- did you ever offer him the opportunity  
22 of reviewing any of the statements he made in  
23 this case? The Nov -- two November statements to  
24 the Marinette authorities, the two February 27  
25 statements, and the March 1 one?

1 A Yes, I told him I could --  
2 ATTORNEY DVORAK: (Unintelligible)  
3 Judge.  
4 THE COURT: I'm sorry?  
5 ATTORNEY DVORAK: I said it's been asked  
6 and answered.  
7 THE COURT: I don't recall that.  
8 ATTORNEY DVORAK: Okay.  
9 THE COURT: Go ahead.  
10 THE WITNESS: Okay. Yes. I think early  
11 on in the case, once I had seen the tape, I think  
12 I told him I would review the CD or tape,  
13 whatever it was, uh, and if he wanted, I could  
14 bring my laptop over to the Sheboygan County Jail  
15 and we'd find a time when he could sit there for  
16 three-and-a-half hours and -- and watch it, and  
17 have to do it, basically, for an afternoon or  
18 morning to avoid interfering with jail meals and  
19 things like that.  
20 Q All right. Did he ever take you up on the offer  
21 to listen to or watch any of those statements?  
22 A No, he said he really didn't feel he had a need to.  
23 Q Did he ever give any other explanation?  
24 A No.  
25 Q During the course of your discussions with him

1 did he ever offer you the explanation that he got  
2 the idea to, quote, confess, closed quote from  
3 the book or the movie called *Kiss the Girls*?

4 A No.

5 Q Did he ever suggest to you that he got any of  
6 those ideas from friends, or media accounts, or  
7 anything else?

8 A No.

9 Q All right.

10 ATTORNEY FALLON: No further questions.

11 ATTORNEY DVORAK: Can I have a few  
12 minutes to caucus, Judge?

13 THE COURT: Does a few minutes mean what?

14 ATTORNEY DVORAK: Few minutes. Or if  
15 you want to take the morning break?

16 THE COURT: All right. Let's take a  
17 morning break. Fifteen minutes.

18 (Recess had at 10:05 a.m.)

19 (Reconvened at 10:43 a.m.)

20 ATTORNEY DRIZIN: We've been having  
21 technical difficulties. I think we've worked  
22 them out. But I'd ask your permission to allow  
23 one of -- member of our counsel's team to sit in  
24 the jury box for the purpose of playing videos  
25 with the next witness as opposed to counsel



1 table.

2 THE COURT: That's fine.

3 ATTORNEY FALLON: Your Honor, if counsel  
4 would permit the State one last question before I  
5 pass the witness. There was one I omitted.  
6 They --

7 THE COURT: Go ahead.

8 ATTORNEY FALLON: Thank you.

9 Q (By Attorney Fallon) Mr. Kachinsky, um, when  
10 Attorneys Fremgen and Edelstein became the  
11 counsel of record in this case, did you provide  
12 them with all of your file materials in this  
13 case?

14 A Yes.

15 Q Was there anything that you can recall holding  
16 back?

17 A There was one thing I remember that I hadn't printed  
18 out, and that was the notes I had taken at the  
19 Calumet County District Attorney's Office of the  
20 material that was referred to on -- on Friday, and I  
21 met -- saw Mr. Edelstein in -- in court in Oshkosh,  
22 and at that point I transferred that on my PDA to his  
23 PDA because I had -- that had been -- that had not  
24 been printed out. But everything else that I had I  
25 gave them.

1 Q All right. And, um, then I guess when you say,  
2 everything I had, did that include Mr. O'Kelly's  
3 work product stuff? I mean, all that material  
4 that he did or --

5 A Any of the portion of it that I had I turned over.  
6 Um --

7 Q All right.

8 A -- Mr. O'Kelly didn't necessarily give me everything.

9 Q And that would then explain why you had not seen  
10 the May 12 video before this?

11 A It might.

12 Q All right. Okay.

13 ATTORNEY FALLON: Your witness. Thank  
14 you, Counsel.

15 ATTORNEY DVORAK: Sure.

16 **REDIRECT EXAMINATION**

17 BY ATTORNEY DVORAK:

18 Q Let's start with that. You handed over the file  
19 in the condition that they were in your office?

20 A Yes.

21 Q Okay. And so what you handed over was -- was  
22 everything you had and -- and reflected your --  
23 what you had reviewed in your work product to  
24 that date; right?

25 A Yes.

1 Q Okay. I want to talk about the March 1 statement  
2 at the station.

3 I -- I believe you said that he felt  
4 that he was -- that the police had told him that  
5 he was free to leave. Would it surprise you if  
6 they never told him that at that time?

7 A No. I -- I'm not -- don't have really close memory  
8 of it. I remember it was noncustodial, you know, in  
9 terms of the overall situation. He might not have  
10 explicitly said that.

11 Q All right. And -- and -- and that his mother was  
12 nowhere in the building? She was at court at  
13 that time?

14 A That might be the case.

15 Q And that there was no full reading of his **Miranda**  
16 rights at that time?

17 A March 1?

18 Q Yes. At the station. At the station.

19 A As I recall on the tape it was -- it was read.  
20 Whatever the tape reflects, it reflects.

21 Q Okay. So if -- if you -- if you conceded those  
22 issues, those would have been based on mistaken  
23 assumptions?

24 ATTORNEY FALLON: Objection.  
25 Mischaracterization.

1 THE COURT: Can you rephrase --

2 ATTORNEY DVORAK: I'll withdraw -- I'll  
3 withdraw the question.

4 Q (By Attorney Dvorak) Um, now, you -- you said  
5 that you had a -- a trusting relationship with  
6 Mr. Kratz throughout your career? You've  
7 developed one; right?

8 A At least from the time he became, I believe, first an  
9 assistant and later the district attorney in Calumet  
10 County.

11 Q Okay. And -- and what you testified on cross is  
12 that there had been ongoing discussions with  
13 Mr. Kratz about Mr. Dassey eventually entering a  
14 plea and testifying against Mr. Dassey? Or  
15 against Mr. Avery?

16 A Right. Some --

17 Q And -- and -- and it was in -- your -- your  
18 testimony is that it was in conjunction with  
19 those discussions that the March 13 statement was  
20 set up?

21 ATTORNEY FALLON: May 13.

22 ATTORNEY DVORAK: I'm sorry. May 13.

23 Thank you.

24 THE WITNESS: Not directly. I mean, it  
25 was not directly part of that, no.

1 Q (By Attorney Dvorak) Well, okay. But your --  
2 your view -- what you're -- what you've told us  
3 is that in your view those -- that May 13  
4 statement was part of a -- a plea negotiation and  
5 therefore not admissible?

6 A Correct.

7 Q Okay. And in order for that to happen it would  
8 mean that it would have to be part of a plea  
9 negotiation; correct?

10 A Yes.

11 Q And it would have to be part of a plea  
12 negotiation with a prosecutor; right?

13 A Yes.

14 Q Is it your understanding that that confession  
15 would also have to be made in the presence, at  
16 least under Wisconsin law, of the prosecutor?

17 A I'm not sure.

18 Q Okay. Um, did you -- did you, uh -- and --  
19 and did -- would -- would your understanding of  
20 this plea negotiation process have included the  
21 follow-up phone call between Mr. Dassey and his  
22 mother?

23 A Um, no. It was that the agents that would be in the  
24 interview would contact Kratz as to whether they  
25 wanted to go ahead with it at that time.

1 Q Well, okay. But you set up the May 13 -- you set  
2 up the May 13 interview with the understanding  
3 that it was going to be in the nature of what you  
4 call a proffer?

5 A Yes.

6 Q And that that proffer was not going to be  
7 something that was admissible into evidence;  
8 right?

9 A Right.

10 Q Okay. And during that proffer another  
11 arrangements were made for Dassey to make another  
12 statement; correct?

13 A Right.

14 Q By the phone call to his mother; right?

15 A That's what's reflected in the -- in the evidence,  
16 yes.

17 Q Right. And -- and -- I mean, isn't it fair to  
18 say that you would have expected that Mr. Kratz,  
19 at least, would have included that statement in  
20 the proffer understanding out of fairness, if  
21 nothing else, see how it was induced by them and  
22 you weren't there?

23 ATTORNEY FALLON: Objection.  
24 Speculation. Mischaracterization of the  
25 evidence.

1 THE COURT: Well, it -- it's certainly  
2 conjectural. I'll sustain the objection.

3 Q (By Attorney Dvorak) The -- would you have,  
4 given your trusting relationship with Mr. Kratz,  
5 and knowing how that May 13 phone call came  
6 about, would -- did you expect that Mr. Kratz  
7 would include that phone call as part of the  
8 May 13 proffer?

9 A Yes.

10 Q Okay. Did you, um -- after finding out about  
11 that, were you upset that they had done that?

12 ATTORNEY FALLON: Objection. He was --  
13 Well, uh, only into the, um -- the phrasing of  
14 the question. When? There's a timing issue.  
15 Upset.

16 ATTORNEY DVORAK: Okay.

17 ATTORNEY FALLON: Did you --

18 Q (By Mr. Dvorak) Would you --

19 THE COURT: Well, the question was a  
20 little bit vague. Why don't you --

21 ATTORNEY DVORAK: I'm sorry.

22 THE COURT: -- rephrase the --

23 ATTORNEY DVORAK: I'll rephrase it.

24 Q (By Attorney Dvorak) Where -- when -- when you  
25 learned -- when you first learned that

1 Mr. Kratz's investigator had arranged the May 13  
2 statement, were you upset to -- not the May 13  
3 statement but the May 13 phone call -- did that  
4 upset you?

5 A It was something I didn't expect.

6 Q Okay. Did you think it -- anything underhanded  
7 had happened there?

8 A I just didn't make that judgment, no.

9 Q Okay. Had you ever in the course, when you were  
10 now in trial preparation mode, made any motion to  
11 exclude any evidence of the May 13 phone  
12 conversation or the May 13 interrogation?

13 A I was giving that very careful consideration. That  
14 was going to follow soon after the speedy trial  
15 demand was filed. But I hadn't done it yet. I think  
16 there was some --

17 ATTORNEY FALLON: Your Honor, I'm going  
18 to impose an objection. Counsel has been telling  
19 us, and they've been more carefully crafting  
20 their questions since last Friday, that we're  
21 only concerned with the events leading up to May  
22 of 13.

23 Now, this is delving into strategy  
24 decisions, ideas, and concepts post-May 13. And,  
25 again --



1 ATTORNEY DVORAK: Judge, I --

2 ATTORNEY FALLON: -- so I say the door  
3 is open for the discovery of those documents they  
4 claim are privileged. That's twice now.

5 And I don't see how they're going to get  
6 through the next two witnesses, the other two  
7 lawyers in this case, without going down that  
8 road.

9 THE COURT: Well --

10 ATTORNEY DVORAK: I'm --

11 THE COURT: -- we'll see.

12 ATTORNEY DVORAK: -- I'm -- I'm going  
13 to -- I'll withdraw the question, Judge.

14 THE COURT: All right.

15 ATTORNEY DVORAK: And the answer.

16 Q (By Attorney Dvorak) Um, now, you had -- you had  
17 not known Brendan Dassey prior to being appointed  
18 to represent him; correct?

19 A That is correct.

20 Q Um, you had -- over the course of your  
21 representation up until March 13 -- had seen him  
22 three times; correct?

23 A What's ever in the billing records is when I saw him.

24 Q I'm sorry. May 13. Uh, and you had -- and that  
25 was for about a total of about three hours;

1 right?

2 A As far as conversations that took place in the  
3 Sheboygan County Detention Center, yes. There were  
4 also some incidental conversations, of course, that  
5 took place during the course of, and immediately  
6 before or after, court proceedings.

7 THE COURT: Look, Counsel, I think we  
8 covered this on Friday.

9 ATTORNEY DVORAK: Very good.

10 THE COURT: Do you have different questions  
11 that are related to those items that were -- or --  
12 or that testimony that was brought forward from  
13 Mr. Fallon's examination?

14 ATTORNEY DVORAK: Well, it -- it --  
15 Judge, it's somewhat laying the groundwork for  
16 the issues about, um, the impositions of the  
17 family. But I'll try to shorten it up.

18 Q (By Attorney Dvorak) Um, given -- given the  
19 amount of time that you had spent with him had  
20 you ever known him to be impassioned about  
21 anything?

22 A No.

23 Q During that time you knew that he had been  
24 interrogated three time -- or several times.  
25 During some of those interrogations he had been

1 told that he was free to leave, uh, and that if  
2 he confessed that he wouldn't get into trouble,  
3 and yet he found himself in -- in jail. Do you  
4 think that he was having some problems  
5 understanding how all this was happening?

6 ATTORNEY FALLON: Objection. Again,  
7 mischaracterization of the -- of the status of  
8 the record right now.

9 THE COURT: I -- I think that's a fair  
10 objection and I'm going to sustain it.

11 Q (By Attorney Dvorak) Did you, um -- you -- you  
12 testified that he -- he never gave you an answer  
13 for why he confessed. Um, but he did tell you,  
14 didn't he, that they had put words into my head?

15 ATTORNEY FALLON: Objection. Leading  
16 the witness.

17 THE COURT: Overruled. You can answer  
18 that.

19 THE WITNESS: I remember him saying  
20 something to that effect, yes.

21 Q (By Attorney Dvorak) Okay. And you never  
22 insisted on going over those tapes with him? To  
23 talk about those tapes with him? That is, the  
24 tapes of his statements?

25 A That is correct.

1 Q Okay. Now, is it unusual for -- you know, you --  
2 you've got a young man who's charged with first  
3 degree intentional homicide and -- and several  
4 other very serious offenses. It's -- it's not  
5 unusual that he would talk to his mother; right?

6 A Correct.

7 Q Or that he would want to talk to his mother;  
8 right?

9 A Correct.

10 Q And in listening to those phone calls, isn't it  
11 true that Barb's position with Brendan, when  
12 talking to Brendan, was that if he did it, that  
13 he should plead, and if he didn't do it, then he  
14 shouldn't?

15 Do you remember any phone calls where  
16 Barb said that? Or words to that effect?

17 A I believe there may have been, yes.

18 Q Okay. Um, you mentioned on -- on cross that  
19 there were frequent contacts with the family, but  
20 far -- by far most of those were with his mother;  
21 correct?

22 A As far as I understand, yes.

23 Q Okay. Um, the -- you spoke to the press, um,  
24 often, as we have gone over, and -- and mentioned  
25 the plea deals from very early on; correct?

1 A Not --

2 ATTORNEY FALLON: Objection. Beyond the  
3 scope.

4 ATTORNEY DVORAK: Let --

5 THE COURT: Well, it --

6 ATTORNEY DVORAK: -- let me --

7 THE COURT: -- is. I didn't understand  
8 the question in the first place.

9 ATTORNEY DVORAK: I'm sorry. Okay.

10 Q (By Attorney Dvorak) Um, you testified  
11 previously that part of your strategy with  
12 talking to the press was to send a message to --  
13 to Mr. Dassey's family that a guilty plea down  
14 the road may be a possibility here?

15 A Yes.

16 Q Okay. Do you suppose that it's -- it's equally  
17 likely that the family was concerned about your  
18 representation because of everything that they  
19 were hearing from you about the case? The amount  
20 of time that you had spent with Brendan? And the  
21 conclusion they may have come to that you weren't  
22 doing a very good job for him?

23 A I don't know what was going through their head.

24 Q Okay.

25 ATTORNEY DVORAK: I have nothing

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further.

ATTORNEY FALLON: Nothing.

THE COURT: You may step down.

ATTORNEY DRIZIN: Your Honor, at this time the defense will call Dr. Richard Leo.

THE COURT: All right.

ATTORNEY FALLON: Your Honor, we -- Your Honor, we would move into evidence Exhibit -- I think it was 364.

THE COURT: Three sixty-three?

ATTORNEY FALLON: I think that was their exhibit. I have no objection to that, although the witness is yet here to -- is not yet here to authenticate it. The report. But Exhibit 364 was the --

THE COURT: The phone log.

ATTORNEY FALLON: -- the phone log.

THE COURT: All right. That's offered. Any objection to it?

ATTORNEY DVORAK: No, Your Honor.

ATTORNEY DRIZIN: No objection, Your Honor. Mr. Dvorak failed to move into evidence Exhibit 356, and we'll sub -- so move that into evidence as well.

THE COURT: Three fifty-six is offered.

1 Are you also offering 363?

2 ATTORNEY DRIZIN: Um, yes, Judge.

3 THE COURT: Any objection to those?

4 ATTORNEY FALLON: Um, 356 is which one  
5 again? The e-mail?

6 ATTORNEY DRIZIN: Yes.

7 THE COURT: Yes.

8 ATTORNEY FALLON: I have no objection to  
9 that.

10 THE COURT: That was received on Friday.

11 ATTORNEY FALLON: Okay. And for 363,  
12 um, subject to the calling of Investigator  
13 Fassbender, I would have no objection. But I'm  
14 not sure that the foundation is -- supports its  
15 admissibility at this point.

16 THE COURT: All right. I'll reserve ruling  
17 on that.

18 ATTORNEY DRIZIN: Dr. Leo, would you  
19 please take the stand?

20 THE COURT: Come on up here, please. Just  
21 remain standing. The clerk will administer the  
22 oath. After that, please be seated.

23 THE CLERK: Please raise your right hand.

24 **RICHARD LEO,**  
25 called as a witness herein, having been first duly

1 sworn, was examined and testified as follows:

2 THE CLERK: Please be seated. Please state  
3 your name and spell your last name for the record.

4 THE WITNESS: My name is Richard Angelo  
5 Leo. My last name is spelled L-e-o.

6 DIRECT EXAMINATION

7 BY ATTORNEY DRIZIN:

8 Q Doc -- Dr. Leo, just to sort of catch you up to  
9 speed, you're surrounded by a number of binders  
10 from one -- they're labeled one through five.  
11 And at various points in time I may ask you to  
12 look at exhibits in those binders. So you're  
13 going to have to go open the binder to those  
14 exhibits.

15 A Okay. Could I get some water?

16 THE COURT: I think you can do that.

17 Q (By Attorney Drizin) At this time, Dr. Leo, I'd  
18 ask you to look at Exhibits 100 and 316. Exhibit  
19 No. 100 is in the third binder, Exhibit No. 316,  
20 I believe, is in the fifth binder.

21 A Okay. So I have a binder marked number one and a  
22 barn -- binder --

23 Q Look --

24 A -- number five.

25 Q -- behind you.



1 A Okay. Can you tell me again what's in three and  
2 what's in five?

3 Q Exhibit No. 100 is in binder number three. It's  
4 the first document. And Exhibit No. 316 is in  
5 binder number five.

6 A Okay.

7 Q Okay. I'd like you to take a look at Exhibit No.  
8 1, do you recog -- 100, do you recognize this  
9 document?

10 A Yes.

11 Q And what is this?

12 A This is my curriculum vitae dated December, 2009.  
13 Curriculum vitae is a fancy word for resumé.

14 Q Would it assist you to be able to refer to this  
15 document, perhaps, in the beginning part of our  
16 testimony?

17 A Sure.

18 Q Any objection, Counsel?

19 ATTORNEY FALLON: No.

20 ATTORNEY DRIZIN: Okay.

21 Q (By Attorney Drizin) Dr. Leo, where are you  
22 currently employed?

23 A The University of San Francisco School of Law where  
24 I'm a professor.

25 Q And what is your position there?

1 A I'm an associate professor of law.

2 Q Okay. And are you currently teaching any courses  
3 at University of San Francisco?

4 A I am, yes. My regular teaching responsibilities  
5 currently include criminal law, criminal procedure,  
6 and a seminar on the wrongful conviction of the  
7 innocent. The last two of which I'm teaching this  
8 semester.

9 Q Okay. Can you tell the Court, briefly, about  
10 your academic training and the degrees that you  
11 hold?

12 A Sure. Well, I have four degrees. A bachelor's and  
13 master's in sociology, and then a Ph.D and a JD.

14 My Ph.D is in a -- a interdisciplinary  
15 social science and law program at UC-Berkeley  
16 where you can specialize in any of the social  
17 sciences as they apply to the study of law and  
18 legal institutions. And in my case, I  
19 specialized in criminology and social psychology.

20 I got both of my degrees in two  
21 thousand -- I'm sorry -- in 1994.

22 Um, the second part of your question,  
23 um, in terms of my specialization, the Ph.D is a  
24 research degree, and -- and you take classes and  
25 exams, and, ultimately, do a research project.

1                   Um, so my specialization, like anyone's  
2 specialization who gets Ph.D in any field, is  
3 general in that I have to master certain  
4 disciplines; criminology, social psychology,  
5 sociology, and law.

6                   But it's also specific, and so  
7 researchers, who are not generalists, um, develop  
8 specific areas of research specialization.

9                   Um, in my case, it's -- it's been the  
10 study of police investigation, police  
11 interrogation, the psychology of interrogation,  
12 coercive interrogation, false confessions, and  
13 the wrongful conviction of the innocent.

14                  And in my career, going back -- research  
15 career -- going back to the early 1990's, when I  
16 was a graduate student, I published -- researched  
17 and published extensively in these areas?

18 Q               Okay. Would it be sar -- fair to say that,  
19 concerning your testimony here today, the most  
20 relevant experience that you have, the most  
21 relevant training that you have, and expertise,  
22 is in the social psychology of police  
23 interrogations and how psychological  
24 interrogation tactics can produce coerced and  
25 unreliable confessions?

1 A Yes.

2 Q Okay. Let's break down some of those terms.

3 When you say the social psychology of  
4 police interrogations, what do you mean?

5 A What I mean is that the interrogation is a process.  
6 Now, social psychology -- social psychologists are  
7 interested -- it's a psychological process. Social  
8 psychologists are interested in, generally, how  
9 people's perceptions are influenced or shaped by  
10 those around them, and how and why they dis -- decide  
11 to do what they do, and act the way that they act.

12 So a social psychologist, studying the  
13 interrogation process is interested in how the  
14 influences in interrogation, um, cause a suspect  
15 to behave the way they do. Namely, usually, stop  
16 denying and -- and, ultimately, start admitting.

17 What is it about the environment of  
18 interrogation? What is it about the techniques  
19 of interrogation which police are trained to use?  
20 What is it about the process that causes a  
21 suspect to change his or her behavior and,  
22 ultimately, stop denying and start admitting to  
23 something that is against their self-interest and  
24 can land them in prison for many years?

25 Q Okay. You mention the words "psychological

1           interrogation tactics." What do you mean by  
2           those words?

3       A     So going back to the 1940's police have developed  
4           a -- a psychology of interrogation. They have  
5           developed training manuals on how to break suspects  
6           down and get confessions.

7                     Police realize this is the premise of  
8           their manuals and their training that most people  
9           are not going to make admissions at the beginning  
10          of an interrogation. And so you've got to use  
11          techniques or methods to -- to break down their  
12          resistance and move them from denial to  
13          admission.

14                    And so these -- when I say psychological  
15          techniques, I mean the techniques that they write  
16          about in their manuals. That they train  
17          interrogators, detectives to use during  
18          interrogation. That social scientists, like  
19          myself and many others, have studied for a long  
20          time.

21       Q     Okay. And when you use the words, as we are  
22           going to use today throughout your questioning,  
23           "psychological coercion," what do you mean when  
24           you use those terms?

25       A     Well, I mean one of two things:

1           Either techniques that are recognized in  
2           the psychological community as being inherently  
3           coercive, um, because, by their very nature, they  
4           are likely to overwhelm or overbear somebody.  
5           Um, techniques like deprivations, physical or  
6           psychological deprivations, but, more commonly,  
7           threats or promises, whether implied or express.  
8           Um, so certain techniques are inherently  
9           psychologically coercive.

10           Um, and, then, a broader view of  
11           psychological coercion, um, because, ultimately,  
12           psychological coercion is about breaking down  
13           somebody's will to the point where they will do  
14           or say anything that they're directed to do.

15           Um, looking cumulatively at the  
16           interrogation process, not just at a particular  
17           technique, and analyzing whether or not the  
18           interrogation process caused the suspect to  
19           perceive that they had no choice but to do what  
20           they were directed or told to do, um, that  
21           perception of no choice is -- is the result of  
22           psychological coercion.

23    Q       And the last term I want you to define, because  
24           gonna -- we're going to be using it throughout,  
25           is the term "unreliable confession." What do you

1 mean by an unreliable confession?

2 A Well, what I mean by an unreliable confession is a  
3 confession that doesn't fit the evidence. That's not  
4 corroborated. Um, that there is no reason to believe  
5 is accurate.

6 Q Okay. Now, have you done research, yourself,  
7 into the social psychology of police  
8 interrogations?

9 A Yes, I've done extensive research on this topic.

10 Q Was this a topic of your doctoral dissertation?

11 A Yes. Although my doctoral dissertation was really a  
12 study of routine. But historical interrogation  
13 practices in the 20th century -- early 20th  
14 century -- in America, as well as routine  
15 interrogation in the -- in the 90's.

16 Um, most of my work on the social  
17 psychology of interrogation was after my doctoral  
18 dissertation, but that was about part of it.

19 Q And as part of your doctoral dissertation did you  
20 conduct field research during which you observed  
21 actual police interrogations?

22 A I did. The Oakland Police Department in northern  
23 California, which is very close to Berkeley where I  
24 was receiving my doctorate, allowed me to sit in for,  
25 um -- I ended sitting in for nine months, that -- on,

1 ultimately, 122 interrogations. Live interrogations  
2 as they occurred.

3 And then two other police departments in  
4 the bay area that were smaller, Oakland -- I'm  
5 sorry -- Hayward and Vallejo, each gave me 30  
6 videotaped -- fully videotaped -- interrogations,  
7 which was less common at that time. So 182  
8 interrogations I observed either live or by  
9 recording.

10 Q And is that experience, being able to actually  
11 observe interrogations as they happen, um, an  
12 experience that sets you apart from other experts  
13 in the field?

14 A I think observing the interrogations live does set me  
15 apart, especially in the early 90's. Now that  
16 electronic recording has become more widespread, of  
17 course, other experts have access to that -- to  
18 those -- to those tapes.

19 Usually, um -- but to -- to my knowledge  
20 very few experts have had access to actual live  
21 interrogations.

22 Q And just so we're clear, when you observed these  
23 interrogations were you actually in the room or  
24 were you monitoring them from another location?

25 A No, I was in the room. I was trying to be as



1 unobtrusive as possible and not have any effect on  
2 the actual process, although it was up to the  
3 interrogator whether to introduce me or not.

4 Q Um, now, after your doctoral dissertation, have  
5 you continued to study and research the social  
6 psychology of police interrogations by reviewing  
7 actual videotapes of police interrogations and  
8 confessions?

9 A Yes. And audio tapes in case files, and other  
10 related materials.

11 Q Can you estimate how many such interrogations  
12 you've reviewed in your career?

13 A Um, well, I'd estimate that I've studied, um,  
14 probably three thousand or more interrogations at  
15 this point.

16 Not all of them have been recorded  
17 interrogations. Um, though I -- I would venture  
18 that at this point most of them have been. In  
19 the earlier years most were not recorded but  
20 that's changed.

21 Q Okay. Have you and other scholars from the  
22 social sciences been able to empirically study  
23 the workings of the effects of these  
24 psychological interrogation techniques?

25 A Yes.

1 Q Okay. And how have these studies been conducted?

2 A There are five methodologies that social scientists  
3 use.

4 The first, which you've alluded to,  
5 would be field observation. Studying something  
6 in its natural context.

7 Um, I've relied on that method,  
8 obviously.

9 Um, I've also relied on another method  
10 which involves interviews. Interviews of the  
11 participants.

12 Social scientists have also studied  
13 documentary materials. I mentioned doing  
14 historical analysis -- excuse me -- but I've also  
15 studied contemporary materials, case files, which  
16 often contain data or information relevant to the  
17 effects of the techniques.

18 And then there are experiments that  
19 social scientists have done and -- in this area,  
20 as well as surveys that can also get at the  
21 effects of these techniques.

22 Q You've performed some of this research in -- in  
23 these areas; correct?

24 A Correct.

25 Q Um, you've done observational studies?

1 A Correct.

2 Q You've done some experimental research?

3 A Yes.

4 Q You've obviously analyzed actual cases of false  
5 confessions?

6 A Correct.

7 Q Um, you've done documentary analysis of case  
8 files?

9 A Yes.

10 Q Okay. And you've reviewed, you know, the --  
11 pretty much the extent of the literature of other  
12 scholars as well?

13 A Yes. This has been the -- the focus of my career --  
14 research career -- for two decades.

15 Q And aside from your work, how large would you say  
16 is the body of work dealing with the social  
17 psychology of police interrogations?

18 A I would say at this point the body is quite large.  
19 Uh, that there are hundreds of articles, dozens of  
20 books, edited books, and -- and books. Um, so it's  
21 quite extensive going back many years.

22 Q And do these studies in this body of work  
23 deduct -- discuss the risks that attend to  
24 psychologically coercive interrogations?

25 A Um, much of it does, yes.

1 Q And what are those risks?

2 A Well, the risks would be, um, that somebody could be  
3 induced through psychological interrogation  
4 techniques or coerced into giving an involuntary  
5 statement. A statement against their will.

6 Um, and that they could be induced or  
7 coerced into giving a false statement. A false  
8 confession, in particular. And that -- that  
9 these kinds of statements, and admissions, and  
10 confessions, if involuntary and/or false, could  
11 lead to the wrongful conviction of the -- of the  
12 innocent, and, perhaps, even the over-conviction  
13 of the guilty.

14 Q Okay. Let's talk about your study and your work  
15 in the area of unreliable confessions. Have you  
16 also done research on the subject of unreliable  
17 confessions?

18 A Yes.

19 Q Can you describe -- when did you begin to study  
20 that top -- subject area?

21 A Well, I -- I began to study the subject of unreliable  
22 or false confessions in the early 1990's. Um, at  
23 first began to write about it in -- in the early  
24 1990's.

25 Q And of the unreliable confessions you have

1 studied, are we talking about actual cases of  
2 unreliable confessions?

3 A Yes. Um, so I've studied many, many cases of actual  
4 unreliable or false confessions. I've done  
5 individual case studies. I've done aggregated case  
6 studies. Yes.

7 Q And amongst the unreliable confessions that  
8 you've studied, some of them were what we call  
9 proven false confessions; correct?

10 A Correct.

11 Q And what do you mean by a proven false  
12 confession?

13 A Well. It's very difficult to prove a confession  
14 false, because you have to prove the negative. And,  
15 strictly speaking, that's impossible to do.

16 So what we in the field have tried to do  
17 is figure out how can you say, when you're doing  
18 research on confession cases, that a confession  
19 is false to near or absolute certainty.

20 And there four ways you can talk  
21 about -- there are four ways you can prove a  
22 confession false. Or to that standard. And so  
23 we describe those as proven false confessions.

24 One, if you could show it was physically  
25 impossible for the crime -- for the person to

1           have committed the crime.

2                     Let's say they were in --

3   Q    I'm sorry. You were going to give an example of  
4       what that means. I didn't mean to --

5   A    Yeah. Uh, no. Um, I'll be very brief. That they  
6       were in jail at the time.

7                     Two, if you could show that the crime  
8       did not occur.

9                     Say, the murder victim showed up alive.

10                    Three, and this is more common these  
11       days, if there's scientific evidence that  
12       exonerates dispositively.

13                    And then, four, if the true perpetrator  
14       is -- is identified and everyone agrees that's  
15       the true perpetrator.

16   Q    Okay. Um, would it be fair to say that you have  
17       analyzed and documented more cases of proven  
18       false confessions than any other expert in the  
19       field?

20   A    Um, along with my co-authors, yes.

21   Q    Okay. Know how -- approximately how many proven  
22       false confessions you've analyzed?

23   A    I would say between 200 and 300 that I've personally  
24       analyzed.

25   Q    Okay. And there also unreliable confessions that

1 fall short of this proven standard; correct?

2 A Correct.

3 Q And you've developed a categorization for those  
4 kinds of confessions as well?

5 A Yeah. We call those highly probable false  
6 confessions. Um, the four situations that I  
7 mentioned, you could be innocent and have falsely  
8 confessed and still not be able to prove your  
9 confession false because the crime did occur.

10 Um, the true perpetrator has not been  
11 apprehended, and, um, it was not physically  
12 impossible.

13 Maybe you were with your family and no  
14 one's believing that alibi.

15 Um, and there's simply no -- no  
16 scientific evidence. Many crimes don't leave  
17 behind scientific evidence.

18 So we talk about highly probable false  
19 confessions when in our analysis the weight of  
20 the evidence overwhelmingly supports that the  
21 confession is false and there's no good evidence  
22 that it's reliable or true. A lesser standard.

23 Q So for the purpose of this examination, if you're  
24 comfortable with this, when I refer to proven  
25 false confessions, um, I'm going to be talking

1 about those pristine confessions where those four  
2 kinds of proof were presented.

3 And when I talk about unreliable  
4 confessions, I'm going to talk about all the  
5 other types of unreliable confessions.

6 A Okay.

7 Q Okay. Now, you've been a prolific scholar. Have  
8 you written any books based on your research and  
9 study of police interrogations and unreliable  
10 confessions?

11 A I have.

12 Q And how many books have you written, Dr. Leo?

13 A Uh, well, several books. Um, one -- the primary book  
14 is, um, the book that I see there, *Police*  
15 *Interrogation and American Justice*, um, which is  
16 about the history, psychology, and policy, and legal  
17 issues related to police interrogation and false  
18 confessions published 2008.

19 I've also edited a book on **Miranda**.  
20 Issues related to **Miranda**, which include the  
21 psychology of interrogations and false  
22 confessions.

23 And I've -- I've written a -- a case  
24 study of a multiple false confession case in  
25 Norfolk, Virginia.



1 Q Okay. And have any of your books received any  
2 awards?

3 A Yes.

4 Q Which books?

5 A The *Police Interrogation and American Justice* book  
6 has received multiple awards, um, this year and --  
7 well, last year and the year before.

8 Q Okay. I'm not going to go through all of your  
9 law review articles and your psychological  
10 articles. But of all the articles and book  
11 chapters that you have written, which do you  
12 consider to be the most noteworthy in the field?

13 A Well, it's a hard question to answer. Um, the -- the  
14 work that I've done with Richard Ofshe, who's a -- a  
15 retired professor at Berkeley and also a social  
16 psychologist, trying to analyze the interrogation  
17 process and how the techniques break suspects down  
18 and lead to the decision to confess, I think is -- is  
19 among the most noteworthy in terms of understanding  
20 the process through which interrogation leads to  
21 false confession, as well as the work that I've done  
22 with him on -- and others -- on the problem of  
23 contamination and separating reliable and unreliable  
24 confessions. One other article with him in  
25 particular.

1 Q And how much of the work that you've done and  
2 published has been submitted to the rigors of a  
3 peer review process?

4 A Um, well, I would say probably two-thirds to  
5 three-quarters. I am an interdisciplinary scholar so  
6 I'm primarily a social scientist. My primarily  
7 study -- I'm sorry -- publish in social science  
8 journals that go through the rigors of peer review.

9 But I'm also a legal scholar and I'm  
10 currently a law professor, and so much of my work  
11 is also published in law reviews which typically  
12 have a lesser form of peer review, though not  
13 always.

14 Some law reviews, um, like the *Journal*  
15 *of Criminal -- Criminal Law and Criminology*,  
16 where I've published a number of articles has a  
17 peer review process.

18 Q And are you also a peer reviewer yourself?

19 A Yes.

20 Q And is that a um -- you know, an honor in the  
21 field to be considered a peer reviewer?

22 A Uh, it is. I -- I guess, after I think about, it is.

23 Q Okay.

24 A Lot of tedious work sometimes, but, yes, it is an  
25 honor.

1 Q Has the work that you've done, your books, your  
2 articles, been cited in courts in the United  
3 States of America?

4 A It has, yes.

5 Q Okay. Has it been cited by Wisconsin courts?

6 A I -- I believe it has. Um, off the top of my head,  
7 um, yes, it has.

8 Q Okay. And was it cited by the Wisconsin Supreme  
9 Court in the **Jerrell J.** case?

10 A Yes.

11 Q Okay. And has your work been cited by the United  
12 States Supreme Court?

13 A Yes.

14 Q And how many times that you're aware of?

15 A I'm aware of two times.

16 Q Okay. And one would be **Corley v. United States**  
17 in 2009?

18 A Yes.

19 COURT REPORTER: Would you please spell  
20 that?

21 ATTORNEY DRIZIN: **Corley**, C-o-r-l-e-y,  
22 **v. United States.**

23 Q (By Attorney Drizin) And what was the second  
24 one, Dr. Leo?

25 A **Missouri v. Seibert** in 2004, I believe.

1 Q Okay. That's S-e-i-b-e-r-t; correct?

2 A Correct. Yeah.

3 Q Okay. Have you ever attended any police  
4 trainings?

5 A Yes.

6 Q And can you discuss some of those that you've  
7 attended?

8 A When I was a graduate student doing my doctoral  
9 dissertation research, I attended five interrogation  
10 training courses.

11 The first was put on in-house by the  
12 Oakland Police Department in Northern California.

13 The second and the third were the  
14 courses by the Reid and Associates interrogation  
15 training firm in Chicago. They are the leading  
16 firm. They travel the country.

17 And at the time, and I believe still  
18 today, put on a three-day introductory  
19 interrogation course for detectives, and police  
20 officers, and law enforcement officials, public  
21 and private. I believe they do a four-day course  
22 in the Chicago area. But when they travel, it's  
23 a three-day course.

24 So I attended and participated in that.  
25 And then I also attended and participated in a

1 two-day advanced interrogation training course  
2 that Reid and Associates also does across the  
3 United States.

4 Um, after that, I attended and  
5 participated in a -- a five-day introductory  
6 interrogation training course in Northern  
7 California at the San Mateo County Community  
8 College.

9 It was basically for detectives in the  
10 Bay area who had promoted from patrol to get them  
11 up to speed on interrogation practices and  
12 getting confessions.

13 And, then, finally, the fifth and final  
14 one I attended was put on by the Federal Law  
15 Enforcement Training Center in Glynn County,  
16 Georgia. That was an advanced interrogation  
17 training course. It was by invitation that I was  
18 allowed to attend and participate.

19 And that's where, at the time, and I  
20 believe this is still true today, all federal  
21 police were trained, with the exception of the  
22 FBI, who, of course, have their own training  
23 academy.

24 Q You mentioned the Reid interrogation training.  
25 Um, are you a cert -- certified Reid

1 interrogator?

2 A Well, I guess I am. I -- I do have the certificates,  
3 yes.

4 Q Okay. And have you ever been on the advisory  
5 committee of police departments?

6 A I have. Of one police department. The Long Beach  
7 Police Department in Southern California. It's a --  
8 a police department that serves over a city of two  
9 million people. And I was on academic advisory  
10 committee from, I believe, the middle of 2001 to  
11 around the middle of 2003.

12 This is a committee that advised the  
13 chief academics. Local academics.

14 Q Have police departments ever brought you in to  
15 train their officers?

16 A Yes.

17 Q On how many occasions?

18 A Two occasions. Um, the first was in the summer of  
19 2002. It was the Broward County Sheriff's Office in  
20 Fort Lauderdale. They are the second largest  
21 Sheriff's Department in the country, and they had me  
22 put on three days of training. It was the same  
23 training each day, eight hours, to a hundred  
24 different felony investigators on interrogation, and  
25 coercion, and false confessions.

1                   And the Miami Beach Police Department,  
2                   six months later, in early 2003, had me do  
3                   another one of those -- basically the same  
4                   eight-hour session.

5       Q       Okay. Um, have you ever given testimony before  
6                   legislative or executive bodies on the subjects  
7                   of police interrogations and confessions?

8       A       I have, yes.

9       Q       Have you ever done that in the state of  
10                  Wisconsin?

11      A       Yes.

12      Q       Can you tell me when?

13      A       I believe it was in 2006, and it was to the Criminal  
14                  Justice Study Commission.

15      Q       Okay. I want to talk to you about your court  
16                  testimony and how many times you've testified in  
17                  court, okay?

18      A       Okay.

19      Q       And to the extent, referring to the second  
20                  exhibit -- what was that? Three-sixteen, is  
21                  that --

22      A       Yes.

23      Q       -- what it was?

24      A       Yes.

25      Q       Would that help you, if you need to refer to

1           that, about how many times you've testified --

2    A       Yes.

3    Q       -- in court?

4    A       Yes.

5    Q       Okay. Um, how many times have been -- you been

6           qualified as an expert to testify?

7    A       A hundred and eighty-eight times.

8    Q       Okay. And how many of those times have been in

9           federal court? If you don't mind looking at your

10          report?

11   A       Ten times.

12   Q       And in the affidavit you filed in this court you

13          summarized the -- the -- the extent of your court

14          testimony; correct?

15   A       To that time, yes.

16   Q       Yeah. And the document that's before you today

17          is -- is -- included, actually, updated

18          information?

19   A       Correct.

20   Q       Okay. So how many times have you testified in

21          state court?

22   A       Let me, um, say that I tes -- I said I testified ten

23          times in federal court. But I've also testified five

24          others times in military courts. And I think,

25          technically, military courts are federal court. So



1 188 times total. Um, 15 times in federal or military  
2 court. So that would mean 173 times in state court.  
3 Q Okay. And how many different states have you  
4 testified in?  
5 A Twenty-seven.  
6 Q Okay. And have you ever been qualified as an  
7 expert in the state of Wisconsin?  
8 A I have. Prior to today, I believe, on two occasions.  
9 Um, one time in Appleton and one time in Chippewa  
10 Falls.  
11 Q And in Appleton, would that have been the case of  
12 State v. LaBatte?  
13 A Yes.  
14 Q And did you testify as an expert in that case at  
15 the suppression hearing?  
16 A Yes.  
17 Q On issues relating to the reluc -- to the --  
18 whether there was psychological coercion in the  
19 underlying interrogation.  
20 A Yes.  
21 Q And the second time you testified in Wisconsin,  
22 Dr. Leo?  
23 A Was in Chippewa Falls at a trial. It was last month.  
24 Q Okay. Do you remember the name of that case?  
25 A Yes. It was State of Wisconsin v. Timothy

1 Schemenauer, S-c-h-e-m-e-n-a-u-e-r, I think.

2 Q Okay. Valiant effort. Um, and in both of those  
3 times that you testified in Wisconsin was your  
4 testimony limited in any way?

5 A I don't recall the testimony being limited.

6 Q Okay. Now, you testified both at the pretrial  
7 stage and at the trial stage; correct?

8 A Yes.

9 Q And when you testify at the pretrial stage, what  
10 generally do you testify about?

11 A When I testify at the pretrial stage I usually  
12 testify in, um, suppression motions or what -- what  
13 are called motions in limine to exclude basically the  
14 same thing.

15 Usually the testimony is both general  
16 and specific. The general testimony is about the  
17 research on the psychology of police  
18 interrogation. Um, and psychological coercion,  
19 and police interrogation practices, more  
20 generally.

21 And the specific research, of course, is  
22 applying that knowledge to the case and opining  
23 about whether or not there were any coercive  
24 interrogation techniques used.

25 Q I don't know if three exhibit can help you -- 316

1 can help you parse through this, but do you know  
2 how many times you have testified as an expert in  
3 pretrial stages?

4 A Yes.

5 Q How many times?

6 A Sixty-five times.

7 Q Okay. Now, you also testify in trials; correct?

8 A Yes.

9 Q Um and when you testify at trials, what is  
10 your -- generally, the subject matter of your  
11 testimony?

12 A The -- the subject matter of the testimony is  
13 generally the same except that there's more  
14 discussion of the problem of false confessions.

15 Um, sometimes the topic of false  
16 confessions is relevant in pretrial suppression  
17 hearings, sometimes it's not. But -- but it's  
18 the primary focus of my testimony at trial.

19 And so when I testify at trial, not only  
20 do I testify about what I mentioned earlier in  
21 the suppression motions, um, but also about the  
22 social science research on how and why police  
23 interrogation can lead to false confessions, what  
24 we know about the phenomena of false confessions,  
25 um, the risk factors, both situational, having to

1 do with the interrogation environment, as well as  
2 interrogation techniques, um, for false  
3 confessions, as well as individual factors that  
4 might predispose a suspect to be more vulnerable  
5 to suggestion or interrogation influence and make  
6 a false confession.

7 Um, indicia of reliability and  
8 unreliability, how social scientists study  
9 reliability, the problem of contamination.

10 And sometimes also good and bad police  
11 practices. Police manuals will articulate things  
12 police should do and shouldn't do. It's largely,  
13 I think, based on the research, or the least in  
14 part, and so the scope of the testimony usually  
15 is much broader in a trial, and it's more focused  
16 on the -- the issues related to false confessions  
17 usually.

18 I might offer specific opinions about  
19 interrogation practices. Sometimes I'm asked to  
20 do that, other times I'm not, about the risks  
21 inherent in certain practices.

22 Um, I never, however, testify about the  
23 ultimate opinion. Whether or not I personally  
24 think a confession is false.

25 Q Okay. So you provide a framework for the fact

1 finder to analyze whether or not a confession is  
2 reliable or not, but don't reach the ultimate  
3 conclusion?

4 A Correct. And the framework to understand the  
5 psychology of interrogation. Um, much of this is  
6 beyond common knowledge, and -- and -- and even  
7 counterintuitive.

8 Q Have you ever testified as an expert in  
9 post-conviction proceedings (unintelligible) --

10 A I have, yes.

11 Q Do you know how many times?

12 A Yes, I do. Um, Exhibit 316 lists -- sorry -- 11  
13 times. But since then I've testified in one  
14 additional post-conviction proceeding. So 12 times  
15 total.

16 Q And is the subject matter of your testimony in  
17 the post-conviction stage the same?

18 A Yes. In -- in my experience there's often fewer  
19 limitations, if any, because of the nature of a  
20 post-conviction proceeding.

21 Q Now, you've testified in a lot of cases, Dr. Leo.  
22 Do you testify in every case on which you are  
23 asked to consult?

24 A No.

25 Q Okay. Can you give us a sense of how often you

1           testify in relationship to how often you are  
2           consulted?

3       A     Yes.  So what I mean by consulted is not just a phone  
4           call.  I only count consultations when an attorney  
5           sends me materials and signs me up, essentially.  Um,  
6           gets an authorization so that I'm -- I'm -- I'm  
7           compensated for my work.

8                        So of the cases where I am consulted,  
9           and review documents, and provide a professional  
10          opinion, about 15 to 20 percent of those cases I  
11          testify in.

12                       And this document, 316, lists, at least  
13          to December 30, the number of cases in which I  
14          had consulted.  And this goes back almost 15  
15          years.

16                       Uh, eleven hundred and thirty-two, and  
17          then of that, 187 times to December 30 I had  
18          testified.  So 15 to 20 percent of the times.

19                       The primary reason I don't testify in  
20          every case is because defense attorneys often  
21          have cases that I can't be helpful in.  They're  
22          weak cases from my area of expertise.  I don't  
23          think the interrogations --

24                       ATTORNEY FALLON:  I'm going to impose an  
25          objection as narrative form because that is

1 unresponsive to his question.

2 THE COURT: That's -- that's a fair  
3 objection.

4 ATTORNEY DRIZIN: I'll ask the question.

5 THE COURT: Sure.

6 Q (By Attorney Drizin) Um, in, uh -- if I get --  
7 if I understand this right, Dr. Leo, 80 to 85  
8 percent of the time that you were consulted to be  
9 an expert you don't testify in those cases --

10 A Correct.

11 Q -- correct? And in the 15 to 20 percent when you  
12 do, you feel like you have something to add to  
13 the case and to the Court; correct?

14 A Correct.

15 Q What is the reason why you don't testify in the  
16 other 80 to 85 percent? What are the reasons?

17 A Yes. Succinctly stated, my testimony can't be  
18 helpful to the attorney who's contacted me. Um, and  
19 in some of those cases, they resolve prior to  
20 suppression hearing or trial.

21 Q Okay. And have you ever consulted with the  
22 prosecution about giving expert testimony in one  
23 of their cases?

24 A Yes.

25 Q Um, have you ever actually testified for the

1 prosecution?

2 A Yes.

3 Q Can you say how many times you've consulted for  
4 the prosecution?

5 A Um, I would have to go through my records. I believe  
6 no more than half a dozen times.

7 Q Okay. And how many times have you actually  
8 testified for the prosecution?

9 A Two times.

10 Q And what was the substance of your testimony  
11 in -- in, um -- can you name the cases where you  
12 testified?

13 A Sure. Well, it was two times in one case. The case  
14 was the State of California v. Richard Tuite,  
15 T-u-i-t-e. I testified both in a pretrial  
16 suppression motion as well as at trial.

17 The nature of the testimony was exactly  
18 as I described in response to your prior question  
19 at the suppression motion and at the trial.

20 Q Um, so the prosecution asked you to testify about  
21 the subject of false confessions and coerced  
22 confessions --

23 A Correct.

24 Q -- in that case. Okay. Was there another time  
25 you testified for the prosecution? Or was it



1 just the two times in that one case?

2 A Correct. Just the two times in that one case.

3 Q Okay.

4 ATTORNEY DRIZIN: Judge, I don't know --  
5 um, at this time I'd like to testi -- uh, to  
6 tender Dr. Leo as an expert in the field of  
7 police interrogations and -- and confessions, um,  
8 and the social psychology of police  
9 interrogations and confessions.

10 THE COURT: Any objection from the State?

11 ATTORNEY FALLON: Uh, if there's an  
12 objection, I'll make it on a foundation ground as  
13 our rules of evidence require. There's not a --

14 THE COURT: All right.

15 ATTORNEY FALLON: -- necessity for a  
16 finding here.

17 THE COURT: That's correct.

18 ATTORNEY DRIZIN: I'm sorry, I don't  
19 understand that objection.

20 THE COURT: What he's saying is, he will  
21 object as, apparently, questions are raised during  
22 Dr. Leo's testimony.

23 You're proffering him as an expert  
24 witness here. His credentials certainly entitle  
25 him under Chapter 907 to be considered an expert

1 witness.

2 ATTORNEY DRIZIN: Okay. Thank you.

3 Q (By Attorney Drizin) Dr. Leo, um, let's begin  
4 with -- with talking about interrogation,  
5 generally, okay? You spoke about psychological  
6 interrogation tactics earlier? What is the  
7 leading police interrogation training manual?

8 A The manual that I referred to earlier, put out by  
9 John Reid and Associates, the first author is Fred  
10 Inbau, I-n-b-a-u; the second author is John Reid; the  
11 third author is Joseph Buckley, B-u-c-k-l-e-y; and  
12 the fourth author is Brian Jayne, J-a-y-n-e.  
13 *Criminal Interrogations and Confessions* in its fourth  
14 edition published in 2001.

15 Q And Mr. Inbau and Mr. Reid are no longer alive;  
16 correct?

17 A Correct.

18 Q Okay. And what's the leading interrogation  
19 training firm in the United States?

20 A Reid and Associates.

21 Q Okay. And the president of that firm?

22 A Joseph Buckley.

23 Q Okay. Now, aside from the Reid manual, you've --  
24 I take it you've reviewed other police  
25 interrogation training manuals?

1 A Yes.

2 Q Okay. Are there psychological interrogation  
3 techniques described in the Reid manual  
4 consistent with those that you've seen in other  
5 manuals?

6 A Yes.

7 Q Um, and do police typically receive training in  
8 psychological interrogation methods and  
9 techniques?

10 A Yes. More training when they promote to detective or  
11 perform the detective function, yes.

12 Q They get some training in the academy and -- and  
13 they may get more training as they rise through  
14 the ranks?

15 A Correct.

16 Q Okay. Now, in your writings, Dr. Leo, you refer  
17 to what you call the "mind trick of psychological  
18 interrogation." Do you know what I'm referring  
19 to?

20 A Yes. I mean, I think I've referred to that once or  
21 twice in my writings.

22 Q What do you mean by the mind trick of  
23 psychological interrogation?

24 A Um, well, what I mean is that, um, interrogators have  
25 a hard task. They are tasked with getting somebody

1 to confess, um, to committing a crime, which is in  
2 the way we conceive of self-interest in this society  
3 against your self-interest because it will rele --  
4 lead to the deprivation of your liberty, um, and many  
5 years, possibly, of incarceration. Even, possibly,  
6 execution.

7 So the trick, or the mind trick of  
8 interrogation, is psychologically manipulating a  
9 suspect to perceive that it's in their  
10 self-interest to make incriminating statements or  
11 confess.

12 Q Okay. And -- and are there various phases or  
13 steps in the psychological interrogation that --  
14 that lead a suspect to confess?

15 A Yes. When we say stages and phases, I mean, it's a  
16 way of psychologically analyzing the process and how  
17 things change. But, yes.

18 Q And can you describe some of those stages?

19 A Sure. Um, usually, a -- a suspect is isolated.  
20 Police are trained to bring them on to their turf and  
21 separate them from friends and family.

22 And, usually, there's -- but not  
23 always -- there's a rapport-building phase early  
24 on to disarm the suspect and downplay the  
25 adversarial aspects of an interrogation.

1                   At some point in a -- in a -- in a  
2                   custodial interrogation there will be -- the  
3                   **Miranda** issue will come up, and -- and police  
4                   have different ways of -- of giving warnings and  
5                   maximizing the likelihood of eliciting waivers.

6                   But the real heart of interrogation,  
7                   which is really two phases, um --

8   Q               Before -- before we get there, can we talk about  
9                   that rapport-building phase --

10   A              Sure.

11   Q              -- for a minute?

12   A              Sure.

13   Q              Okay. You mentioned isolating the suspect. Why  
14                   are police officers trained to isolate a suspect?

15   A              They are trained to isolate a suspect because their  
16                   ultimate goal is to get a confession, and it's  
17                   believed that you can exert maximal influence on  
18                   isolated suspect.

19                   If you separate a suspect from friends,  
20                   or family, or any support network, um, you break  
21                   down or weaken the ability of the suspect to  
22                   deny. Um, and that's what police interrogators  
23                   are trained to do.

24                   And then, secondly, um, isolating a  
25                   suspect is not just about separating them from a

1 support network or familiar environment, but also  
2 getting them on the police turf.

3 And so police have carefully  
4 orchestrated interrogation rooms, um, that are  
5 designed to not allow a suspect to focus on  
6 something other than the interrogation. To not  
7 distract a suspect.

8 Q Okay. Um, now, you talked about the  
9 rapport-building phase, and then, after the  
10 rapport-building phase, there's a dramatic shift  
11 as the interrogation proceeds; correct?

12 A Correct.

13 Q What happens after this rapport-building phase?

14 A Well, after the rapport-building phase, um, usually  
15 police launch into, in one form or another,  
16 accusatory interrogation. Um, and that's when the --  
17 the full arsenal of techniques, or whichever  
18 techniques the interrogators choose to use, are used,  
19 and it's the interrogation process proper that I was  
20 referring to in my earlier answer when I said the  
21 heart of interrogation is really two phases.

22 Q Um, the start of the interrogation process, um,  
23 the heart of the interrogation, as you describe  
24 it, how does it generally begin? How do police  
25 officers begin the accusation part of the

1           interrogation?

2   A       Usually by confronting a suspect. Well, accusing the  
3           suspect of committing the crime. Um, and then  
4           challenging their denials and confronting them with  
5           real, or alleged, or made up evidence.

6   Q       Okay. And what are some of the other tactics  
7           that you commonly see in the heart of most police  
8           interrogations?

9   A       Well, in the -- in the first phase of -- which we  
10          call the accuse -- well, the first of the two phases,  
11          um, we usually classify this by the goal that the  
12          phase seeks to accomplish, psychologically, which is  
13          convincing a suspect that it's -- it's futile to  
14          deny.

15                        Um, usually, you see repeated  
16          accusations of committing the crime, repeated  
17          accusations of lying when denying committing the  
18          crime. Um, usually, you see monologuing by an  
19          interrogator. Sometimes you see interpersonal  
20          pressure where the interrogator gets closer.  
21          Sometimes, but not always, raises their voice.  
22          Um, but applies some kind of pressure on the  
23          suspect to stop denying, um, start admitting.

24                        Almost always in this phase you see  
25          confrontation with evidence, as I alluded to a

1 moment ago, um, that the interrogator is trying  
2 to convince the suspect that the evidence  
3 irrefutably establishes the suspect's guilt and,  
4 therefore, it's pointless to deny and no one's  
5 going to believe his or her denials.

6 Those techniques are really the heart of  
7 the first phase of -- of -- or stage of in --  
8 inter -- of the interrogation proper.

9 Q Okay. And these -- these, um, steps that we --  
10 you've discussed, accusation, interrupting  
11 denials, confronting with true or false evidence,  
12 the point of these tactics is to do what?

13 A Convince a suspect that you are caught, and there's  
14 no way out, the jig is up, no one is going to believe  
15 your denials. You've got to admit to this crime.

16 Q Okay. What's the next phase?

17 A The next phase, um -- the second phase is -- is about  
18 motivating a suspect to see it as in their  
19 self-interest to confess using what we call  
20 inducements, or incentives, or motivators to persuade  
21 a suspect why he or she should confess or will be  
22 better off if they confess.

23 Q And what kinds of inducements or motivators do  
24 you typically see?

25 A We've described -- my colleague, Richard Ofshe, and



1 I, and -- and others, these as -- inducements as  
2 ranging along a continuum, perhaps using a little bit  
3 of academic language, but we've talked about the low  
4 end of the continuum often being moral or religious  
5 appeals.

6 We've talked about the mid-range of the  
7 continuum in terms of systemic -- we call them  
8 systemic -- inducements that focus a suspect on  
9 the system and the processing of their case in  
10 the system.

11 And we've talked about inducements being  
12 at the high end, which convey some explicit  
13 benefit or implied suggestion or promise of  
14 leniency. Sometimes maybe even threaten harsher  
15 consequences. Um, these high end inducements can  
16 be implicit or explicit.

17 So the -- to answer -- continue to  
18 answer your question these inducements, uh, go  
19 along a range from weak to strong. But these  
20 inducements sometimes are delivered through  
21 scenarios as well, which police are trained to  
22 use to convey benefit or to minimize culpability  
23 or to suggest harm will occur or some bad outcome  
24 will occur if the suspect fails to confess.

25 Q So you didn't mean to commit this crime. It was

1 an accident. Would be --

2 A Correct.

3 Q -- one such scenario? Or you didn't, um -- you  
4 know, you didn't kill this person intentionally.  
5 Um, you didn't premeditate. It was impulsive?

6 A Correct. These -- I mean, I -- these scenarios are  
7 usually developed more fully than your question  
8 implies. But, yes, a scenario -- often the scenarios  
9 are contrasted as well.

10 So an accident -- you -- you -- you  
11 killed her accidentally versus premeditated, um,  
12 will be two scenarios. One suggesting, um,  
13 lesser culpability, the other suggesting more  
14 culpability.

15 And the way these scenarios work,  
16 contextually, is the, um -- which I -- which I  
17 really forgot to mention in response to your  
18 prior question -- was that there's usually time  
19 pressure in the interrogation, and the suggestion  
20 is if you don't admit to the good scenario, the  
21 one that minimizes your culpability, since the  
22 evidence is overwhelmingly established that you  
23 did this, and we're beyond talking about that,  
24 then everyone is going to think, and part --  
25 particular if it's made explicit, the police, the

1 prosecutor, the judge, the jury, that you're  
2 really guilty of the bad scenario, the  
3 premeditated killing in your example, and the  
4 suggestion may be made that that's what will  
5 ultimately happen, you'll be convicted of first  
6 degree as opposed to negligent killing, let's  
7 say, if you don't confess.

8 Q Is one of the scenarios that police frequently  
9 use a scenario where they try to get the suspect  
10 to minimize his blame and to place, you know,  
11 greater braim (phonetic) -- blame on a  
12 co-defendant?

13 A Yes.

14 Q And how do you see that in interrogations?

15 A Well, you see that all the time. And the manuals, of  
16 course, talk about blaming anybody you possibly can.  
17 The idea being that -- that if you communicate that  
18 somebody else is at fault, or more at fault, the  
19 suspect is going to think that they're own  
20 culpability is -- is -- is minimized or sometimes  
21 even eliminated.

22 Um, in -- in many interrogations  
23 that's -- that's the message that's being  
24 communicated. And so it creates an incentive for  
25 the suspect to confess, especially if there's now

1 or never time pressure. This is your only  
2 opportunity. After -- after this occurs, I can't  
3 help you. You're not going to be able to present  
4 this later to the judge and the jury.

5 That sort of thing. That minimizing  
6 your culpability or eliminating your culpability  
7 by blaming anybody, including, especially,  
8 co-defendants may communicate either leniency or  
9 immunity if the suspect stops denying and starts  
10 admitting during the interrogation.

11 Q Is one of the common scenarios you've seen a  
12 situation where the suspect is -- it's suggested  
13 to the suspect that somebody else made him do the  
14 criminal acts?

15 A Yes. Yes. So not only that somebody else was  
16 responsible, but al -- a co-defendant, um -- or  
17 entirely liable -- but the co-defendant, um,  
18 unfairly, um, or improperly pressured or induced the  
19 suspect to do what they were doing and, um -- yeah.

20 Q Okay. So you've talked about the inducements.  
21 You've talked about the rapport-building phase.  
22 What's the final phase of the interrogation  
23 process?

24 A I mean, I realize there's a lot of phases here we're  
25 talking about. But, um, if we're going to talk about

1 a final phase, what we would -- we'd make an  
2 additional dis --

3 Q Did I skip a phase?

4 A No.

5 Q I'm --

6 A No.

7 Q -- sorry.

8 A No, no, no. I'm -- no. If we were -- what we  
9 would -- the -- the final phase would be a -- what --  
10 what we would really call the post-admission phase.  
11 And so I was just going to clarify that by  
12 distinguishing -- distinguishing between  
13 pre-admission interrogation and post-admission  
14 interrogation.

15 Post-admission interrogation occurs  
16 after the suspect has essentially said the words,  
17 "I did it."

18 So the two phases that I had mentioned  
19 before really are pre-admission phases.  
20 Convincing a suspect that they're caught, and  
21 it's futile to deny, and inducing them to see it  
22 as in their self-interest. I call that the heart  
23 of the interrogation, which I think it is, but  
24 it -- it -- it -- it's -- it's really  
25 pre-admission. It's -- it's what police do to

1 get the suspect to stop denying and say, I did  
2 it.

3 The final phase, um, might be called the  
4 post-admission phase, where interrogators ideally  
5 elicit the details about how and why the suspect  
6 committed the crime, um, because a confession is  
7 not just the admission, "I did it," confession is  
8 a narrative about how and why a suspect did the  
9 crime.

10 Q Okay. And what is the significance of this  
11 post-admission narrative phase?

12 A Well, it has -- there's -- there's several things  
13 that are significant about it. Um, first, um, it's  
14 significant to law enforcement because if they hold  
15 back information, and they do it right, they can get  
16 the suspect to either verify his or her inside or  
17 non-public knowledge about the crime, and objectively  
18 demonstrate if the suspect did -- committed the  
19 crime, or is confessing truthfully, that they know  
20 details that could not have been guessed by chance,  
21 that were not publicly revealed, um, that almost  
22 certainly only the true perpetrator would know,  
23 absent any contamination if they do it right.

24 So that's one aspect of its  
25 significance. It's a way of making confessions

1 bullet proof, and police are trained on hold-back  
2 principles, and how to elicit good, corroborated,  
3 non-contaminated proper confessions to establish  
4 they're reliable.

5 Of course, police interrogators are  
6 interested in separating the innocent from the  
7 guilty, and so it can also be used to test  
8 whether or not using the same exact principles  
9 the person possesses. That kind of knowledge.  
10 In other words, whether the confession contains  
11 indicia of unreliability. And so that's the  
12 obvious other side of the coin. Significance for  
13 law enforcement.

14 For researchers, it's also significant  
15 because it allows us to evaluate whether or not  
16 using the same principles that law enforcement  
17 use, whether or not it fits with, um, the --  
18 the -- not only the suspect possessing  
19 non-public, unique knowledge not likely guessed  
20 by chance, and whether it contains indicia of  
21 reliability, but also whether it contains indicia  
22 of unreliability?

23 And so we see patterns in the  
24 post-admission narrative in false confession  
25 cases, in a proven false confession cases.

1           Doesn't fit the facts. Suspect doesn't know  
2           non-public details. Contaminated by police.  
3           Can't lead to new or missing evidence. Can't  
4           explain anomalies, etc., etc.

5    Q       Okay. You mentioned the word "contamination."  
6           Um, since you mentioned it now, what do you mean  
7           when you say contamination, Dr. Leo?

8    A       What we mean by contamination is that the police  
9           interrogators -- well, there's multiple sources of  
10          contamination. But let's just talk about police  
11          interrogation first for a second.

12                    Um, in the context of an interrogation,  
13           the interrogator has provided the suspect with  
14           unique or non-public crime details, or facts, or  
15           crime scene details that are then given back in  
16           the -- in the confession or post-admission  
17           narrative.

18                    So they've -- they've educated or fed  
19           the suspect with these unique non-public case  
20           facts. Of course, a suspect might learn those  
21           through other sources of contamination prior to  
22           an interrogation.

23                    One might be the media, of course.  
24           If -- if crime facts have been reported, they're  
25           no longer non-public.



1                   Another would be overheard communica --  
2                   uh, conversations or community gossip.

3                   Um, yeah. So those would be the other  
4                   sources of contamination.

5       Q       And so when you're assessing the reliability of a  
6                   confession, Dr. Leo, um, you have to sort of rule  
7                   out whether or not there were any sources of  
8                   contamination; correct?

9       A       Correct.

10      Q       Okay. Now, you talked earlier about two  
11                  different kinds of psychological coercion. Do  
12                  you remember that?

13      A       Yes.

14      Q       Okay. Now, when you analyze an interrogation or  
15                  interrogations, okay, what is your process for  
16                  determining whether or not an interrogation  
17                  contains psychologically coercive tactics?

18      A       Well, what I want to do is I want to review the  
19                  interrogation, itself, and a crucial issue is whether  
20                  or not the interrogation is recorded. Um, and if the  
21                  interrogation is fully recorded, as is increasingly  
22                  common across the country, then I will watch, or  
23                  listen to, although these days it's mostly watch, the  
24                  interrogation, usually with a transcript, and  
25                  evaluate the techniques that are used and whether or

1 not, first, those techniques -- any of those  
2 techniques -- are inherently coercive, like the ones  
3 I mentioned earlier.

4 And then, secondly, evaluate whether or  
5 not, in the totality of the interrogation, it  
6 appears to me that the person's will is  
7 overborne, is one way of putting it, but, really,  
8 a better way of putting it is that they are  
9 motivated to comply and, ultimately, confess  
10 because they're broken down and perceive they  
11 have no choice.

12 And relative to that kind of analysis  
13 there might be other case materials that are  
14 helpful, um, including interviews with the  
15 suspect, if a clinical psychologist is  
16 interviewed, or psychiatrist, and produced a  
17 report, um, there may even be situations where I  
18 interview a defendant, although I'm not likely to  
19 do that if there's a fully recorded  
20 interrogation.

21 There are times when there are multiple  
22 interrogations, or interviews by third parties of  
23 a defendant, where they will state things about  
24 their state of mind, or what they were thinking,  
25 or feeling, or perceiving during the

1           interrogation that might be relevant for that  
2           analysis as well.

3    Q    Have scholars from the field of police  
4           interrogations and confessions found that certain  
5           techniques, um, increase the risk of unreliable  
6           confessions?

7    A    Yes.

8    Q    Okay. And which techniques are those?

9    A    Well, um, promises, threats, whether implicit or  
10           explicit. Um, sometimes these are referred to as  
11           minimization techniques. Techniques that minimize a  
12           suspect's culpability.

13                 Um, scholars have -- have also written  
14           about deception, lies about evidence, primarily,  
15           which are thought to -- when misapplied to an  
16           innocent suspect -- also, raise the risk of  
17           interrog -- of false confession.

18                 There other factors that really go to  
19           the interrogation, like length of interrogation,  
20           but not to particular techniques.

21   Q    Okay. And you talked about particular  
22           techniques. Have these, um, techniques been  
23           consistently observed in observational studies,  
24           laboratory studies, and actual cases of false  
25           confessions?

1 A Yes.

2 Q Okay. Now, last question I want to ask you is,  
3 besides the effects of interrogation tactics on  
4 unreliable confessions, are there also internal  
5 or personality-related factors that increase the  
6 risk of false confessions?

7 A Yes.

8 Q What are those?

9 A Um, there are certain groups of individuals who have  
10 clusters of these techniques. People with low IQs,  
11 or the mentally retarded, juveniles, and sometimes  
12 people who are mentally ill.

13 These techniques have to do,  
14 essentially, with making somebody's personality  
15 more weak or vulnerable to persuasion. Um, low  
16 intelligence, high suggestibility, high  
17 compliance.

18 Um, suggestibility refers to the extent  
19 to which we accept a message that somebody is  
20 telling us, and then repeat it back.

21 Compliance is really obedience to  
22 authority.

23 And there's traits related to that that  
24 make certain people more suggestible and more  
25 compliant. Low self-esteem, aversion to

1 conflict, poor memory, and there are others.

2 And so individuals from the groups that  
3 I mentioned who tend to manifest these  
4 techniques, as well as normal individuals who are  
5 not mentally retarded, or low IQ, or juveniles,  
6 or mentally ill, sometimes manifest these  
7 personality traits as well. High compliance,  
8 high suggestibility, etc.

9 ATTORNEY DRIZIN: Judge, at this time,  
10 before we're -- I'm about ready to launch into his  
11 analysis of Brendan Dassey's interrogations. I'm  
12 going to be using the tape machine. Would this be a  
13 good time to take a lunch break?

14 THE COURT: It would, indeed.

15 ATTORNEY DRIZIN: Thank you.

16 THE COURT: Back at one o'clock.

17 (Recess had at 12:00 p.m.)

18 (Reconvened at 1:00 p.m.)

19 THE COURT: All right. Mr. Drizin,  
20 proceed.

21 ATTORNEY DRIZIN: Dr. Leo, and -- and  
22 counsel, and the Court, for the purposes of the  
23 rest of this examination, I think it would be  
24 helpful if you looked at Exhibit 316. Okay. I'm  
25 sorry, 315. I apologize. Three fifteen.

1 Q (By Attorney Drizin) And, Dr. Leo, I want you to  
2 look at Exhibit No. 3 as well. Your affidavit.  
3 So you should have a volume one, binder one,  
4 Exhibit 3, and binder five, Exhibit 316. Three  
5 fifteen.

6 THE COURT: For the record, 315 is an  
7 exhibit that comprises, I believe, 24 pages.  
8 Correct, Counsel?

9 ATTORNEY DRIZIN: That's correct.

10 THE COURT: And it is a copy of various  
11 transcripts?

12 ATTORNEY DRIZIN: It is a copy of clips  
13 from various transcripts, um, from the various  
14 interrogations in this case.

15 THE COURT: And those transcripts  
16 accurately represent the words that will appear on  
17 the film clips?

18 ATTORNEY DRIZIN: They do. I mean, to  
19 the -- to the best of my knowledge they do.

20 THE COURT: Well, one of the reasons I'm  
21 saying that is I -- it's always difficult for the  
22 court reporter to take these things and --

23 ATTORNEY DRIZIN: That's right.

24 THE COURT: -- if -- if these are vetted  
25 transcripts that represent what is being said on the

1 screen, I propose that for those portions she not  
2 have to take them. Mr. Fallon, any objection to  
3 that?

4 ATTORNEY FALLON: Um, I guess I'd like  
5 one foundation question, and then I want to  
6 revisit with you the status of that rule.

7 Um, Counsel, are the excerpts, which are  
8 contained in Exhibit 315, are those the words?  
9 Were they taken from the police reports? The  
10 transcripts that were prepared. Or are they  
11 something that your team created after listening  
12 to certain segments and then typed up?

13 ATTORNEY DRIZIN: They were taken from the  
14 police reports.

15 ATTORNEY FALLON: Okay. In all  
16 circumstances?

17 ATTORNEY DRIZIN: In all circumstances.

18 ATTORNEY FALLON: All right. Then I  
19 don't have too much of a problem from the  
20 foundation...

21 ATTORNEY DRIZIN: One second, Tom. I'm  
22 sorry. There's -- there's one exception to that,  
23 and that would be the -- the transcript of  
24 Mr. O'Kelly's interrogation on May 12, which was  
25 not, obviously, known to the police.

1                   ATTORNEY FALLON: Right. All right. Um,  
2 well, I guess we'll have to let Mr. O'Kelly  
3 authenticate that part.

4                   Then I guess I don't have a problem with  
5 the excerpts as represented by Counsel, if  
6 that's, in fact, the case, because I haven't  
7 compared word for word.

8                   My concern is where -- I know there was  
9 an amendment floating around. And I'm still  
10 under the impression that as uncomfortable as it  
11 would be that she may have to take these.

12                  THE COURT: I thought this would --

13                  ATTORNEY FALLON: Under that --

14                  THE COURT: -- comply with the -- the  
15 amendment. There had been a -- a Court of  
16 Appeals case that -- Ruiz-Veloze (phonetic) or  
17 something like that --

18                  ATTORNEY FALLON: Ruiz-Valez. Yeah.

19                  THE COURT: Which provided that the court  
20 reporter had to take this all the time. The Supreme  
21 Court amended that about two months ago.

22                  ATTORNEY FALLON: It did get passed?

23                  THE COURT: Yeah. And -- and I -- I  
24 don't -- I can't quote you the -- the SCR, or the  
25 Supreme Court Rule, but it was my -- let's recess



1 for a second. The court reporter has it in her  
2 office.

3 (Recess had.)

4 THE COURT: All right. I'll just read it.  
5 Let's go back on the record.

6 "It is ordered that effective January 1,  
7 2010, the Supreme Court Rules are amended as  
8 follows:

9 Section 1, SCR 71.01 (2)(e) of the  
10 Supreme Court Rules is created to read:

11 SCR 71.01 (2)(e): Audio recordings of  
12 any type that are played during the proceeding,  
13 marked as an exhibit and offered into evidence.  
14 If only part of the recording is played in court,  
15 the part played shall be precisely identified in  
16 the record."

17 The comment is:

18 "Those seeking to admit at trial  
19 videotaped depositions or other testimony  
20 presented by videotape should consult Wisconsin  
21 Statute Section 885.42 (4)."

22 Um, there is some further comment that  
23 really doesn't have anything to do with that.

24 I think the net effect of that is if the  
25 audio recording is appropriately marked, and the

1 transcript is shown to be the appropriate  
2 transcript, the court reporter doesn't have to --  
3 have to take it.

4 ATTORNEY FALLON: Okay.

5 THE COURT: Now, Mr. Tepfer has told us  
6 that there may be some errors here. Is that  
7 correct, Mr. Tepfer? Why don't you come on up here.

8 ATTORNEY TEPFER: I think for some of --  
9 were mismarked. Like, they were six numbers off  
10 but not all of them. We have five chapters from  
11 my understanding, I think, and one of the  
12 chapters the copies that State has and the Judge  
13 has are six numbers off in particular points.

14 THE COURT: When you say six numbers off,  
15 what does that mean?

16 ATTORNEY TEPFER: It means that -- if I  
17 could just consult with Alex.

18 THE COURT: Let's go off the record then.  
19 (Discussion off the record.)

20 ATTORNEY TEPFER: Um, what I mean is --  
21 this is chapter two, right now?

22 MR. HESS: Um-hmm.

23 ATTORNEY TEPFER: Chapter two, for  
24 example, it says number fif -- it says number 15  
25 on the sheet you have -- have -- actually --

1 MR. HESS: Josh, it starts recounting at  
2 one when it should be seven.

3 ATTORNEY TEPFER: Recounting at one when  
4 it should be seven.

5 ATTORNEY DRIZIN: Judge, I, um -- I  
6 apologize for this, but I think in -- in light of  
7 this, I think it would be our preference that she  
8 try to take this down.

9 THE COURT: I think that's what we're going  
10 to have to do. Um, understanding that there does  
11 exist a transcript that at least, in most respects,  
12 appears to be appropriate. Let's proceed.

13 Q (By Attorney Drizin) Dr. Leo, I'd like to begin  
14 this afternoon by talking to -- about your  
15 analysis of whether there are psychologically  
16 coercive interrogation tactics in the  
17 interrogations in Brendan Dassey's case.

18 But before I do, let me ask you this:

19 Um, what were you provided with to  
20 review for your testimony in preparation of your  
21 testimony today?

22 A I was provided with multiple CDs and DVDs of Brendan  
23 Dassey's interrogations on February 27, 2006,  
24 March 1, 2006, and May 13, 2006.

25 And later, I believe, Mr. Kelly's --

1 DVDs of Mr. Kelly's interrogation of March 12,  
2 2006.

3 Q That would be Michael O'Kelly?

4 A O'Kelly.

5 Q And that would be May 12 of 2006?

6 A Correct. I was also provided with supplemental  
7 police reports, Wisconsin DOJ criminal investigation  
8 reports, Calumet County Sheriff's Department reports.

9 I was provided with trial transcript.

10 Um, I was provided with news stories,  
11 um, media stories of the Halbach murder.

12 I was provided with a report by Joseph  
13 Buckley of Reid and Associates.

14 I was provided with a report by Lawrence  
15 White. Dr. Lawrence -- a Professor Lawrence  
16 White.

17 I've also seen a report by Dr. Robert  
18 Gordon.

19 Q Okay. In addition to the news stories and  
20 broadcasts that you cite in your affidavit in  
21 this case, did we send you additional news media  
22 accounts from television news in the case?

23 A I believe you did.

24 Q Okay. Now, um, I'm going to focus specifically  
25 on the interrogation beginning February 27. Um,

1 but, just generally, a couple questions.

2 When you looked at the videos in this  
3 case, did you observe some psychological  
4 interrogation tactics?

5 A Yes.

6 Q Did you observe some psychologically coercive  
7 tactics?

8 A Yes.

9 Q Okay. And can some of these tactics that you  
10 observed, if repeated over and over, become  
11 psychologically coercive?

12 A Yes.

13 Q So in and of themselves some of these tactics may  
14 not be psychologically coercive?

15 A Correct.

16 Q But if repeated over and over they can become  
17 psychologically --

18 A Correct.

19 Q -- coercive?

20 A In combination with other tactics, yes.

21 Q Okay. Now, let's start with the February 27  
22 questioning of Brendan Dassey at the school.  
23 That's Mishicot High School.

24 A Okay.

25 Q Okay? Um, now, the officers who -- there's been

1 testimony in this case that this conversation was  
2 an interview.

3 A Okay.

4 Q Okay. What is the difference between an  
5 interview and an interrogation?

6 A Well, an interview is usually not accusatory and it's  
7 more open-ended. Um, and the questions that are  
8 asked are not asked to elicit incriminating  
9 statements. An interview will always be  
10 non-custodial. There's no requirement to give any  
11 **Miranda** rights during an interview.

12 The goal of an interview is not to get a  
13 confession or self-incriminating statements, um,  
14 but to get general and specific information that  
15 assists in an investigation. You won't see in an  
16 interview interrogation techniques.

17 Q Um, and when you reviewed the February 27, um,  
18 questioning of Brendan Dassey, what was your  
19 opinion about whether or not it was an interview  
20 or an interrogation?

21 ATTORNEY FALLON: Again, I'm going to  
22 interpose an objection since the fruits of this  
23 interview were not played in front of the jury.

24 THE COURT: Mr. Drizin, why are we  
25 concerned?

1                   ATTORNEY DRIZIN: We're concerned because  
2                   Dr. Leo has testified and will testify that  
3                   psychologically coercive interrogation tactics from  
4                   one interrogation, if repeated in subsequent  
5                   interrogations, can have a psychologically coercive  
6                   effect.

7                   And many psychologically coercive  
8                   interrogation tactics, as well as contamination,  
9                   were introduced in the February 27  
10                  interrogations.

11                  THE COURT: All right. I'll overrule the  
12                  objection.

13                  Q    (By Attorney Drizin) Do you remember the  
14                  question, Doctor?

15                  A    Can you repeat the question?

16                  Q    Yeah. When you reviewed the February 27  
17                  interrogation video -- interrogation audio  
18                  tape -- at Mishicot High School, did you conclude  
19                  that it was an interview or an interrogation?

20                  A    An interrogation.

21                  Q    And why?

22                  A    Because they were using interrogation techniques and  
23                  they were seeking to elicit incriminating statements.  
24                  And so it looked like not only were they using  
25                  interrogation techniques, but they were trying to

1 accomplish what is the goal of a -- an accusatory  
2 interrogation.

3 Q Okay. And, um, is -- in your experience is it  
4 common for police officers to portray  
5 interrogations as interviews?

6 A Yes, very common.

7 Q Okay. Is there a legal significance to this  
8 distinction between interrogations and  
9 interviews?

10 A Yes.

11 Q What is that significance?

12 A Well, the significance would be that if it's -- if  
13 it's an interview, then there's no requirement for  
14 **Miranda**. If it's an interrogation in custody then,  
15 of course, **Miranda** is required.

16 Um, and there may be other  
17 constitutional issues triggered as well.

18 Q Okay. Now, Dr. Leo, um, I'm going to refer you  
19 to Exhibit 315, page one, clips one and two.  
20 Okay?

21 A Yeah. Hold on just a second.

22 THE WITNESS: Is it okay if I just set  
23 this right here?

24 THE COURT: Go ahead.

25 THE WITNESS: Okay. So, um --



1 Q (By Attorney Drizin) Exhibit 315 --  
2 A Correct.  
3 Q -- page one --  
4 A Right.  
5 Q -- clips number one and two?  
6 A Okay.  
7 Q You see what I'm talking about?  
8 A Yeah. I haven't re-read them but --  
9 Q Okay.  
10 A -- I see.  
11 Q Um, early in the interrogation on February 27,  
12 the following exchange occurred.  
13 ATTORNEY DRIZIN: Now, I had planned to  
14 play the 2/27 audio, Your Honor, but the 2/27  
15 audio is too garbled to play. Um, so I'm going  
16 to read these clips as they appear on Exhibit No.  
17 315. They're not very long.  
18 Um, clip number one. Mr. Fassbender  
19 speaking.  
20 "You're a kid. You know. And we got --  
21 we've got people back at the sheriff's  
22 department, district attorney's office, and  
23 they're looking at this now saying there's no way  
24 that Brendan Dassey was out there and didn't see  
25 something."

1                   They're talking about trying to link  
2                   Brendan Dassey with this event. They're not  
3                   saying that Brendan did it. They're saying that  
4                   Brendan had something to do with it, or the  
5                   coverup of it, which would mean Brendan Dassey  
6                   could potentially be facing charges for that.

7                   Clip two. Again, Mr. Fassbender.

8                   "We've gotten a lot of information. You  
9                   know, some people don't care. Some people back  
10                  there say, no, we'll just charge him.

11                  We said, no, let us talk to him. Give  
12                  him the opportunity to come forward with the  
13                  information that he has and get it off his chest.  
14                  Now, make it -- look, you can make it look  
15                  however you want."

16                  Okay? How would you describe the  
17                  techniques that are being used in these clips?

18        A        Okay. So you read two clips. I would describe them  
19                  as interrogation techniques, first of all. And, more  
20                  specifically, as inducements.

21                  Um, these are the kinds of techniques  
22                  that interrogators use to make somebody think  
23                  that it's in their best interest to confess or to  
24                  give them the information they're seeking, um,  
25                  because there could be negative consequences for

1 failing to do that.

2 In the first clip, um, the Sh -- you  
3 know, we've -- we've got people back at the  
4 Sheriff's office, the district attorney's office,  
5 and there -- there -- um, the description is that  
6 they're trying to figure out what Brendan's  
7 culpability is, and whether to link him to the  
8 crime.

9 Um, and they say explicitly here, you  
10 could be facing potential charges. So this would  
11 be an example of either a systemic or high end  
12 inducement.

13 Um, the second one, um, repeats -- the  
14 second of the two clips you read repeats this  
15 issue of -- of him being charged, um, and  
16 suggests, also, that he has an opportunity to get  
17 this off his chest or come forward and get this  
18 off his chest, which is really what we meant by a  
19 low-end inducement.

20 So these are classic interrogation  
21 techniques. They're inducements. They're  
22 conveying a -- a -- a high cost being charged  
23 with a murder, um, for failing to confess.  
24 Continuing to deny. And implying a benefit, um,  
25 implying that he might not get charged.

1 Q Okay. Now, some systemic inducements are  
2 psychologically coercive; correct?

3 A Yes.

4 Q Do you consider these systemic inducements  
5 psychologically coercive?

6 A Yes. The -- um, I think the threat -- threatening  
7 him with facing charges and suggesting that what he  
8 says will determine or could determine whether he  
9 gets charged and is linked to this very serious  
10 crime, um, is -- is -- is coercive.

11 I think it rises to the level of an  
12 implied threat of charging if he doesn't give  
13 them what they're looking for. An implied  
14 promise or suggestion of leniency or maybe even  
15 immunity if he does.

16 Q Okay. Dr. Leo, in your writing you use the term  
17 "pragmatic implication" on occasion. Do you know  
18 what that term means?

19 A Yes. It's a term for -- for ling -- from  
20 linguistics, and it conveys a very simple idea. That  
21 in conversation, um, we often imply the meanings of  
22 certain things without explicitly stating them. Um,  
23 and it's understood, contextually, the meaning of  
24 what's being implied through the particular language  
25 use.

1                   It -- it -- it's relevant in  
2                   interrogation because a -- essentially, um,  
3                   certain meanings can be implied and understood  
4                   without being expressly communicated. And, in  
5                   particular, oftentimes promises, or suggestions  
6                   of leniency, or threats of harsher or higher  
7                   charging or punishment, are implied pragmatically  
8                   in the context rather than explicitly stated so  
9                   somebody would understand or is likely to  
10                  understand their meaning even if it's not  
11                  explicitly said.

12    Q            Okay. And has this idea of product -- pragmatic  
13                  implication been studied in the context of police  
14                  interrogations?

15    A            It has, yes.

16    Q            Okay. Can you describe some of this research?

17    A            Well, it's been studies in two contexts. One context  
18                  has been an experimental context where the  
19                  experimental subjects are asked to read transcripts  
20                  of -- of excerpts from in -- interrogations. And, of  
21                  course, in an experiment you can vary the conditions.

22                  So you then -- you have control groups,  
23                  and stimulus groups, and you give different  
24                  transcripts, and you analyze what the people  
25                  infer from the different transcripts.

1                   Whether implied -- whether certain  
2 things are implied promises or implied threats,  
3 whether it's understood, um, or not, and in the  
4 various different conditions, including explicit  
5 threats and promises or other statements.

6                   So that would be experimentally based on  
7 real live interrogation.

8                   Um, and then there's been field research  
9 of people who've confessed, and analyzing the  
10 transcripts of their interrogation, and some  
11 cases interviews with them about the meaning that  
12 they inferred from things that were stated during  
13 the interrogation implicitly rather than  
14 explicitly.

15 Q   Okay. In your opinion, is there any practical  
16 difference in terms of which is more coercive  
17 between a direct threat or a promise and one that  
18 is conveyed through pragmatic implication?

19 A   Not if the one conveyed through pragmatic implication  
20 is understood to be a -- a threat. What really is  
21 important is how the meaning is understood, or how  
22 it's conveyed, and how it's understood.

23                   And a threat conveyed through --  
24 implicitly through what we call pragmatic  
25 implication -- can be just as powerful as

1 implicitly as one that's conveyed explicitly.

2 Q Okay. Um, is the use of threats and promises  
3 conveyed through pragmatic implication a strategy  
4 that police officers use during interrogations to  
5 avoid being, um, associated with direct promises  
6 or threats?

7 A Yes. You know, the police officers, themselves, may  
8 deny that it's a strategy that they're using, or  
9 that, in their opinion, it rises to the level of a  
10 threat or a promise. But it -- from -- from -- from  
11 a behavioral point of view the answer is, yes,  
12 that -- that we ob -- we have observed that.

13 Q Okay. Now, Dr. Leo, I'd like you to turn to  
14 Exhibit 315, page one, clip six; and page two,  
15 clip seven.

16 But let's start with page one, clip --

17 A Okay.

18 Q -- six. And, again, I would play this but I'm  
19 going to read this tape. This as well.

20 Clip six is from Investigator Wiegert.

21 "Um, but we want to go back and tell  
22 people that you know Brendan told us what he  
23 know. We want to be able to tell people that  
24 Brendan was honest. He's not like Steve. He's  
25 honest. He's a good guy. He is going to go

1 places in this life.

2 But in order for us to do that, you need  
3 to be honest with us, and so far you're not being  
4 a hundred percent honest."

5 Clip seven.

6 "Mark and I can" -- "Mark and I both" --

7 This is Investigator Fassbender  
8 speaking.

9 "Mark and I both can go back to the  
10 district attorney and say, uh, Dassey came  
11 forward and finally told us. Can imagine how  
12 this was weighing on him. They'll understand  
13 that."

14 And then, finally:

15 Mr. Wiegert: "We'll go to bat for ya  
16 but you have to be honest with us."

17 Okay? Are these other examples of what  
18 you would call systemic inducements?

19 A The first one, in and of itself, not -- excuse me --  
20 not necessarily. Number six, um, although it would  
21 depend on the context in which number six was given,  
22 if it had been preceded by other systemic inducements  
23 or references to the consequences in the system for  
24 being honest, then contextually it may be referring  
25 back to those, um, and conveying the meaning that



1 honesty will pay off in terms of what the prosecutor  
2 will or will not do.

3 So this would depend on the context. It  
4 just -- if I just read this out of context, then  
5 I would say, no. But it could, depending on the  
6 con -- context, refer back to something that --  
7 that reestablishes that meaning.

8 Number seven I would say no question  
9 because, first of all, he's referencing the  
10 district attorney. The district attorney is the  
11 person who decides whether or not somebody gets  
12 charged.

13 And, obviously, that has all kinds of  
14 implications in terms of depriving them of  
15 their -- of their liberty, and possibly resulting  
16 in a -- in a conviction.

17 And suggesting that they will go to bat  
18 for him, depending on what he says, he has to be  
19 honest, and the meaning of going to bat suggests  
20 putting in a word, or persuading, or advocating  
21 on his behalf in a way that will minimize, or  
22 reduce, or eliminate his culpability.

23 So I think this is no question. The  
24 second one you read, no question, is a systemic  
25 in -- inducement.

1 Q So with regard to the first one, when  
2 Mr. Wiegert -- Investigator Wiegert -- says, we  
3 want to go back and tell "people," if the word  
4 "people" in that statement refers back to people  
5 in the district attorney's office, then you would  
6 consider number six a systemic inducement?

7 A Correct.

8 Q Okay. Now, I want you to focus, if you will, on  
9 page one, clips four and five. Okay?

10 Um, Mr. Fassbender on page -- on clip  
11 four begins by saying:

12 "Talk about it. We're not just going to  
13 let you high and dry. We're going to talk to  
14 your mom after this, and we'll deal with this the  
15 best we can for your good, okay?

16 I promise I will not let you high and  
17 dry. I'll stand behind you."

18 Mr. Wiegert then says:

19 "We both will, Brendan. We're here to  
20 help ya."

21 Okay?

22 And, number five, Mr. Wiegert says:

23 "We want to help you through this."

24 Okay?

25 Now, I want you to focus on, if you

1 will, page two, clip eight, and page nine, clip  
2 nine. Okay? Do you see that?

3 A Yes.

4 Q Okay. Mr. Fassbender then says:

5 "I'll promise you I'll not -- I promise  
6 you I'll not let you hang out there alone but  
7 we've got to have the truth. The truth is going  
8 to be terrible."

9 Clip nine. Mr. Fassbender says:

10 "Talk to us, Brendan, if you want this  
11 resolved."

12 Okay.

13 Um, play -- and -- and -- and, finally,  
14 clip ten on page two. Okay?

15 Mr. Wiegert. Investigator Wiegert:

16 "It's not your fault. Remember that."

17 Fassbender: "Yeah, it's not your fault.  
18 Like I said, Mike -- Mark and I are not going to  
19 leave you high and dry."

20 Okay.

21 What, in your opinion, is the  
22 significance of these repeated suggestions that  
23 the officers are there to help Brendan if he  
24 talks?

25 A I -- I think -- the -- these clips that you just

1 pointed to, again, are systemic inducements. I  
2 think, again, they convey some sort of promise, or  
3 suggestion, or implication of more lenient treatment.

4 Um, the offer to help sounds like it  
5 could convey the idea of helping him not face  
6 liability, not get charged by a district  
7 attorney, not get caught up in the system.

8 Um, and I -- I think that in this  
9 context, also, um, "We're not going to leave you  
10 high and dry," which implies, being left high and  
11 dry, that he would be the one who's charged or  
12 blamed for this crime?

13 And when they say, clip nine, "Talk to  
14 us, Brendan, if you want this resolved," I think  
15 the implication there is resolved means resolved  
16 for him. He walks out, he doesn't face criminal  
17 charges.

18 Uh, this doesn't -- he doesn't get  
19 caught up in this.

20 ATTORNEY FALLON: I'm going to object to  
21 that as being speculation. And until we have  
22 evidence that's going to tie this up as to how these  
23 were taken by the defendant, then I object.

24 THE COURT: Sustained.

25 Q (By Attorney Drizin) Dr. Leo, are these kinds of

1           tactics, in your opinion, particularly  
2           problematic with juveniles?

3    A    Yes.

4    Q    Are they particularly problematic when used with,  
5           um, people of below average intelligence?

6    A    Yes.

7    Q    Why?

8    A    Because we know that juveniles and people with a low  
9           level intelligence or low level cognitive functioning  
10           are more susceptible to interrogation pressure and  
11           influence, uh, more likely -- more likely to -- to  
12           make false confessions, have -- are easier to coerce  
13           into making false confessions.

14   Q    Okay. Thank you. I want to move on to the  
15           March 1, interrogation, um, and ask you, in your  
16           opinion, did the interrogators continue to use  
17           improper inducements on March 1?

18   A    Yes.

19   Q    Okay. And March 1 is the interrogation that --  
20           first of all, is the questioning that took place  
21           at the police station; correct?

22   A    Yes.

23   Q    And, in your opinion, was the questioning at the  
24           police station on March 1 an interview or an  
25           interrogation?

1 A Again, an interrogation.

2 Q Why?

3 A The same reasons I offered before. They were using  
4 interrogation techniques. They were seeking to  
5 elicit incriminating statements.

6 Q Does the fact that the interrogation took place  
7 in what the officer's called a "soft room" change  
8 your opinion about whether it was an  
9 interrogation or an interview?

10 A No, it doesn't change my opinion. What's important  
11 is the techniques that were used and how the  
12 questioning was being conducted whether it's in a  
13 soft room or non-soft room.

14 Q So whether the suspect is sitting on a couch or a  
15 hard back chair doesn't matter to you?

16 A Correct.

17 Q Okay. Um, now, I want you to focus on, if you  
18 will, page four, clip 19. We're going to play a  
19 series of clips, page four, clip 19, and then  
20 clips 22 through 26.

21 Um, but before I get there, um, on  
22 March 1 Detectives Wiegert and Fassbender used  
23 a -- a -- one tactic over and over again. Um,  
24 you called in your report the superior knowledge  
25 ploy. Do you recall that?

1 A Yes.

2 Q What is this technique?

3 A Well, this is a technique of confronting a suspect,  
4 either with evidence that irrefutably establishes his  
5 guilt, or --

6 (Wherein interference noise is coming  
7 from DVD player.)

8 A Thought that I did that. Or pretending to have  
9 superior knowledge or omniscient knowledge, knowing  
10 everything. In other words, knowing that the -- that  
11 the suspect did this because you know everything.

12 So this is a kind of evidence ploy.  
13 When I referred earlier to confronting a suspect  
14 with real or alleged evidence, uh, to convince  
15 them they're caught and it's futile to continue  
16 denying.

17 Q So would it be fair to say that in and of itself  
18 this superior knowledge ploy may not be  
19 psychologically coercive?

20 A Correct.

21 Q But if used over and over again throughout the  
22 interview, it might become psychologically --

23 A Correct. Especially in combination with other  
24 techniques it could have a coercive effect, yes.

25 Q Okay. Um, I'm hoping that we'll be able to play

1 clips 19, and 22 through 26.  
2 (Unintelligible.)  
3 "Tell me the truth. We already know.  
4 Just tell us. It's okay."  
5 (Unintelligible.)  
6 Clip 22.  
7 "Why did he -- why did he have you come  
8 over there? Did he need help with something?  
9 Remember, we already know but we need to hear it  
10 from you. Why did he have you come up there? He  
11 needed help, didn't he? What did he need help  
12 with? Go ahead and tell us."  
13 Clip 23.  
14 "Why was he peed off at her?"  
15 "I don't know."  
16 (Unintelligible)  
17 "I think he probably told you. So just  
18 be honest. We already know."  
19 Clip 24.  
20 "What else did he do to her? We already  
21 know. Be honest. We got enough here to..."  
22 (unintelligible) "...know some things that  
23 happened to her. So tell us the truth. What  
24 else did he do to her?"  
25 Clip 25.



1 "How did you know that?"

2 (Unintelligible.)

3 Q (By Attorney Drizin) Dr. Leo, would you look at  
4 that tape for this one?

5 (Unintelligible.)

6 "Be honest with us. We already know.

7 (Unintelligible.) We're going to help you  
8 through this, all right?"

9 Okay. Clip number 26.

10 "It's okay, Brendan. We already know."

11 Q (By Attorney Drizin) Okay, um --

12 "What happens next? Remember, we  
13 already know. We want to hear it from you. It's  
14 okay. It's not your fault. What happens next?"

15 Q (By Attorney Drizin) That was clip 29. And,  
16 finally, clip number 30.

17 "Come on. Be honest. You went back in  
18 that room." (Unintelligible.)

19 ATTORNEY DRIZIN: Okay. I know you're  
20 having difficulty hearing that, but, um, we'll give  
21 you the exhibit to the extent you need to fill --  
22 fill in what you were unable to hear.

23 Q (By Attorney Drizin) Um, now, Dr. Leo, is this  
24 an example of -- a repeated example of the  
25 omniscient ploy or the super knowledge ploy?

1 A Yeah. It's an -- they repeatedly tell him that they  
2 know and convey superior knowledge or knowledge of  
3 everything that occurred.

4 Q And if, in fact, they don't know, then this would  
5 be a false evidence ploy; correct?

6 A Correct.

7 Q Okay. Is there anything in the literature, um,  
8 that discusses the use of false evidence ploys  
9 with teenage suspects?

10 A Yes.

11 Q And what can you tell me what those findings are?

12 A Well, the false evidence ploys are often involved in  
13 false confessions. They're considered a risk factor  
14 for false confessions. They are considered  
15 particularly influential on individuals who have low  
16 IQs, or who are juveniles, who they -- may be more  
17 gullible or easily led or manipulated into confessing  
18 as a result of them.

19 Q Now, you recall I asked you to watch clip 25 and  
20 26. Do you remember that?

21 A Yes.

22 Q Okay. During that clip, investigator reaches out  
23 and pats Brendan on the knee. Did you see that?

24 A Yes.

25 Q Okay. Are police to drain -- trained to do this?

1 A Yes.

2 Q And what is the significance of that?

3 A Sometimes they use these kinds of body gestures to  
4 disarm a suspect, to communicate that they're the  
5 friend's suspect or ally, to get closer to -- to them  
6 physically. Um, it's believed to help in getting  
7 somebody to confess.

8 Q Okay. Now, Dr. Leo, I want to talk about the  
9 tactic of minimization which you spoke about  
10 earlier?

11 A Okay.

12 Q And I'd like to focus on, if you will, Exhibit  
13 315, page five, clip 31.

14 ATTORNEY DRIZIN: Alex, do you have  
15 that?

16 (Inaudible response.)

17 ATTORNEY DRIZIN: Okay.

18 "He brings you back there and he shows  
19 you her and what do you do? Honestly...

20 (unintelligible) ... I believe you were...

21 (unintelligible) ... we know what happened. Be  
22 truthful. We know what happened. It's okay.

23 What did you do?"

24 "I didn't do nothing."

25 "Brendan. Brendan, come on. What did

1           you do? What did Steven make you do? It's not  
2           your fault he makes you do it."

3    Q       (By Attorney Drizin) Okay. Mr. Fassbender on  
4           that clip says to Brendan, "What does Steven make  
5           you do?"

6    A       Correct.

7    Q       Is that an example of minimization?

8    A       Yeah. It's blaming -- it's blaming this on somebody  
9           else, implying that Steve -- Steven's at fault, as  
10          the next sentence suggests as well, and that he,  
11          himself, is not at fault, and so his culpability is  
12          being minimized here if he admits to being involved  
13          as they're trying to get him to admit to.

14   Q       Is there a connection between minimization and  
15          pragmatic implication?

16   A       Yes. Um, uh, pragmatic implication, again, implying  
17          the meaning of something rather than explicitly  
18          stating it. Minimization is a way to imply  
19          suggestions or promises of leniency, essentially,  
20          through what we call pragmatic implication.

21   Q       So the combination of suggesting that Steven made  
22          him do it, and it's your fault --

23   A       It's not your fault.

24   Q       It's not your fault. I'm sorry. Um, why is that  
25          an example of minimization?

1 A Because, again, he's trying to minimize -- he's  
2 trying to suggest that Mr. Brendan's -- I'm sorry --  
3 Mr. Dassey's culpability will be minimized or  
4 eliminated if he admits to this. He's not admitting  
5 to something that he's at fault for. He's not  
6 responsible for something he's not at fault for.  
7 Therefore, he has no criminal liability for something  
8 that he's not responsible for. Not at fault for.

9 Q Okay. I want to focus, if you will, on page  
10 three of Exhibit 315 and clips -- clip 17  
11 followed by page four, clip 18. Okay?

12 "Honesty here, Brendan, is the thing  
13 that's going to help you. No matter what you  
14 did, we can work through that. Okay? We can't  
15 make you any promises, but we'll stand behind you  
16 no matter what you did. Okay? Because you're  
17 being the good guy here. You're the one that's  
18 saying, you know what? Maybe I made some  
19 mistakes. But here's what I did.

20 The other guy involved in this doesn't  
21 want to help himself. All he wants to do is  
22 blame everybody else. Okay? And by you talking  
23 with us, it's helping you. Okay? Because the  
24 honest person is the one's that's going to get a  
25 better deal out of everything. You know how that

1 works. You know, honesty's the only thing  
2 that'll set you free; right?

3 And we know -- like Tom said, we know --  
4 when we reviewed those tapes, we know there's  
5 some things you left out. And we know there's  
6 some things that maybe you weren't quite correct  
7 that you told us. Okay?

8 We've done -- we've been investigating  
9 this a long time. We pretty much know  
10 everything. That's why we're talking to you  
11 again today. We really need you to be honest  
12 this time with everything. Okay?

13 If, in fact, you did some things which  
14 we believe some things may have happened that you  
15 didn't want to tell us about, it's okay. As long  
16 as you can -- as long as you be honest with us,  
17 it's okay. If you lie about it, that's going to  
18 be problems."

19 Clip 18.

20 "Just take it through honestly now.  
21 Come on, Brendan, be honest. (Unintelligible.)  
22 We already know what happened. Okay?"

23 "We don't get honesty here -- I'm your  
24 friend right now. Or I -- I got -- I got to  
25 believe in you, and if I don't believe in you, I

1 can't go to bat for you. Okay? (Unintelligible)  
2 Tell us what happened."

3 "Your mom said you'd be honest with us."

4 "And she's behind you a hundred percent  
5 no matter what happens here."

6 "That's what she said because she thinks  
7 you know more, too."

8 "We're in your corner."

9 "We already know what happened. Now,  
10 tell us exactly. Don't lie."

11 Q (By Attorney Drizin) What is the significance of  
12 clip 17 and 18?

13 A I think this is the place where you see the most  
14 concentrated, um, implied, if not, explicit, promises  
15 of -- of help, and suggestions, if not, promises, of  
16 leniency.

17 Um, the -- in clip 17, um, they're  
18 suggesting that, um, being honest, which means  
19 telling them what they regard as honest or the  
20 truth, um, will allow, um -- will help him, um,  
21 and will allow them to work through it and that  
22 they will stand behind him. Um, and he'll get a  
23 better deal if he's honest.

24 Um, and if he's honest, this will be  
25 okay. But if he lies, that there -- there will

1           be problems.

2                       So it seems to me that what they are  
3 suggesting here is that there will be specific  
4 negative consequences, general negative  
5 consequences, if he continues to say things that  
6 they don't regard as honest. That they don't  
7 regard as the truth.

8                       But if he does, he will get help. They  
9 will stand behind him. He'll get a better deal.  
10 And they even say, "The truth will set you free."

11 Q       Tell me about that. I mean, "The truth will set  
12 you free."

13                       In the context of clip 17 when that  
14 comes after the honest person is the one who's  
15 going to get a better deal out of everything, how  
16 do you interpret the truth will set you free? Or  
17 honesty will set you free?

18 A       I interpret this as a -- as a kind of quid pro quo.  
19 As an implied deal. They even use the word "deal."  
20 Right?

21                       But the -- the -- the quid pro quo, or  
22 the implied deal, or negotiation here is if you  
23 tell us what we regard as honest, what we regard  
24 as the truth, then you're not going to get caught  
25 up in the system. You're not the one who's going



1 to be blamed. You're not the one who's at fault.

2 The truth will set you free, um,  
3 suggests that he will be set free if he tells  
4 them what they regard as the truth.

5 Q Well, let's take a step back. There's no yelling  
6 here?

7 A Correct.

8 Q There's no screaming here?

9 A Correct.

10 Q There's no, um, direct threats of harm, is there?

11 A Um, not explicit. If you do this, then this will  
12 follow. If you don't, then that will follow. As you  
13 might expect in a contract; right? If someone, uh,  
14 writing a contract.

15 Q Um, why do you think this is psychologically  
16 coercive?

17 A Because I think it's conveying an implied promise of,  
18 if not leniency, immunity, in exchange for telling  
19 them what they regard as truthful or honest.

20 And I think it's in -- conveying an  
21 implied threat of the opposite if he doesn't.  
22 And I think -- you know, you've been playing  
23 these clips. But it's also important to remember  
24 the context that's established before these sorts  
25 of things are said. And I think the message

1 keeps getting driven home here, um, about this  
2 negotiation, or deal, or quid pro quo. The  
3 benefit if he tells them what they regard as  
4 truthful or honest. As being honest.

5 ATTORNEY FALLON: Your Honor, I'm going  
6 to renew the objection and ask that the Court  
7 take this evidence on conditional relevance.  
8 Because until it's established that the doctor's  
9 suggestions were, in fact, taken the way that  
10 he's now testifying, then all of this is  
11 speculation.

12 THE COURT: Well, I don't think it really  
13 goes to the admissibility of the evidence. I do  
14 think, though, it goes to the weight. So I'm going  
15 to overrule your objection.

16 ATTORNEY DRIZIN: Thank you, Your Honor.

17 Q (By Attorney Drizin) Um, is there anything wrong  
18 with linking a statement like, I'll go bat -- to  
19 bat for you, with honesty on Brendan's part?

20 A I -- I think it's creating -- a -- a statement like  
21 that is creating a -- a quid pro quo like deal or  
22 expectation. If you say what I want to hear, what I  
23 regard as honest, what I regard as truthful, then I  
24 will help you out.

25 The idea of going to bat for you, again,

1           you see this in -- in -- seen this many times in  
2           interrogations -- that I will be your advocate.  
3           I will try to negotiate something better for you.

4                     The implication is clear in a murder  
5           interrogation.

6   Q       Have you ever seen interrogations when detectives  
7           tell a suspect that the truth or honesty will set  
8           you free?

9   A       Yes.

10   Q       Okay. Is that a tactic that interrogators are  
11           trained to use with suspects?

12   A       I'm not aware that they're trained to use that --  
13           that tactic, no.

14   Q       Okay. Um, and how would you describe that  
15           tactic?

16   A       Well, I would describe that tactic as an inducement.  
17           Um, in anything other than the context of quoting  
18           religious scripture, I would describe that as a  
19           systemic or high end inducement if it creates the  
20           expectation that you will go free if you tell them  
21           what they regard as the truth.

22   Q       Now, later on in this interrogation, um,  
23           Detective Wiegert tells Brendan that we can't  
24           make any promises to you?

25   A       Correct.

1 Q Okay? You remember that?

2 A Yes.

3 Q Okay. Does, then -- doesn't that allay your  
4 concerns that these interrogations are  
5 psychologically coercive?

6 A No, it doesn't. And you frequently see this. Um,  
7 the detectives can talk out of both sides of their  
8 mouth. They say on the one hand, we're not making  
9 you any promises, but -- and they may -- they may, in  
10 their mind, actually believe that.

11 Um, but, again, this goes back to  
12 pragmatic implication, and minimization, and  
13 communicating implied promises. Um, so they --  
14 they -- they may be saying, we're not making any  
15 explicit promises, and they may not be realizing  
16 that they are conveying implicitly the same  
17 promise, or negotiation, or deal.

18 Q Okay. Thank you, Dr. Leo. I want to play clips  
19 14, 15, and 16, which are all on page three and  
20 ask you to --

21 "Feel that -- that maybe...

22 (unintelligible) ... Mark and I both feel that  
23 maybe there's some -- some... (unintelligible)  
24 ... or that you could tell us that you may have  
25 held back for whatever reasons, and I want to

1 assure you that Mark and I both are in your  
2 corner. We're on your side."

3 Clip 15.

4 "One of the best ways to -- to -- to  
5 prove to us or, more importantly, you know, the  
6 court and stuff, is that you tell the whole  
7 truth. Don't leave anything out. Don't make  
8 anything up because you're trying to cover  
9 something up a little, um, and even if those  
10 statements are against your own interest -- know  
11 what I mean? That that makes you -- might -- it  
12 might make you look a little bad or make you look  
13 like you were more involved than you want to be  
14 looked at, um, it's hard to do.

15 But it's good from that...

16 (unintelligible) to say, hey, they hope to hell  
17 you're telling the truth because now you're given  
18 the whole story, you're getting -- given points  
19 where it didn't look real good for you either."

20 Clip 16.

21 "As Mark and I looked at -- looked at  
22 the tapes, looked at the notes, and it's real  
23 obvious there's some places where some things  
24 were left out, or maybe changed just a bit to --  
25 to maybe -- looking at yourself, to protect

1           yourself a little.

2                       Um, from what I'm seeing, even if I fill  
3 those in, I'm thinking you're all right. Okay?  
4 You don't have to worry about things. Um, we're  
5 there for ya.

6                       Um, and -- and -- and we know what  
7 Steven did. And -- and -- and we know kind of  
8 what happened to you and what he did. We just  
9 need to hear the whole story from you. As soon  
10 as we get that, we're comfortable with that, I  
11 think you're going to be a lot more comfortable  
12 with that. It's going to be a lot easier on you  
13 down the road if this goes to trial and stuff  
14 like that."

15 Q       (By Attorney Drizin) Okay. Dr. Leo, what's the  
16 significance of these statements?

17 A       Well, number 14, um, they say that -- that both of  
18 them -- one of them says they're both in his corner.  
19 Again, suggesting they're his advocates. They want  
20 to help him, um, in this situation, and in implying  
21 eliminate or reduce his culpability.

22                       Um, in number 15 they, um, link this to  
23 the courts. Right? The -- the -- Fassbender,  
24 um, talks about how the courts want the whole  
25 truth. Again, implying that there's a benefit at

1           that stage of a proceeding, uh, for him giving an  
2           account that they regard as truthful.

3                     Um, 16, in my opinion, is, um -- has the  
4           most here, um, in terms of inducement. Um, they  
5           talk about protecting himself, implying that  
6           he'll avoid harm, um --

7   Q       Okay.

8   A       They also talk about, again, reinforcing the message  
9           that they are there for him. Right? That they're  
10          going to be his advocates. Um, this idea that  
11          they're on his side.

12                    They also, I think, make more explicit  
13          reference, than in the prior two ones, to the  
14          long term consequence. It'll be easier down the  
15          road, um, suggesting, again, lesser or no  
16          liability or culpability especially when they  
17          link it to if this goes to trial. The image of a  
18          trial being that that's where somebody might get  
19          charged with a crime or avoid getting charged if  
20          -- if -- if he's not the one who goes to trial.

21                    So, again, these are all inducements  
22          that convey, um, benefit and help. Uh, and  
23          they're on his side to -- to help him achieve  
24          reduced culpability or liability.

25   Q       And do you think that telling a teenager, uh,

1           like Brendan, that he will be all right, even if  
2           he implicates himself further in the crime, is a  
3           tactic that increases the risk of an unreliable  
4           confession?

5    A    Yes.

6    Q    Why?

7    A    Because, um, if somebody is being repeatedly accused  
8           and pressured to say something, I keep saying no, no,  
9           no, no, and then they are told that that's not the  
10          truth, um, and they're not being honest, and -- and  
11          so truth and honesty become code words for what the  
12          interrogator wants to hear, and then they are told  
13          there's no consequence for you telling us what we  
14          want to hear, especially in the context of something  
15          as serious as a murder interrogation, and the  
16          incentive, after a while, can easily become, I'll  
17          tell them what they want to hear. They'll stop  
18          badgering me or accusing me. There's no consequence.  
19          I'm not liable for any criminal activity.

20   Q    In clip number 16 Investigator Fassbender says:

21                 "Um -- um, from what I'm seeing, even if  
22                 I filled those in..."

23                 ATTORNEY DRIZIN: And that refers to  
24                 some blanks.

25                 Um, "...I'm thinking you're all right.



1           Okay? You don't have to worry about things."

2   Q       (By Attorney Drizin) Do you see that --

3   A       Yes.

4   Q       -- statement in the context of clip 16?

5   A       Yes.

6   Q       Um, what is problematic, if anything, about that?

7   A       Um, the idea that you'll be all right, and that you  
8           won't have to worry anything, I think, conveys,  
9           reasonably -- through any reasonable interpretation  
10          it conveys that you're not going to be -- or you may  
11          not be criminally charged for this.

12                        Um, you're going to be okay suggests  
13          you're out of it. And you don't need to worry  
14          about it suggests you don't need to worry about  
15          being charged, or prosecuted, or convicted.

16   Q       Okay. Um, I'd like to play, um, clips 33, 35,  
17          and 36. These are on -- page five is clip 33,  
18          page six is clip 35, and page six is clip 36.

19                        ATTORNEY DRIZIN: Alex, please play.

20                        "Honesty here, Brendan, is the thing  
21          that's going to help you. Okay? No matter what  
22          you did, we can work through that. Okay? We  
23          can't make any promises, but --

24                        This is clip 33, Alex.

25                        "I have a question."

1 "Sure."  
2 "How long is this going to take?"  
3 "It shouldn't take a whole lot longer."  
4 "You think I can get there before 1:29?"  
5 "Um, probably not."  
6 "Well" --  
7 "What's at 1:29?"  
8 "Well, I had a project due in sixth  
9 hour."  
10 (Unintelligible.)  
11 Clip 35.  
12 (Unintelligible.)  
13 "Okay?"  
14 "Am I going to be at school before  
15 school ends?"  
16 "Probably not. We're at 2:30 already.  
17 School's over at what? Three? Three..."  
18 (Unintelligible.)  
19 "What time will this be done?"  
20 "Well, we're pretty -- we're pretty much  
21 done. We have a couple followup things to ask  
22 you. But it's pretty much done."  
23 Okay. Clip 36.  
24 "You do understand that you're under  
25 arrest now?"

1                    "So could I call my girlfriend and tell  
2 her that..." (unintelligible).

3                    "We'll give you an opportunity to -- to  
4 do that. Okay? Did you kind of..."  
5 (unintelligible) "... after telling us what you  
6 told us kind of figured this was coming?"

7                    "Yeah."

8                    (Unintelligible.)

9                    "We don't know that at this time."

10 Q                (By Attorney Drizin) Dr. Leo, Brendan Dassey has  
11 just confessed to raping and murdering Teresa  
12 Halbach, and he's asking his interrogators if he  
13 can go back to school to do a school project.

14                    What, if any, significance did you  
15 attach to this request?

16                    ATTORNEY FALLON: Objection. Speculation.

17                    THE COURT: Sustained.

18 Q                (By Attorney Drizin) Did you rely on this  
19 passage in any way in forming any of your  
20 opinions in this case?

21 A                Yes. I relied on this and many other passages.

22 Q                Okay. Um, how did you rely on this passage?

23 A                Well, in my opinion, um, he didn't understand that he  
24 was confess --

25                    ATTORNEY FALLON: Renew the objection.

1 THE COURT: Well, I think it's -- it's  
2 expert opinion. It's his opinion. He can give it.  
3 Go ahead.

4 THE WITNESS: In my opinion, um, he  
5 doesn't understand that he confessed to a rape  
6 and a murder, or the consequences of that, and,  
7 in my opinion, that's a product of the  
8 interrogation techniques that were used to elicit  
9 those confessions.

10 Q (By Attorney Drizin) Dr. Leo, I want to focus  
11 now on a brief clip that occurs when Brendan  
12 Dassey's mother, Barb, is brought into the room.  
13 And the investigators, Wiegert and Fassbender,  
14 leave the room for the first time.

15 This would be page six, clip 37.

16 (Unintelligible.)

17 "You're going to juvie. That's where  
18 you're going. To juvie jail. About 45 minutes  
19 away."

20 (Unintelligible.) "What happens if he  
21 says, like, his story's different but he says  
22 he -- he admits to doing it?"

23 "What do you mean?"

24 "Like, if he says it different, like, I  
25 never did nothing or something?"

1 "Did you?"  
2 (Unintelligible.)  
3 "Huh?"  
4 "Not really."  
5 "What do you mean, 'Not really.'?"  
6 "They got into my head."  
7 "Huh?"  
8 "I didn't say anything."  
9 (Unintelligible.)  
10 "What do you mean by that? What do you  
11 mean by that, Brendan?"

12 Q (By Attorney Drizin) What significance do you  
13 attach to Brendan's statements in this clip,  
14 Dr. Leo?

15 A Well, he's -- he's saying that he wasn't really  
16 involved. And when pressed about that, they got to  
17 my head, suggests to me that they influenced him in  
18 how they interrogated him. Got to my head makes it  
19 sound like he was manipulated and not really makes it  
20 sound like he's denying that he did this.

21 Q Does the fact that Brendan chooses this moment,  
22 when there are no officers in the room, to make  
23 these statements have any significance to you?

24 A Yes, in that it -- once removed from the pressure of  
25 interrogators and interrogation it's easier to make

1           these kinds of statements.

2    Q    Have you seen other cases and situations where  
3           children recant their statements to their mothers  
4           when left alone with their parents?

5    A    Yes.

6    Q    Okay.  When Brendan is asked to explain by his  
7           mother what me meant by the words, "Not really,"  
8           he tells his mother, quote, they got to my head.  
9           Okay?  In your experience, do suspects often have  
10          a difficult time explaining the reasons why they  
11          confessed falsely to climb -- crimes?

12   A    Yes, some suspects do.

13   Q    And what is that based on?

14   A    Well, it's -- it's based on my observations of cases  
15          in which they've been asked, after the fact, in  
16          interviews by me, or others, um, or a relative, or  
17          guardian, uh, or friend comes in, and they talk to  
18          them, and they're being recorded, and asked what they  
19          said and why they said it.

20   Q    Now, Dr. Leo, you know, based on your training,  
21          and your experience, your research, your studies  
22          into police interrogations and psychological  
23          coercion, do you have an opinion as to whether  
24          the techniques that we've shown you here today  
25          used by the officers in the case on February 27

1 and on March 1 were psychologically coercive?

2 A Yes. It's my opinion that they were for the reasons  
3 that I have stated.

4 Q Okay. Um, before we turn to the question of the  
5 reliability of these statements, Dr. Leo, um, did  
6 you also review a videotape and a transcript of a  
7 conversation between Mr. Michael O'Kelly and  
8 Brendan Dassey on May 12?

9 A I did.

10 Q Okay. And without showing you this entire  
11 conversation, would you call this an interview or  
12 an interrogation?

13 ATTORNEY FALLON: Objection. Relevance,  
14 and materiality, and it's relationship, if at all,  
15 to a statement that occurred six weeks before.

16 ATTORNEY DRIZIN: It is -- I'm sorry.

17 THE COURT: Go ahead.

18 ATTORNEY DRIZIN: It is our position, as  
19 we've made clear over and over again, that it is  
20 directly relevant to the voluntariness and the  
21 reliability of statements that Brendan made  
22 following that May 12 interview, including the  
23 telephone confessions of May 13.

24 And Your Honor was deprived of seeing  
25 the Michael O'Kelly video when you ruled on the

1 voluntariness of those statements.

2 And Dr. Leo should be entitled to weigh  
3 in on whether or not, um, those statements were  
4 the product of Mr. O'Kelly's interrogation.

5 THE COURT: Court'll overrule the  
6 objection.

7 THE WITNESS: Okay. So the question --

8 Q (By Attorney Drizin) The question is, um --

9 ATTORNEY DRIZIN: Actually, um, may I  
10 have a moment, please, Your Honor?

11 (No verbal response.)

12 Q (By Attorney Drizin) Um, I'd like you to turn to  
13 page 3-6 -- Exhibit 316, page 17, please? I'm  
14 sorry. Page 16.

15 THE COURT: You mean Exhibit 315?

16 ATTORNEY DRIZIN: I apologize. Having a  
17 mental block about that number. Three fifteen, Your  
18 Honor.

19 Q (By Attorney Drizin) Okay. Dr. Leo, did you  
20 answer my last question? Did you believe that  
21 the -- the questioning of Brendan Dassey on 5-12,  
22 May 12, with Michael O'Kelly was an interview or  
23 an interrogation?

24 A Interrogation.

25 Q Okay. Mr. --



1                   ATTORNEY DRIZIN: Alex, if you would,  
2 I'd like you to play clip two.

3                   ATTORNEY FALLON: Your Honor, I'm going  
4 to renew the objection because they're attempting  
5 to tie all this in to a ten-second,  
6 fifteen-second clip played on a cross-examination  
7 after the defendant had taken the stand and  
8 waived his rights.

9                   And the interesting thing here is that  
10 that was a phone call with his mother. It was  
11 not in response to, um, police interrogation, or  
12 questioning, or comments. There's no state  
13 action there as it relates to his conversation  
14 with his mother on the suggestion that, well, if  
15 you're going to plead guilty, you better tell her  
16 that you're going to do that.

17                   That was the context of that as the  
18 Court recalls the trial.

19                   So this is all a -- a -- a charade, as  
20 it were, to tie in -- tie in all this irrelevant,  
21 immaterial evidence to something that did not  
22 have state action attached to it.

23                   THE COURT: Yeah. I'm -- I'm getting very  
24 skeptical here, Mr. Drizin. This -- this seems to  
25 me to be -- be pushing it beyond the grounds of any

1           relevance that I can see in this. I'm -- I'm going  
2           to sustain Counsel's objection at this point.

3                    ATTORNEY DRIZIN: Okay.

4   Q    (By Attorney Drizin) Um, at the beginning of the  
5           interview, Dr. Leo, without playing the tape,  
6           Mr. O'Kelly tells Brendan that he failed the  
7           polygraph exam and that the results were a score  
8           of 98 percent deception indicated. Do you  
9           remember that?

10   A    Yes.

11   Q    Okay. Now, in your experience have you seen  
12           cases in which confronting a suspect with  
13           polygraph results leads a suspect to falsely  
14           confess?

15   A    Yes.

16   Q    In your stud --

17                    ATTORNEY FALLON: Objection. Relevance.  
18           Mr. O'Kelly was not an agent of the State.

19                    ATTORNEY DRIZIN: It doesn't matter, Your  
20           Honor. We are -- okay. Your Honor, it's our --

21                    ATTORNEY FALLON: There's no evidence --

22                    THE COURT: Here. One at a time.

23                    ATTORNEY DRIZIN: It doesn't matter whether  
24           he was an agent of the State. The State knew about  
25           this interview. They knew it was happening.

1           They -- they knew that it resulted in a second  
2           interview the next day.

3                     Mr. Kachinsky testified earlier today  
4           that it was his understanding that the deal  
5           with -- with the State was that anything that  
6           came out of that weekend was pursuant to a  
7           proffer, and, therefore, not going to be used  
8           against Mr. Dassey at trial.

9                     The State specifically took advantage of  
10          Mr. Kachinsky's absence by getting him to make  
11          phone calls that were then used against him at  
12          trial.

13                    Now, Counsel can talk about the fact  
14          that it was only used on impeachment. Brendan  
15          Dassey. But the fact of the matter it wasn't  
16          mentioned in impeachment of Mr. Dassey,  
17          impeachment of Dr. Gordon, had also referenced in  
18          closing argument.

19                    That means that it was more prejudicial  
20          than Counsel would like to say it is.

21                    Um, I think Dr. Leo's entitled to talk  
22          about the tactics that were used that led to  
23          those statements.

24                    THE COURT: I don't know that your argument  
25          has a whole lot to do with why you're asking Dr. Leo

1           that question. I'm going to sustain the State's  
2           objection.

3           Q     (By Attorney Drizin) Dr. Leo, what is a prop  
4           room?

5           A     A prop room is a room that sometimes interrogators  
6           will take suspects that has artifacts of the crime.  
7           Sometimes newspaper articles, or folders, uh, of the  
8           particular crime that the person's being interrogated  
9           about.

10          Q     And is the use of such props, um, typically  
11          associated with interrogations?

12          A     Yes.

13          Q     As opposed to interviews?

14          A     Yes.

15          Q     In your experience, um, analyzing thousands of  
16          interrogations have you ever seen a video of a  
17          defense investigator interrogating his own  
18          suspect? His own -- excuse me. His own client?

19          A     I can't think of one off the top of my head.

20          Q     Okay.

21                    ATTORNEY DRIZIN: Your Honor, if -- if  
22                    it's okay, can we take a break as we go to  
23                    reliability?

24                    THE COURT: Any objection?

25                    ATTORNEY FALLON: No.

1 THE COURT: Take ten minutes.

2 (Recess had at 2:10 p.m.)

3 (Reconvened at 2:30 p.m.)

4 THE COURT: Proceed, Mr. Drizin.

5 Q (By Attorney Drizin) Dr. Leo, is the process of  
6 a psychological interrogation complete when a  
7 person makes his first admission?

8 A No.

9 Q Okay. What happens next?

10 A Well, this -- this is the post-admission phase that I  
11 referred you earlier where detectives --

12 Q Okay. I don't need you to define it right now.  
13 But -- but you're referring now to the  
14 post-admission narrative about which you  
15 testified earlier?

16 A Correct.

17 Q Okay. Why is a narrative important in the  
18 process of psychological interrogation?

19 A To get an account of how and why the suspect  
20 committed the crime, and to also see if there's  
21 indicia of reliability or unreliability as I  
22 described earlier.

23 Q Do police officers receive specific training on  
24 how to create a persuasive post-admission  
25 narrative?

1 A Yes.

2 Q And what kind of training do they receive?

3 A Training about hold-back information. Not giving a  
4 suspect non-public details that the true -- only the  
5 true perpetrator would know. Direct -- direct --  
6 telling police interrogators to elicit a full  
7 account. Not to stop with the admission, but to try  
8 to get the full details. Telling interrogators to  
9 look for corroboration and ways of objectively  
10 verifying and strengthening the admission.

11 Q How about -- are they trained to also seek an  
12 apology from the suspect?

13 A Yeah. That -- I -- I -- I think of that as an  
14 interrogation technique. Yes, they often, um --  
15 they're -- they're -- sometimes they're taught, and  
16 sometimes you see, increasingly, um, getting apology  
17 notes from suspects.

18 Q How about, um, eliciting some type of a motive?

19 A Yes.

20 Q Okay. Are there any other details of the  
21 confession that police officers are trained to  
22 elicit through the post-admission narrative  
23 process?

24 A Well, the details, again, of how and why the suspect  
25 committed the crime. And, um, sometimes you also

1 see, in addition to motives, a plaus -- trying to get  
2 a story of what happened. And, um, sometimes in  
3 post-admission interrogation they also will ask them  
4 legal questions. You know, I didn't make you any  
5 threats. This is voluntary.

6 Q Okay. Now, how does the post-admission narrative  
7 relate to the reliability of the confession?

8 A The post-admission narrative can potentially tell you  
9 a great deal about the reliability of the confession  
10 if the person is not contaminated by the police or  
11 other influences, but can't give the non-public  
12 facts. Guesses, and gets things wrong. Can't lead  
13 police to missing evidence. Can't explain aspects of  
14 the crime.

15 If the post-admission narrative doesn't  
16 fit with the existing physical, medical, or other  
17 credible evidence, all of that is indicia of  
18 unreliability.

19 Conversely, uh, if all of that were not  
20 true, it would be indicia of reliability. If  
21 they know non-public details that were -- that  
22 they're not likely guessed by chance, and were  
23 not the product of contamination.

24 And almost certainly you have to have  
25 participated in or been present for the crime.

1 If their statements lead to new or missing  
2 evidence, match the physical or other credible  
3 evidence, that post-admission narrative that  
4 follows the admission could -- can become  
5 excellent evidence of reliable -- or indicia of  
6 reliability.

7 Q Are you aware, Dr. Leo, that the prosecution in  
8 Brendan Dassey's case argued to the jury that  
9 there were 19 facts in Brendan's confession that  
10 were corroborated?

11 A Um, I -- I -- I -- I thought there were 17. I must  
12 have been mistaken. So I was aware they made that  
13 argument, whether it was 17 or 19, yes.

14 Q You're referring to the 17 in -- in Mr. Buckley's  
15 report?

16 A Correct.

17 Q Okay. But in either event, whether it was  
18 Mr. Buckley or the prosecution, you understood  
19 that they argued that this was a highly  
20 corroborated confession?

21 A Correct.

22 Q And you're -- are you aware that they argued that  
23 Brendan's statement was reliable because it led  
24 the police to the discovery of evidence that had  
25 been unknown to them prior to the confession?



1 A Yes.

2 Q And that would have been a bullet in -- or the  
3 fragment of a bullet that was in the -- the Avery  
4 garage?

5 A Yes.

6 Q Okay. And that it contained a description of  
7 some unusual and some mundane elements of the  
8 crime?

9 A Yes.

10 Q How can a confession that is so rich in detail,  
11 that appears to be corroborated, and which leads  
12 the police to be -- to unknown evidence, be  
13 unreliable?

14 A Well, perhaps counterintuitively, most false  
15 confessions are very detailed. The fact that a  
16 confession is detailed does not make -- make it true,  
17 necessarily, or false. Um, both true and false  
18 confessions can be detailed.

19 The question becomes where did this  
20 information come from?

21 Did it come from the media? Did it come  
22 from community gossip? Was it publicly known?  
23 Did the police explicitly feed the suspect? Or  
24 did they ask force choice questions where the  
25 answer was implied? Uh, or did the suspect

1 independently volunteer this information?

2 So I guess to answer your question, a --  
3 an unreliable or false confession can be detailed  
4 with these kinds of facts, um, false confession,  
5 um, because the person was contaminated because  
6 they learned the information from either the  
7 police, or the media, or some other source.

8 Q And, in fact, aren't there studies of proven  
9 false confessions where suspects have given what  
10 appear to be highly corroborated detailed  
11 accounts of a heinous crime?

12 A Yes.

13 Q And what studies are those?

14 A Um, I've written about this in my book.

15 Professor Brandon Garrett of the  
16 University of Virginia has written about that.  
17 He has unique access to the DNA exonerations, of  
18 which 40 or 50 involve false confessions.

19 He's looked at the trial transcripts of  
20 those cases, and in all but one there was --  
21 there was contamination. These are people proven  
22 innocent by DNA who were, nevertheless,  
23 convicted.

24 And at their trials the argument was  
25 always made, it's a detailed confession. The

1 person supplied details that only the true  
2 perpetrator would know, um, and so it's  
3 corroborated.

4 And, in fact, these were false  
5 confessions. Provably false through DNA.

6 Um, a professor in England, Gisli  
7 Gudjonsson, G-u-d-j-o-n-n-s-o-n (sic), I think  
8 was the first to really document and study this  
9 in English cases.

10 So this is a phenomena. And I've  
11 written elsewhere about it with my colleague,  
12 Richard Ofshe. This is a phenomena that's  
13 well-known to confession researchers, especially,  
14 um, with these DNA cases.

15 Q Now, contamination that you're referring to can  
16 come from a variety of sources?

17 A Correct.

18 Q Can come from the police?

19 A Correct.

20 Q It can come from the media?

21 A Correct.

22 Q It can come from the suspect's general knowledge  
23 of a crime scene?

24 A Correct.

25 Q Um, and in many cases, for example, suspects

1 will -- will, um, come upon a dead body and that  
2 will give them information that could contaminate  
3 their final confession?

4 A Correct.

5 Q Okay. So is contamination that you've described  
6 confined to the post-admission narrative process?

7 A No. You could have -- first of all, you could have  
8 pre-existing knowledge. Somebody has been to the  
9 crime scene, or was a witness to a crime. That's  
10 before the interrogation.

11 You can also have contamination, um,  
12 through media sources, or community gossip,  
13 overheard conversations prior to the  
14 interrogation.

15 And then in the interrogation you can  
16 have contamination in the pre-admission portion  
17 of the interrogation even before the words -- the  
18 suspect says the words, I did it. They're being  
19 educated about the crime facts by the  
20 interrogators even if it's not the interrogator's  
21 intent or the interrogator's --

22 Q That's --

23 A -- not aware of it.

24 Q I'm sorry. That's what I want to focus on. But  
25 you're not saying that these are cases where

1 interrogators deliberately contaminated the  
2 suspect's confession are you?

3 A Correct. Correct. No, I'm not saying that.

4 Q Okay. Now, um, if it's not deliberate, how --  
5 how would -- how do police contaminate  
6 confessions?

7 A Well, um, the -- the in -- the interrogations are  
8 guilt presumptive, which means that they presume the  
9 guilt of the person they're interrogating, and so  
10 they assume the person knows the details.

11 And sometimes in the pre-admission  
12 interrogation techniques, like the evidence ploy,  
13 for example, or through accusations, they will  
14 tell the suspect details, thinking the suspect  
15 knows them, to get more details, or try to cue  
16 the suspect in their attempt to pressure the  
17 suspect, or persuade the suspect to give a true  
18 confession.

19 So they don't realize -- if they are  
20 interrogating an innocent person, because they  
21 presume that person to be guilty, who has  
22 knowledge, they don't always realize that they  
23 are feeding the facts, um, or that they are  
24 cueing them to particular answers, or directing  
25 them to particular answers.

1                   Um, and the same process sometimes  
2 happens post-admission where their focus is not  
3 so much on getting the "I did it" statement but  
4 on getting a -- a story, a narrative, with  
5 details, and where, in their frustration, they --  
6 they pressure and persuade the suspect, and  
7 inadvertently direct them, or cue them, or ask  
8 questions that suggest the correct answers.

9   Q   Contamination. Can contamination from one  
10 interrogation later infect other interrogations?

11   A   Yes. Because if you're educating the suspect about  
12 particular details at time one, and then at time two  
13 the person's interrogated and confessons  
14 (phonetic) -- confesses, he or she is likely to know  
15 the details from time one. Um, the cat's out of the  
16 bag.

17                   Unless the person didn't hear them, or  
18 didn't remember them, the contamination from the  
19 prior interrogation, um, will carry over to the  
20 subsequent interrogation.

21                   And you see that in some of the DNA  
22 cases.

23   Q   As an expert, when you're looking at the  
24 reliability of a -- of a confession, how do you  
25 know whether contamination exists?

1 A Well, um, if you have a recording of the  
2 interrogation, then, um, your job is much easier  
3 because you don't have to rely on anybody's account  
4 for that piece of it.

5 You go to the interrogation, and you  
6 have to carefully go through the statements to  
7 see whether or not, um, police are feeding facts,  
8 educating the def -- the suspect, correcting  
9 details, cueing the -- the suspect to the right  
10 answer, giving the suspect fifty/fifty guess  
11 options.

12 Um, so that's one thing you'd have to  
13 do. Um, in a high profile case that's received  
14 media coverage, um, it would be important to know  
15 what's been reported out there, and whether or  
16 not the suspect could have learned that. Um --

17 Q Does the problem of contamination, um, lead to  
18 wrongful convictions?

19 A Um, it does, but I think it's important to say how it  
20 leads to wrongful convictions. It's -- it's -- it's  
21 a big part of the story. It's not the whole story.

22 It leads to wrongful convictions because  
23 it makes false confessions detailed and look very  
24 persuasive so that the trier of fact -- first of  
25 all, so that the prosecutor argues that the

1 confession is corroborated by the details and by  
2 the, quote, unquote, inside knowledge, and that's  
3 very persuasive.

4 We find in our studies to triers of  
5 fact, um, because the -- the -- the -- the fact  
6 of details, and if the prosecutor's argument of  
7 inside knowledge is believed, again appears to  
8 corroborate, confirm, drive home the validity and  
9 veracity of the confession.

10 Q And does the problem of contamination make it  
11 more difficult to overturn wrongful convictions?

12 A This is very clear from the DNA studies, um, where  
13 Brandon Garrett looked at the history of these cases  
14 in appellate and post-conviction, and these arguments  
15 were repeated. Um, when error was found, it was  
16 harmless error.

17 But, perhaps, the most, um, disturbing  
18 thing about Brandon Garret's findings --

19 ATTORNEY FALLON: I'm going to object to  
20 the relevance of Mr. Garrett's soon-to-be  
21 published law review article and it's application  
22 to the particular proceedings as to whether or  
23 not trial counsel were ineffective, which is  
24 really the focus here.

25 THE COURT: I understand the objection.



1 This is an expert. He can tell us what he relies on  
2 in forming his opinion. I would appreciate it if  
3 you could do that succinctly.

4 THE WITNESS: Okay. Um, even after the  
5 DNA established the innocence, um, trial  
6 prosecutors continue to refuse to release  
7 individuals who had confessed, repeating the same  
8 arguments. They gave details only the true  
9 perpetrator could know.

10 Q (By Attorney Drizin) Now, in your experience and  
11 your research, is contamination a phenomenon that  
12 jurors can typically spot?

13 A No.

14 Q How do you know that?

15 A Well, through the studies and the research is how we  
16 know that. Um, you really have to break it down to  
17 see contamination. I think jurors tend to get  
18 focused on the confession process itself.

19 Q Okay. And by "break it down" you mean show them  
20 precisely on the interrogation tape where  
21 contamination occurs?

22 A Right. Step by step.

23 Q Okay. Did you look at the State's 19 -- or I'm  
24 sorry -- Mr. Buckley's 17 corroborated facts in  
25 this case?

1 A I did.

2 Q And in doing so, were you able to make any  
3 assessments of whether or not these facts were  
4 the product of any contamination?

5 A Yes.

6 Q Um, and what did you find?

7 A I find -- found, as is -- as I went through in the  
8 affidavit for all 17 statements, that all of the  
9 statements that Mr. Buckley alleges were  
10 corroborating the confession, or were unique,  
11 non-public knowledge, um, were not that.

12 They either were fed to Mr. Dassey by  
13 the police, or, um, Mr. -- the police cued  
14 Mr. Dassey toward the right answer, or, um, they  
15 were -- and/or they were in the public domain,  
16 they had been reported in the media, either the  
17 print or electronic media.

18 Um, finally, or there were some  
19 statements here which, even though true, were  
20 consistent with an exculpatory account and in no  
21 way incriminated Mr. Dassey.

22 So none of these 17 points, um, revealed  
23 unique, non-public knowledge that only the true  
24 perpetrator could have known and couldn't have  
25 been guessed by chance.

1 Q Now, you mentioned earlier about the police  
2 training with regard to holding back some details  
3 from the general public?  
4 A Correct.  
5 Q Do you remember that?  
6 A Yes.  
7 Q What are they trained in that regard, Dr. Leo?  
8 A To hold back non-public case facts, unique crime  
9 details, that only the true perpetrator is likely to  
10 know, other than the police, um, unless they're  
11 co-defendants, and then perpetrators, so that when  
12 they confess, if they voluntarily, independently  
13 reveal that information, you can -- you can argue  
14 very persuasively it's evidence of guilt. It  
15 corroborates the confession and seals the convic --  
16 should seal the conviction.  
17 Q So the less facts that are held back from the  
18 general public, the more difficult it is to  
19 assess the reliability of a confession?  
20 A Correct.  
21 Q Okay. I want to show you some clips with regard  
22 to contamination. Actually, um, again, since we  
23 have a problem with the video, I'm going to read  
24 you some clips from February 27 on contamination.  
25 I want to -- you to look at Exhibit 315, page

1 eight, clip one.

2 A Can you just give me a moment?

3 Q This is 315, page eight, clip one at the top of  
4 the page, which is February 27.

5 A Um, okay.

6 Q Do you see where I'm referring?

7 A Yes.

8 Q It begins with the words, "Brendan, we know  
9 that."

10 A No, I think I'm --

11 ATTORNEY FALLON: What page are --

12 THE WITNESS: Is it --

13 ATTORNEY FALLON: -- you on, Counsel?

14 THE WITNESS: -- Exhibit 315, page one?

15 ATTORNEY DRIZIN: Exhibit 315, page

16 eight --

17 THE WITNESS: I'm sorry.

18 ATTORNEY DRIZIN: Clip one.

19 THE WITNESS: Okay. Okay.

20 Q (By Attorney Drizin) This is Mr. Fassbender  
21 speaking.

22 "Brendan, we know that that Halloween  
23 and stuff you were with him, and helped him tend  
24 to a fire and stuff like that, behind the garage  
25 and stuff, and anything that you saw that nights

1 that's been bothering you.

2 If you built the fire, and we believe  
3 that, that's where Teresa was cooked."

4 Okay? Do you -- what does this clip  
5 show you about contamination?

6 A Sorry. Well, they're educating him about some of  
7 the -- some of the key facts here. Um, that there  
8 was a fire. That, um -- and that that's where  
9 Teresa's body was, as they say, "cooked."

10 Q That would be in the fire pit?

11 A Correct. Um, and that it was behind the garage.

12 Q And that they think Brendan built the fire?

13 A Yeah. Helped tend to a fire, yes.

14 Q And that -- that Brendan may have seen something  
15 in the fire pit?

16 THE COURT: Here. Just --

17 THE WITNESS: Correct.

18 THE COURT: Let me just stop this. For  
19 sake of expediency, I haven't done this before, but  
20 oftentimes, Mr. Drizin, you are actually testifying  
21 rather than asking questions.

22 ATTORNEY DRIZIN: I'm trying to get through  
23 this, Judge.

24 THE COURT: I -- I -- and that's why I  
25 haven't said anything about it before.

1                   ATTORNEY DRIZIN: Okay. I'll -- I'll  
2                   refrain.

3                   THE COURT: All right.

4                   ATTORNEY DRIZIN: That's fine.

5                   Q    (By Attorney Drizin) Um, why is this  
6                   contamination significant to you?

7                   A    Well, because the -- then when he repeats back these  
8                   facts that's taken by the State to -- to somehow  
9                   corroborate his confession, but if it's -- if he  
10                  first learns of it through the police, then it has no  
11                  probative value.

12                  Q    Okay. Let's look at page eight, clip two, um,  
13                  again on the top of the page, beginning with,  
14                  "Did you see a hand? A foot?" Do you see that?

15                  A    Yes.

16                  Q    Okay. This is February 27. Agent Fassbender  
17                  says to Brendan:

18                                 "Did you see a hand? A foot? Something  
19                                 in that fire?"

20                                 Clip three. Agent Wiegert says:

21   "That burn pit, Brendan, was no bigger  
22   than this table. Okay? You know how big it was.  
23   I find it quite difficult to believe that if  
24   there was a body in that, Brendan, that you  
25   wouldn't have seen something like a hand, or a

1 foot, a head, hair, something. Okay? We know  
2 you saw something."

3 Clip five.

4 "I find it very hard, Brendan, that you  
5 didn't see a skull, or the head."

6 Why are these clips significant?

7 A Because, again, they're educating him about things  
8 that they believe he saw. And so he repeats back  
9 these facts in his confession. And then the State  
10 says this -- this reveals unique, non-public  
11 knowledge that argument would be false.

12 Um, in -- in fact, he could be repeating  
13 back exactly what they told him or suggested.  
14 And, therefore, his confession is contaminated,  
15 and these statements have no probative value in  
16 establishing corroboration of that confession.

17 Q Okay. I'm wanting to focus now on March 1, okay?  
18 And I want to focus on -- I'd like you to focus  
19 on clips one, two, and three on page eight at the  
20 bottom of the page. This is the March 1  
21 interrogation at the Manitowoc Police Department.  
22 The first clip begins, "Where did he stab her?"

23 Do you see that?

24 A Yes.

25 Q Okay.

1                   ATTORNEY DRIZIN: Alex, can you play  
2 that clip, please?

3                    "In the stomach."

4                    "What else did he do to her?"

5                    (Unintelligible.)

6                    "Did something else. We know that."

7                    (Unintelligible.)

8                    "He tied her up."

9                    ATTORNEY DRIZIN: Um --

10                    "We know he did something else to her.

11                    What else did he do to her? (unintelligible)

12                    What else did he do to her? We know something

13                    else was done. Tell us. What else did you do?

14                    Come on. Something with the head. Brendan.

15                    (Unintelligible.) "We know he made you do

16                    something else. What was it? What was it? We

17                    have the evidence, Brendan. We just need you

18                    to -- to be honest with us."

19                    "That he cut off her hair."

20                    ATTORNEY DRIZIN: Alex, I'm going to ask

21                    you to continue playing clips on that page through

22                    clip nine.

23                    "What else? What else was done to her

24                    head?"

25                    "That he punched her."



1                    "What else? What else? He made you do  
2 something to her, didn't he? He -- he would feel  
3 better about not being the only person, right?  
4 What did he make you do to her?

5                    (Unintelligible.) What did he do, Brendan?

6                    (Unintelligible) It's okay. What --

7                    (Unintelligible.)

8                    "Cut her."

9                    "Cut her where?"

10                   "On her throat."

11                   ATTORNEY DRIZIN: Okay. Why don't we  
12 stop there for now. Okay? Alex, you want to --  
13 okay.

14 Q                (By Attorney Drizin) Um, the clips that you just  
15 viewed, um, what did they say to you about  
16 contamination?

17 A                It's my interpretation here is there -- I'm sorry.  
18 My interpretation here is that he's giving the wrong  
19 answers and they're trying to direct him to the right  
20 answers. And that's why they keep pressing him  
21 despite everything that he says.

22                   Um, and at one point, I guess, on clip  
23 three, um, they suggest that something happened  
24 to the head.

25 Q                Okay. And that's the first time that there's any

1 reference in these interrogations to something  
2 happening to -- happening to her head; is that  
3 correct?

4 A That's my recollection, yeah.

5 Q Okay. Um, now, I -- I --

6 ATTORNEY DRIZIN: Alex, will you  
7 continue to play the clips? This would be, I  
8 believe, from where you left off.

9 "Extremely, extremely...

10 (unintelligible) ... tell us this for us to  
11 believe you. (Unintelligible.) Come on, Brendan.  
12 We know. We just need you to tell us."

13 "That's all! I can remember."

14 "All right. I'll come out and ask you,  
15 who shot her in the head?"

16 "He did."

17 "Why didn't you tell us that?"

18 "Because I didn't think of it."

19 Q (By Attorney Drizin) Okay. Again, Dr. Leo, what  
20 does this clip suggest to you about  
21 contamination?

22 A They're feeding him. They're -- they're -- they're  
23 directing him.

24 Oh, the statement, um, when he says he  
25 doesn't remember, and they haven't

1           successfully -- I mean, five begins with what  
2           happens to her in the head. He's not giving the  
3           right answer. So, finally, they just come out  
4           and tell him the right answer.

5   Q       And that answer is that she was -- what -- that  
6           what?

7   A       Who shot her in the head. So, um, read in the  
8           context of the earlier clips that you played, he's  
9           now guessed wrongly several times. They've hinted at  
10          what the right answer is several times. And then  
11          they just give up.

12                   He says he can't remember. They just  
13          give up and basically tell him by saying, who  
14          shot her in the head. So they are disclosing  
15          that she was shot in the head, which he doesn't  
16          appear to know.

17   Q       Okay. Now, um, uh, Agent Wiegert late -- later  
18          asks Brendan in clip, I believe, 11, um, what --  
19          "Do you know what side of the head?" Do you  
20          recall that? That's on page nine?

21   A       Yeah.

22   Q       It's marked as -- I'm sorry. It's marked as clip  
23          six.

24   A       Right. Yeah. That's following the end of clip five.

25   Q       Is this an example of contamination?

1 A Yes.

2 Q How so?

3 A Well, again, um, they're affirming the answer.  
4 Unlike the other ones, where they keep pressing him,  
5 um, to go on, they accept this answer, and then they  
6 imply that it was one or the other side, and then ask  
7 him.

8 Q Okay. And so why he's telling him that she was  
9 shot in the side of the head contamination?

10 A Well, it's also the location of the head, as well,  
11 that they're suggesting.

12 Q Okay. Um, now, in his arguments to the jury, the  
13 prosecution play -- placed great weight on the  
14 fact that Brendan was able to say that she was  
15 shot, that she was shot in the head, and that she  
16 was shot in the side of the head.

17 In your opinion, after reviewing these  
18 clips, do you think that these facts are  
19 corroborated?

20 A No, because they come from the interrogator, as --  
21 these clips show, not from Brendan. So because they  
22 didn't come from Brendan, they have no probative  
23 value in corroborating the confession.

24 He didn't independently volunteer them.  
25 In fact, exactly op -- exactly the opposite. He

1 doesn't appear to know where they came from and  
2 guesses incorrectly, despite their initial cues,  
3 until they -- until they literally feed it to  
4 him.

5 ATTORNEY DRIZIN: Alex, I'd like you to  
6 play, um, clip 21, and this is on page 12, um,  
7 where Mr. Fassbender says, "Tell me where in the  
8 head."

9 THE COURT: Page 21.

10 THE WITNESS: Oh, sorry.

11 ATTORNEY FALLON: Oh, page 21. I thought  
12 he --

13 ATTORNEY DRIZIN: I think it's page 12.

14 ATTORNEY FALLON: Page 12. Well, there's  
15 only 15 --

16 ATTORNEY DRIZIN: Clip 15, but --

17 ATTORNEY FALLON: Okay.

18 ATTORNEY DRIZIN: On Alex's -- do you  
19 have it, Alex?

20 "Tell me where in the head. What  
21 sides?"

22 "To the left side I think it was."

23 Q (By Attorney Drizin) Um, Dr. Leo, does the fact  
24 that Brendan stated that she was shot in the left  
25 side of the head carry any significance?

1 A Um, to me, no. This is, um, an example of one of  
2 those facts that could be guessed by chance. There's  
3 only two sides. Fifty/fifty likelihood of guessing  
4 it.

5 So it -- it -- it -- it has no probative  
6 value in terms of corroborating the confession  
7 since it so easily can be guessed by chance, and,  
8 therefore, we don't know whether he provided that  
9 independently, um, or whether he just guessed it.

10 And, of course, since he was directed,  
11 and couldn't get the answer right in the first  
12 place, um, there -- there's multiple reasons why  
13 this is not corroborative.

14 Q Okay. Um, I want to focus your attention, now,  
15 on page nine again, and I want to show you some  
16 clips, um, relating to where Teresa was shot.

17 Brendan talks about that. Um, we'll  
18 begin with what is listed on Exhibit No. 315 as  
19 clip number seven.

20 ATTORNEY DRIZIN: And I want Alex to  
21 play clip number seven and clip number eight.

22 (Unintelligible.)

23 I'm sorry. Alex --

24 (Unintelligible.)

25 "And we know there's some -- some things

1           that you're -- you're not telling us. We need to  
2           get the accuracy about the garage, and stuff like  
3           that, and the car. Again, we have -- we know  
4           that some things happened in that garage and in  
5           that car. We know that. You need to tell us  
6           about that so we know you're telling us the  
7           truth."

8                         ATTORNEY DRIZIN: Okay. Um, would you  
9           keep playing what's marked on your exhibit as  
10          clip nine.

11                        (Wherein clip is played while Attorney  
12          Drizin is talking.)

13                        (Unintelligible.)

14                        "Took her in the garage."

15                        ATTORNEY DRIZIN: Again with ten.

16                        "Tell us where she was shot."

17                        "In the head."

18                        "No. I mean where? In the garage?  
19          Outside? In the house?"

20                        "In the garage."

21                        "Okay. Was she on the garage floor or  
22          was she in the truck?"

23                        (Unintelligible) "... the truck."

24                        "Come on. Where was she shot? Be  
25          honest here. The truth."

1 "In the garage."

2 Okay. Let's stop there.

3 Q (By Attorney Drizin) Um, Dr. Leo, um, the fact  
4 that Teresa was shot in the garage was argued to  
5 the jury as a corroborated fact. In your  
6 opinion, is that a corroborated fact?

7 A Well, again, they're -- they're directing him to  
8 where the crime took place by repeatedly telling them  
9 the garage and the car.

10 Q And, in fact --

11 A And, in fact, they say, um, tell us where she was  
12 shot. And -- and he says, in the head, and then  
13 Fassbender says -- this is clip ten -- "No. I mean  
14 where in the garage?" So, in effect, they're telling  
15 him.

16 Q Now, after Brendan's interrogation, Dr. Leo,  
17 you're aware that the police went into the garage  
18 and they actually found some evidence that she  
19 had been shot there; correct?

20 A Yes.

21 Q Um, isn't this an example of the most valuable  
22 kind of corroboration? Evidence which the police  
23 did not even know about prior to a confession?

24 A Correct.

25 Q But what is the significance of this evidence in



1 light of the tape that you just reviewed?

2 A It -- it loses all its probative value as a means of  
3 corroborating the confession, establishing its  
4 reliability, when the police educate the suspect  
5 about the fact, and then the suspect repeats back the  
6 fact, and then they discover something new related to  
7 that fact.

8 So it violates their training, and it  
9 makes it more difficult to establish the  
10 reliability of the statement they elicited  
11 because it -- it -- its corroborative value is  
12 completely undermined by the police,  
13 unnecessarily, providing him that information in  
14 their interrogation.

15 Q Okay. Um, now, Dr. Leo, um, I want to focus your  
16 attention on page ten of this exhibit, and what's  
17 marked on your exhibit as 13, beginning with the  
18 words, "Okay. What else did he do?" Do you  
19 see --

20 A Yes.

21 Q -- where that is?

22 A Yes.

23 ATTORNEY DRIZIN: Alex, can you play the  
24 tape?

25 "Okay. What else did he do? He did

1 something else. You need to tell us what he did.  
2 After the car is parked there. Extremely  
3 important. Before you guys moved that car."

4 "That he left the -- the gun in the  
5 car."

6 "That's not what I'm thinking about.  
7 You did something to that car. To the plates. I  
8 believe you did something else to that car."

9 "I don't know."

10 "Okay. Did he -- did he -- did he go  
11 and look at the engine? Did he raise the hood at  
12 all or anything like that? Do something to that  
13 car?"

14 "Yeah."

15 "What was that?" What did he do,  
16 Brendan? It's okay. What did he do? What did  
17 he do under the hood if that's what he did?"

18 "I don't know what he did. But I know  
19 he... (unintelligible).

20 Q (By Attorney Drizin) Dr. Leo, in light of these  
21 questions, what, um, value ought to be placed on  
22 the fact that Brendan stated that he saw Steven  
23 go under the hood of the car?

24 A Again, I don't think there's any probative value  
25 because Fassbender says, prior to Brendan saying

1           that -- in the middle of this -- did he raise the  
2           hood at all or anything like that, and then all  
3           Brendan can say is he doesn't know. The end of the  
4           clip. But he knows that Steven Avery went under.

5                        So this is a classic example of just  
6           feeding back a detail that was first suggested by  
7           the interrogator and, therefore, it's not inside  
8           knowledge. It has no probative value. It does  
9           not corroborate the confession.

10    Q        But this fact, again, led the police to discover  
11           Steven Avery's DNA on the hood latch of the car.  
12           Doesn't that provide precisely the kind of  
13           corroboration you want a confession to provide?

14    A        Yes. Maybe a different way of answering the prior  
15           question. And this question would be to say that  
16           this would have been something very valuable to hold  
17           back. That had they held that back, and had he then  
18           independently supplied it, um, this would have been  
19           very probative, um, if that had happened, and it  
20           would have been corroboration. If he could not have  
21           provided it, it would have suggested the opposite.  
22           And here it doesn't appear that he could provide it  
23           until he was told.

24    Q        Okay. I want to show you one more series of  
25           clips. Okay? This is a little bit longer so,

1 um, this is going to be on the bottom of page  
2 ten, and also --

3 (Wherein tapes starts to play.)

4 ATTORNEY DRIZIN: One second, Alex.  
5 Okay. Can you bring that back if possible?

6 This is going to be on the bottom of  
7 page ten, um, it's clip 14, and it's going to go  
8 all the way through the top of page 12. Okay?

9 "Did you place some things in that burn  
10 barrel that night?"

11 "No."

12 "What happened to Teresa's other  
13 personal effects? I mean, a woman usually has a  
14 purse; right? Tell us what happened to that."

15 "I don't know..." (Unintelligible.)

16 "What happened to her -- her cell  
17 phone?" Don't try to -- to..." (Unintelligible.)  
18 "... think of something. Just..."

19 "I don't know."

20 "Did Steven -- did you see whether -- a  
21 cell phone of hers?"

22 "No."

23 "Do you know whether she had a camera?"

24 "No."

25 "Steven tell you what he did with those

1 things?"

2 "No."

3 "Did you tell us the truth?"

4 "Yeah."

5 "What did he do with her -- her

6 possessions?"

7 "I don't know."

8 "Brendan, it's okay to tell us. Okay?

9 It's really important that you continue being

10 honest with us. Don't start lying now. If you

11 know what happened to a cell phone, or a camera,

12 or her purse, you need to tell us. Okay? The

13 hard part's over. Do you know what happened to

14 those items?"

15 (Unintelligible.)

16 "Because when I passed it, there was,

17 like -- like a purse in there and stuff."

18 "When you passed what?"

19 "The burn barrel."

20 "Did you look inside?" Why did you look

21 inside?"

22 "Because it was full."

23 "What else was in there?"

24 "Like garbage bags and..."

25 "Did you put those things in the burn

1 barrel?"

2 "No."

3 "Did you actually see those items in the  
4 burn barrel?"

5 "Yeah."

6 "Tell me what you saw in there exactly."  
7 "Like they were buried underneath the  
8 garbage -- garbage bag that was" --

9 "How do you know -- how could you see if  
10 they were underneath the garbage bag?"

11 "'Cause the garbage bag was, like, on  
12 top of it..." (unintelligible) "...the top."

13 "Okay. So we have the barrel. Okay?  
14 (Unintelligible.) You got the barrel. Okay?  
15 Here's the top of the barrel, and the garbage bag  
16 is on top?"

17 "Yeah."

18 "Where were those items you said you  
19 saw?"

20 (Unintelligible) "Like underneath it."  
21 "Underneath the bag?"

22 (Unintelligible.)

23 "How would you see that?"

24 "Well, if the bag's, like, that far off  
25 the -- the top of the thing..." (unintelligible).

1 (Unintelligible) "... you would see  
2 underneath there..." (unintelligible).

3 "What did you see?"

4 "Like a cell phone, a camera, purse."

5 Q (By Attorney Drizin) Beginning with the -- the  
6 question, "Did you put some things in the burn  
7 barrel that night?" Where Brendan shook his  
8 head, no, and following through with the clip  
9 that you just saw, is this an example of  
10 contamination?

11 A Yes. Yes, because, again, they're educating him  
12 about what was in the burn barrel. What they believe  
13 was in the burn barrel. The purse, the cell phone,  
14 and the camera.

15 And when he says -- he says at the end  
16 of the quote, cell phone, camera, purse. The  
17 very bottom of 14.

18 So, again, that has no probative value  
19 because they gave him that fact, um, before he  
20 gave it back to them. So it can't be said that  
21 he independently volunteered these unique  
22 non-public facts. This is a classic example of  
23 contamination.

24 Q Okay. And the only way to see this contamination  
25 is by doing what, Dr. Leo?

1 A Well, you have to break it down. I mean,  
2 contamination in a complicated case, or case with a  
3 lot of facts, um, you -- you've -- you've got to  
4 break down the record.

5 You've got to go through, parse out the  
6 recorded interrogation. You also have to do some  
7 investigation, you know, of other sources of  
8 contamination if they exist.

9 Q Dr. Leo, I want to talk to you about what, um,  
10 Joseph Buckley, in his report, refers to as  
11 resistance?

12 A Okay.

13 Q Do you know what I'm referring to?

14 A I believe so, yes.

15 Q Okay. Um, in Dr. -- in, um, Mr. Buckley's report  
16 he cites a number of facts that Brendan  
17 supposedly resisted. Okay? Do you place any  
18 weight on this so-called resistance?

19 A No. Um, some of the things that Mr. Buckley is  
20 calling resistance, I think are not really called  
21 resis -- shouldn't be called resistance. They don't  
22 imply active resistance. Um, he's just not adopting  
23 them.

24 But, more generally, in proven false  
25 confession cases where there may be, or is, a lot



1 of contamination and suggestion, um, you don't  
2 see the -- the person mechanically adopts or  
3 repeats back every single fact that's suggested  
4 to them as if they were an automaton or simply a  
5 sponge.

6 So you're also going to get some  
7 suggestions or statements that are not fed back  
8 to the suspects. So, no, I don't put weight on  
9 that.

10 Um, the most important thing is to do,  
11 again, this post-admission narrative analysis, an  
12 analysis of contamination.

13 Q And, um, some of the examples of resistance cited  
14 by Dr. -- by Mr. Buckley include examples where  
15 Brendan denies doing things, but says that Steven  
16 did them?

17 A Correct.

18 Q Do you recall that?

19 A Yes.

20 Q Um, what's the significance of that?

21 A I'm not sure why you would call that resistance or  
22 why you would say that that somehow corroborates his  
23 confession since they were encouraging him to blame.

24 It's -- it's in fitting with the theme  
25 of the interrogation. A part of it. They were

1 encouraging him to shift the blame onto Steven.  
2 That was part of their strategy. In particular,  
3 their inducements to communicate he was less at  
4 fault or -- or wouldn't get punished, as we  
5 described earlier.

6 Q Now, Dr. Leo, you've attended the retraining;  
7 correct?

8 A Correct.

9 Q You've read, um, *Criminal Interrogations and*  
10 *Confessions*?

11 A Every, um, edition of it going back to 1942, yes.

12 Q Okay. Does the Reid -- do -- do the Reid  
13 training materials talk about contamination?

14 A They do. Yes.

15 ATTORNEY FALLON: I'm going to object.  
16 There's no relevance about the Reid training  
17 materials as it relates to this case.

18 THE COURT: Where are we going?

19 ATTORNEY DRIZIN: Dr. -- um, Mr. Buckley  
20 testifies in -- excuse me -- Mr. Buckley, in his  
21 report, states that Agents Wiegert and  
22 Fassbender, um, were, in their questioning in  
23 Brendan's interrogations were following standard  
24 accepticle (phonetic) standards of accepted  
25 practice in the interrogation of Brendan Dassey.

1 And I believe Dr. Leo can say that they weren't  
2 even following Mr. Buckley's standards of  
3 accepted practice.

4 THE COURT: I don't think that report's  
5 been offered into evidence at this stage, has it?

6 ATTORNEY DRIZIN: It hasn't, but I'm -- I  
7 mean, he's reviewed it. He's relied upon it in  
8 his -- in his opinion. Um, it's going to be offered  
9 into evidence.

10 THE COURT: Well, until it is, uh, the  
11 objection's sustained.

12 ATTORNEY DRIZIN: Can I make an offer of  
13 proof on this one point, Your Honor?

14 THE COURT: Narrative offer of proof.

15 ATTORNEY DRIZIN: Um, Dr. Leo, if allowed  
16 to testify, would testify that it is in his opinion  
17 that investors (sic) Wiegert and Fassbender in their  
18 extensive use of contamination in this case did not  
19 follow standards of accepted practice in the  
20 interrogation of Brendan Dassey.

21 ATTORNEY FALLON: There's been no testimony  
22 that they employed this technique, nor was there any  
23 testimony at the trial from Mr. Buckley.

24 THE COURT: Well, uh, he's made the offer  
25 of proof. So that's on the record. Go on.

1 Q (By Attorney Drizin) Dr. Leo, um, there was a  
2 confession expert called as a witness in this  
3 case. Are you aware of that?

4 A Are you talking about Mr. Gor -- Dr. Gordon?

5 Q I'm sorry. Um, yes. Dr. Gordon. Um, is he  
6 in -- is he -- what kind of expert would you call  
7 Dr. Gordon?

8 A Dr. Gordon is not a confession expert. Dr. Gordon is  
9 a clinical psychologist. He may be an expert on  
10 personality factors that are associated with somebody  
11 being more vulnerable to giving or making a -- a  
12 confession. Though I'm not even sure of that.

13 Q Okay. And have you worked on cases where there  
14 have been suggestibility experts?

15 A Yes.

16 Q And so there's a division of labor between the  
17 two of you in these cases?

18 A Correct.

19 Q What does the suggestibility expert focus on and  
20 what do you focus on?

21 A Suggestibility experts focus on factors related to a  
22 suspect's personality that may predispose them to be  
23 more vulnerable or susceptible to suggestion, and  
24 influence, and interrogation techniques. And,  
25 therefore, more likely to agree with, repeat back, or

1           make a false confession.

2                     An expert like me, a social  
3           psychologist, who knows about police  
4           interrogation techniques and false confessions,  
5           will testify about the psychology of  
6           interrogation, coercion, and how -- and the  
7           literature on false confessions. How and why  
8           these techniques can lead to false confessions,  
9           and issues about pre- and post-admission  
10          interrogation, including contamination and  
11          reliability.

12    Q       Do you believe that a suggestibility expert alone  
13          can adequately educate a jury about the  
14          reliability, how to assess the reliability of a  
15          confession?

16                     ATTORNEY FALLON: Objection. Um, as for  
17          speculation on this witness as to what the  
18          capabilities or abilities of another expert in  
19          another discipline may or may not accomplish in a  
20          court of law.

21                     THE COURT: I'm going to overrule the  
22          objection. He can give his opinion.

23                     ATTORNEY DRIZIN: Thank you, Your Honor.

24                     THE WITNESS: Not unless the  
25          suggestibility expert is also an expert on the

1 psych -- soc -- psychology of interrogation and  
2 the phenomena of false confessions.

3 Q And are you aware that Dr. Gordon in this case  
4 specifically said he was not an expert in those  
5 areas?

6 A Yes.

7 Q Okay. Now, do you believe that the topics about  
8 which you discussed -- you talked today,  
9 psychological coercion and contamination, can be  
10 effectively demonstrated through  
11 cross-examination alone?

12 A Um, you're talking about cross-examination of whom?

13 Q Of investigating officers. Thank you.

14 A No.

15 Q Why not?

16 A Because these -- the -- the social science research  
17 on these topics are not areas that investigators are  
18 familiar with, typically. They don't read the  
19 research. They're not familiar with it. They may  
20 have expertise in their particular training on how to  
21 use particular techniques.

22 So to educate the jury about these  
23 counter-intuitive and not popularly known  
24 phenomena and their effects and why they're  
25 significant in understanding how false

1           confessions come about is not something the  
2           average police interrogator is going to know  
3           about.

4    Q    And is there evidence or research that suggests  
5           that juries need to be educated about these  
6           topics?

7    A    There is evidence suggesting that juries are not  
8           aware of this.  These counter-intuitive phenomena.  
9           Um, they're not aware of the main findings in the  
10          research literature on interrogation, the psychology  
11          of interrogation, coercion.

12                 Um, and that, in addition to their --  
13          their lack of knowledge, that they are strongly  
14          influenced by confession evidence.  That -- that  
15          they tend to assume, if somebody confesses, it's  
16          a true confession because they don't understand  
17          why somebody would falsely confess.  They don't  
18          believe that they would falsely confess.  And so  
19          they're highly skeptical of any claim of a false  
20          confession.

21   Q    I just want to -- one final question, Dr. Leo.  
22          Are you saying that in every confession case,  
23          every unreliable confession case, that an  
24          interrogation expert like yourself must be  
25          called?

1 A No. Um, I mean, there are many cases where attorneys  
2 may argue it's an unreliable confession case, even if  
3 there's indicia of reliability.

4 What I'm saying is that, um, in a case  
5 like this, where, as we've -- as we've seen,  
6 there's -- there's evidence of coercive  
7 inducements. There's evidence of contamination.  
8 There's other risk factors associated with false  
9 confession. Low -- low IQ. Um, youthful, um,  
10 uh, suspect.

11 In cases like this, um, a false  
12 confession expert, police interrogation expert,  
13 can be uniquely helpful to the jury.

14 ATTORNEY DRIZIN: One minute, Your Honor.

15 Q (By Attorney Drizin) Dr. Leo, as part of your  
16 opinion today, did you review extensive newspaper  
17 articles and -- and print -- printed -- printed  
18 out transcripts of television news coverage?

19 A Yes.

20 Q Okay. And when you reviewed those what did you  
21 find?

22 A That many of the facts that Mr. Buckley lists in his  
23 report that were corroborating of the, um -- Brendan  
24 Dassey's confession, because they allegedly revealed  
25 unique or non-public details not likely guessed by



1 chance, were, in fact, reported in the print and  
2 electronic media.

3 Q Okay. And --

4 A And reported prior to his confession.

5 Q Okay. Can you take a look at Exhibit 312,  
6 please? Which is a group exhibit. A summary  
7 exhibit. And, also, if you would take a look at  
8 313 and 314?

9 A Okay.

10 Q And are -- does this exhibit reflect the universe  
11 of media coverage that you reviewed in connection  
12 with rendering your opinion?

13 A Yes.

14 Q Okay. Um, okay.

15 ATTORNEY DRIZIN: At this time, Your  
16 Honor, we would ask for a number of exhibits to  
17 be moved into evidence.

18 THE COURT: All right. Give me the numbers  
19 that you're offering.

20 ATTORNEY DRIZIN: Exhibit No. 212, which is  
21 the video exhibit with the clips that we showed  
22 Dr. Leo.

23 Exhibit No. 315, which are the  
24 transcript portions of the video. That is, 212,  
25 of the clips that we were showing.

1                   Exhibits No. 312 through 314, which are  
2 the universive media exhibits that Dr. Leo  
3 reviewed prior to rendering his opinion.

4                   Exhibit No. 87, which is a group  
5 exhibit. Which is a chart that we prepared that  
6 demonstrates the contamination.

7                   Exhibit No. 100, which is Dr. Leo's CV.

8                   Exhibit No. 316, which are -- which is a  
9 summary of information relating to the number of  
10 times he's testified, um, and in what courts and  
11 under what circumstances.

12                   And, Your Honor, the -- the underlying  
13 documents under which he based his opinion, which  
14 would be Exhibit No. 69, which is the transcript  
15 of May -- no. Sorry. I'm sorry. Exhibit No.  
16 206, which is the transcript of the February 27  
17 interview at Mishicot High School.

18                   Exhibit No. 205, which is the audio CD  
19 of that interview.

20                   Um, Exhibit No. 90, which is the  
21 official transcript of the Two Rivers, um,  
22 interrogation.

23                   Exhibit No. 207, which is the video of  
24 the Two Rivers interrogation.

25                   Exhibit No. 209, which is the transcript

1 of the March 1 interrogation.

2 And Exhibit No. 10, which is the March 1  
3 video. Exhibit No. 210. I'm sorry. Exhibit No.  
4 210.

5 And I believe those are all the  
6 documents that we seek admission of at this time.

7 THE COURT: Three-fifteen has previously  
8 been received. Uh, I have a question about one.  
9 But before we'll get -- before we get to that,  
10 Mr. Fallon?

11 ATTORNEY FALLON: Yes. I have several  
12 questions. I think 315 was previously admitted to  
13 the extent that it was discussed with Mr. Kachinsky,  
14 I think.

15 THE COURT: Correct.

16 ATTORNEY FALLON: All right. Um, let me  
17 go in reverse order because that's easier. 210,  
18 the complete video of the March 1 interview, we  
19 have no objection.

20 Two-o-nine, the transcripts associated  
21 with the March 1 objection. Um, as I understand  
22 it, that's the complete transcription of all the  
23 video. We have no objection.

24 Two-o-seven, a video of the Two Rivers  
25 questioning, and 90, the transcript of the Two

1 Rivers questioning, we have no objection to  
2 either of those.

3 With respect to the questioning at the  
4 high school on February 27, Exhibit 205, audio or  
5 the transcript associated with it, which would be  
6 206, I believe, we have no objection.

7 Um, with respect to the add -- the  
8 additional descriptions provided in Exhibit 315  
9 as discussed with Dr. Leo to the extent that the  
10 portions of 315, which were discussed, we have no  
11 objection.

12 And I assume that the video clips, 212,  
13 to the extent that only those clips which match  
14 up with the transcript portions that we talked  
15 about, um, if the video that it goes with them, I  
16 have no objection to that. But there were other  
17 factors contained in both the video and 315 that  
18 we still have a standing objection to.

19 Now, um, I do have, however, objections  
20 to 312, 313, 314 and 87.

21 With respect to 312 through 314, and  
22 again to 87, um, they haven't been conditionally  
23 tied up in this particular case. And right now  
24 there's still a question of their relevance and  
25 materiality as it relates to these issues.

1 THE COURT: Yeah. My question was to those  
2 as well. You had Dr. Leo testify, very briefly,  
3 from 87, as, in effect, a chart that replicates or  
4 supplements his -- actually, it replicates some of  
5 his testimony, but nobody has testified to the  
6 preparation of the exhibits. The summary exhibits  
7 under 910. Are you intending to call a witness to  
8 do that?

9 ATTORNEY DRIZIN: Those exhibits -- Exhibit  
10 No. 87 in particular -- is -- is essentially just a  
11 demonstrative exhibit. Um --

12 THE COURT: Okay.

13 ATTORNEY DRIZIN: -- Your Honor.

14 ATTORNEY FALLON: Well, it -- it's more  
15 than a demonstrative exhibit. I just took a close  
16 look at 87, and it states -- there's several  
17 additional opinions which are offered here.

18 For instance, column two, did the  
19 State's physical evidence actually corroborate  
20 this detail?

21 Um, well, one, that's a questionable as  
22 to whether that's an appropriate question for  
23 this particular witness under -- in the context  
24 in which it's being offered.

25 So it does contain additional opinion

1 evidence, some of which hasn't been discussed,  
2 and some of which is, um, questionable  
3 admissibility.

4 Um, so -- and -- but that's not the  
5 primary objective. The primary objective, it  
6 still has to be tied into this particular case.

7 ATTORNEY DRIZIN: Well, I believe it was  
8 tied into this particular case. But I will accept  
9 that -- that, um, at least that particular column is  
10 probably, uh -- you know, requires, um, a knowledge  
11 than Dr. Leo may not be the best witness to --

12 THE COURT: In any case, it has to be --  
13 it -- it has to be validated by whoever prepared the  
14 exhibit.

15 ATTORNEY DRIZIN: Okay.

16 THE COURT: And with respect to Exhibits  
17 312 through 314, uh, you're -- you objected to  
18 those, did you?

19 ATTORNEY FALLON: Um, to the extent that  
20 I just say, again, um, the impact of the media  
21 coverage in this case is yet to be established.

22 ATTORNEY DRIZIN: Judge, the point that we  
23 used Dr. Leo for, and I think that we can hopefully  
24 agree to admit these documents for this limited  
25 purpose at this time, is that these were facts that

1           were in the public domain. Um, and I don't think  
2           there's any disputing that.

3                     ATTORNEY FALLON: We don't dispute that.  
4           They clearly were in the public domain. But the  
5           fact that they were in the public domains,  
6           importance and significance has yet to be  
7           established.

8                     THE COURT: Well, Dr. Leo has testified  
9           the -- that the fact that they were in the public  
10          domain, in his opinion, meant that the defendant  
11          could have had access to them. I don't see the  
12          exhibits as -- as going one way or another on that.  
13          They simply -- if -- if the State is acknowledging  
14          that these were facts in the public domain, that's  
15          what I'm going to receive the exhibits for.

16                    ATTORNEY FALLON: Well, for that limited  
17          purpose, then, I'm not going to object.

18                    THE COURT: All right. Exhibits 312  
19          through 314 are received for that purpose.

20                    Um, 212 and 315, those portions of it  
21          that were testified to here today, with respect  
22          to 212, will be received. Three-fifteen, the  
23          additional portions that were testified here  
24          today, will be received.

25                    Eighty-seven. The Court will withhold

1 ruling on that until some testimony tying that up  
2 is -- is had.

3 As for the remainder of the exhibits,  
4 and I believe that would be Exhibit 100, 316,  
5 206, 205, 90, 207, 209, and 210, they're offered  
6 and received.

7 ATTORNEY DRIZIN: Judge, there's just one  
8 other exhibit, and that would be Dr. Leo's  
9 affidavit, which is Exhibit 3. Um --

10 ATTORNEY FALLON: I would object to that.

11 THE COURT: Yeah. I -- I'm not going to  
12 admit that. He's testified here today.

13 ATTORNEY DRIZIN: Okay.

14 THE COURT: That -- that is -- that trumps  
15 the affidavit.

16 ATTORNEY DRIZIN: Thank you.

17 THE COURT: Any further --

18 ATTORNEY DRIZIN: No further questions.

19 THE COURT: Your final one question was  
20 about 15 minutes ago, so...

21 ATTORNEY DRIZIN: There's a lot of exhibits  
22 in this case.

23 THE COURT: All right. All right.

24 Mr. Fallon?

25 ATTORNEY FALLON: Yes. Could I have



1           about just five minutes to put out my stuff for  
2           cross here?

3                     THE COURT:    Sure.

4                     ATTORNEY FALLON:  Thank you.

5                     THE COURT:  We'll recess for five minutes.

6           Before we do that, how long do you envision this  
7           as -- as taking?

8                     ATTORNEY FALLON:  I won't be done in an  
9           hour.  I can assure you of that.

10                    THE COURT:  Well, that's good, but can you  
11           give me any estimate?

12                    ATTORNEY FALLON:  Hopefully, by mid-morning  
13           tomorrow.

14                    THE COURT:  Okay.

15                             (Recess had at 3:35 p.m.)

16                             (Reconvened at 3:42 p.m.)

17                    THE COURT:  Go ahead.

18                                     **CROSS-EXAMINATION**

19           BY ATTORNEY FALLON:

20           Q    Good, afternoon, Doctor.

21           A    Good afternoon.

22           Q    I just want to be clear what exactly you are.

23           Are you a -- an attorney?  A -- a JD?  Or are you  
24           a social psychologist?  How do you -- how do you  
25           see yourself?

1 A Um, I'm a social psychologist and a criminologist by  
2 training. I also have a law degree. And I'm a  
3 professor of law. But I've never taken a bar exam or  
4 practiced law. So I don't consider myself an  
5 attorney. And if somebody did, I would be a  
6 non-practicing attorney.

7 Q So then your emphasis is -- is more as a social  
8 psychologist, criminologist?

9 A Correct. As a social scientist.

10 Q As a social scientist. Okay. So in terms of --  
11 of codes of responsibility or behavior, you would  
12 find yourself required, for instance, to follow  
13 the Code of the American Psychological  
14 Association --

15 A Correct.

16 Q -- for instance. Or the California Psychologist  
17 Association?

18 A I don't belong to that organization.

19 Q You don't. Okay. All right. Um, now there's a  
20 difference between a social psychologist and a  
21 clinical psychologist?

22 A Correct.

23 Q In your understanding, tell us what the  
24 difference is.

25 A Well, a -- a clinical psychologist is somebody who

1 studies personality factors. Um, a clinical  
2 psychologist is typically a practicing psychologist  
3 and would be a licensed psychologist.

4 A social psychologist, uh -- social  
5 psychologists are typically academic  
6 psychologists. They don't do therapy. They  
7 don't practice. Um, they're not required to get  
8 licenses. And their subject matter is different,  
9 as I described on direct, what social  
10 psychologists study.

11 Q All right. And so in this particular case, then,  
12 you don't have any other experience in medicine  
13 as a clinical psychiatrist, and you don't consult  
14 with clinical psychiatrists to assist you in your  
15 work?

16 A Um, well, I am not a clinical psychologist or a  
17 clinical psychiatrist. I don't typically consult  
18 with psychologists or psychiatrists. But there are  
19 cases that I've worked on where there will be a -- a  
20 psychologist and, occasionally, a psychiatrist  
21 usually as a suggestibility expert and, um -- and I  
22 do rely on their opinions sometimes.

23 Q But you -- those aren't opinions that you  
24 normally form yourself?

25 A Correct.

1 Q Okay. And although you've watched many  
2 interrogations -- in fact, I think you -- your  
3 original dissertation, um, was -- was that on  
4 *Inside the Interrogation Room*?

5 A That's an article that was published from the  
6 interrogation --

7 Q Right.

8 A -- from the dissertation.

9 Q Right. And that's from your study in the Oakland  
10 Police Department?

11 A Correct. And --

12 Q Hundred and eighty-two confessions observed?

13 A Interrogations and --

14 Q Interrogations.

15 A Yeah.

16 Q All right. And so although you've studied them  
17 and been allowed to monitor them, you've never  
18 actually conducted any interrogations yourself?

19 A Correct.

20 Q Okay. Um, is that something that a criminologist  
21 would do?

22 A No.

23 Q And in your view they wouldn't, um -- they --  
24 their role would be limited observing,  
25 monitoring, and critiquing interrogations?

1 A Well, I wouldn't put it that. But maybe we could  
2 agree, um, studying, analyzing, researching,  
3 publishing about, um, there may be some academic  
4 interrogation experts who, prior to starting, were  
5 cops, but most were not.

6 Q All right. Now, from your, um, curriculum vitae,  
7 you are now currently a professor of law. Is  
8 that your sole responsibilities?

9 A Correct.

10 Q All right. So as we say, that would be your day  
11 job?

12 A Correct.

13 Q All right. And prior to that, you did what kind  
14 of work?

15 A Prior to that I was a professor of criminology and a  
16 professor of psychology at UC-Irvine. Prior to that,  
17 I was a professor of sociology, an adjunct professor  
18 of law at the University of Colorado, Boulder.

19 Q Okay. Now, in this particular case I want to go  
20 over some of the things that I believe you  
21 reviewed in preparation for your testimony; all  
22 right?

23 Now, as I understand it, you reviewed  
24 the materials, and by that I mean the transcripts  
25 and the DVDs regarding the February 27, 2006,

1 statement at the Two Rivers Police Department;  
2 correct?

3 A Yes. Um --

4 Q And I believe you indicated, and -- and gave us  
5 your thoughts, that you also listened to the  
6 audio interview and reviewed the transcript of  
7 the interview which occurred at Mishicot High  
8 School preceding the Two Rivers questioning?

9 A Correct.

10 Q Okay. You, likewise, reviewed, um, the  
11 transcripts and DVDs surrounding the March 1,  
12 2006, statement?

13 A Correct.

14 Q And you reviewed the transcripts and DVDs  
15 surrounding the May 13 statement?

16 A Correct.

17 Q Did you review any other materials or statements  
18 made by Mr. Dassey that assisted you in rendering  
19 the opinions that you've rendered today?

20 A Well, Mr. O'Kelly's polygraph interrogations  
21 (unintelligible) on May 12 that were mentioned  
22 earlier.

23 Q Anything else?

24 A Not that I recall.

25 Q All right. I see, also, interestingly enough,

1           you reviewed a memorandum filed by Attorneys  
2           Buting and Strang in preparation for the  
3           sentencing of the Steven Avery case; is that  
4           correct?

5   A       Um, are -- are you referring to my affidavit?

6   Q       Yes, I'm referring to your affidavit.

7   A       Yes.

8   Q       I believe it would be one, two, three -- I think  
9           that's the fourth bullet point?

10  A       Correct. On page two.

11  Q       Page two; right?

12  A       Correct.

13  Q       Why did you review that?

14  A       Because it was provided to me.

15  Q       Um, I'll come back to that point in a minute.

16           Did you review any of the police reports or audio  
17           clips regarding Mr. Dassey's questioning by  
18           authorities in Marinette County on Sunday,  
19           November 6, or later that week, November 10,  
20           2005?

21  A       I don't believe so.

22  Q       You were aware that he gave statements to law  
23           enforcement on those days, were you not?

24  A       Yes. Now, I -- looks like I -- I reviewed some  
25           reports from the Wisconsin Division of Criminal

1 Investigation or Department of Justice, uh, dated  
2 November of 2005, as well as the Marionette -- I'm  
3 sorry -- Marinette County Sheriff's Department. So  
4 some reports, yeah.

5 Q So you may have seen the reports? Do you  
6 remember seeing if there were any transcripts  
7 associated with those reports or did you just  
8 review the police reports?

9 A I believe I just reviewed the police reports.

10 Q All right. And the authors -- if I were to throw  
11 the names of the officers involved in tho -- in  
12 tho -- in that questioning period, would you  
13 recognize their names so that you and I can be  
14 sure you looked at what I think you looked at?

15 A No. I'd have to look at the materials that I looked  
16 at.

17 Q All right. We may very well come to that.

18 Um, I believe, also, you indicate in  
19 your affidavit that you reviewed Calumet County  
20 Sheriff's reports associated with the  
21 February 27 -- I take it February 27 -- interview  
22 of Mr. Dassey? Or were those interviews or  
23 investigative reports regarding other subject  
24 matter?

25 A I believe they related to Mr. Dassey.



1 Q All right. I see, also, you reviewed the final  
2 report of Dr. Lawrence White, dated May 11?  
3 A Correct.  
4 Q And that's 'cause that was provided to you along  
5 with the defense attorney's filing in the  
6 co-defendant's case, Steven Avery; correct?  
7 A Yes.  
8 Q All right. You also received and reviewed a  
9 report of -- of Mr. Buckley; correct?  
10 A Yes.  
11 Q All right. And in this particular case you  
12 reviewed the transcripts?  
13 A Correct.  
14 Q And those were the trial transcripts?  
15 A Well, that's what it says on my affidavit so that's  
16 what I believe I did review.  
17 Q Did you review any transcripts from the motion  
18 hearing to admit the testimony of Dr. Gordon?  
19 A Not that I recall.  
20 Q Did you review the suppression hearing  
21 transcripts?  
22 A Not that I recall.  
23 Q Any particular reason why?  
24 A I -- I reviewed the materials that were provided to  
25 me.

1 Q Did you ask for any additional materials?

2 A No.

3 Q So you were relying entirely on what defense

4 counsel figured you would need to render the

5 opinions you rendered?

6 A Correct.

7 Q And is there any question in your mind if you

8 would ask for any additional information it would

9 have been provided?

10 A I assume it would have been, yeah.

11 Q You also report reviewing a -- an Investigator

12 Skorlinski's report from November 13, 2005?

13 A Yeah. This is the Wisconsin Department of Justice --

14 Q Yes. Division of Criminal Investigation report.

15 Investigator Skorlinski?

16 A Correct.

17 Q Okay. Again, you don't recall seeing any

18 transcript that may or may not have been

19 associated with that report?

20 A I'd have to review the report, correct.

21 Q Now, also, in your affidavit, primarily beginning

22 on page three, you list reviewing 11 different

23 media reports on this case?

24 A Correct.

25 Q But, yet, in the affidavit that we just talked

1 and media summaries, the number escapes me at the  
2 moment, but there were significantly more media  
3 reports than what you've listed here?

4 A Yeah. Additional materials were recently provided to  
5 me --

6 Q And --

7 A -- after the affidavit was prepared.

8 Q After the affidavit was --

9 A Right.

10 Q -- prepared? What additional materials have you  
11 reviewed after you prepared this affidavit which  
12 is dated, looks like, March 5, 2009?

13 A Um, additional newspaper stories, the DVDs and  
14 transcripts of Mr. O'Kelly's May 12 interrogation of  
15 Brendan Dassey, and Mr. Gordon's -- Dr. Gordon's  
16 report.

17 Q When did you review those?

18 A I reviewed Dr. Gordon's report last night. I  
19 reviewed the media stories, and the DVD interrogation  
20 tapes and transcripts of Mr. O'Kelly's interrogation,  
21 I believe, either toward the end of last month or the  
22 beginning of this month.

23 Q All right. So that would be -- just so the  
24 record is clear, that would be December of '09 or  
25 early January, 2010?

1 A Correct.

2 Q Okay. Anything else that you --

3 A Not -- not that I recall, no.

4 Q Okay. All right. So let me be clear, then, you  
5 examined no other materials or investigative  
6 reports relative to the prosecution of Brendan  
7 Dassey than those which we've just discussed?

8 A Yes. Unless I'm not recalling something. But I  
9 believe I'm recalling everything.

10 Q And by that, primarily I'm asking you, you didn't  
11 review any of the, uh, investigative reports  
12 prepared by the officers?

13 A Uh, other than --

14 Q Other than those that --

15 A -- other than those that are listed here, correct.

16 Q Right.

17 A Yeah.

18 Q Okay.

19 A Yeah.

20 Q And so you are aware that there was a  
21 substantial, um, investigation in this particular  
22 case because of the co-defendant, Mr. Avery?

23 A Correct.

24 Q And you were aware in this particular case that,  
25 initially, the police believed that they had,

1 quote, gotten their man, closed quote, with the  
2 arrest of Steven Avery in November of 2000- --  
3 uh, 2005; right?

4 A Yes.

5 Q All right. So there wasn't a lot of media  
6 attention directed to this case with the focus  
7 being in on Steven Avery from -- literally from  
8 November through January and February of '06;  
9 right?

10 A Yes.

11 Q In fact, all of the media reports that you  
12 reviewed, the focus was almost exclusively, if  
13 not exclusively, on Steven Avery?

14 A Correct.

15 Q Yet, with respect to those media reports, you  
16 made no determination as to their accuracy;  
17 correct?

18 A Correct.

19 Q All right. And that's because you didn't review  
20 any of the investigative reports regarding, um,  
21 Steven Avery; correct?

22 A No. It's because I wasn't asked to make any  
23 determination about their accuracy.

24 Q You were not asked to make any determination  
25 about their accuracy. Why not?

1 A Well, you'd have to ask Counsel that.

2 Q All right. Their accuracy would have no bearing  
3 on whether or not the contamination was real or  
4 imagined?

5 A Well, if they were -- no. No. I don't. Yeah. I  
6 don't think it would. If the information is out  
7 there, then it's still contamination even if it's  
8 inaccurate information.

9 Q Even if it's inaccurate?

10 A Correct.

11 Q We'll come back to that. May not get to it  
12 today, but... all right. Um, you reviewed no  
13 school records of Brendan Dassey? Such as any  
14 behavioral records? Individual Education Plans?  
15 Academic performance records? You reviewed none  
16 of that information; correct?

17 A Correct.

18 Q Um, you did not review any statements or reports  
19 of -- of a Ms. Susan Brandt?

20 A Correct. Not that I recall.

21 Q All right. Did you review any materials or  
22 information regarding a woman by the name of Kris  
23 Schoenenberger-Gross?

24 A Not that I recall.

25 Q I'm going to assume, and please correct me if I'm

1 wrong, but I'm -- I believe you've never  
2 interviewed Brendan Dassey; correct?

3 A Correct.

4 Q In fact, you may not ever have even met him until  
5 today; correct?

6 A Correct.

7 Q And as part of your assessment, since you are a  
8 social psychologist, I'm going to assume that you  
9 conducted no psychological tests or had anyone  
10 conduct them on your behalf involving Mr. Dassey?

11 A Correct.

12 Q So no MMPI, no Gudjonsson suggestibility scale,  
13 etc.?

14 A Correct.

15 Q Okay. You, yourself, did not perform, nor did  
16 you ask anyone to, conduct any intelligence tests  
17 on Mr. Dassey; correct?

18 A Correct.

19 Q And so I believe then -- so you -- you did,  
20 however, indicate that you reviewed Dr. Gordon's  
21 report? Or what? Or not?

22 A Correct. I did last night, yes.

23 Q Okay. Last night.

24 A Correct.

25 Q You didn't review his testimony?

1 A Correct.

2 Q Okay. Anything else of what -- what Dr. Gordon  
3 did in this case that your might have reviewed?

4 A Not that I recall, no.

5 Q Okay. And in this particular case you reviewed  
6 all the materials that were submitted to you by  
7 counsel for the defense?

8 A Correct.

9 Q Did you make any additional requests for  
10 information?

11 A Dr. Gordon's report, I think, was the only one.

12 Q All right. Um, you didn't ask for additional  
13 media reports? They were just given to you?

14 A Correct.

15 Q Okay. So it's fair to say that the only  
16 materials you examined outside of those directly  
17 relating to the Dassey interviews conducted in  
18 November, February, March, and May, were the  
19 trial transcript, the report of Dr. Gordon, and  
20 the media reports?

21 A Um, I -- I'm not sure I understand your question  
22 because there's also reports by White and Buckley,  
23 and then there's also these police reports. And I'm  
24 not sure. Maybe --

25 Q All right.



1 A -- I just didn't understand your question.

2 Q Well, that's fair. You, um -- you looked at

3 those in a -- but that's pretty much the -- the

4 focus, as it were, of your examination?

5 A Yes. In --

6 Q Okay. All right. Now, in Exhibit 316, you --

7 A Would you like me to turn to it?

8 Q If you wish.

9 A Okay. And what binder is that in?

10 Q I believe it would be binder five. I believe

11 that's the one that summarizes your testimonial

12 experience or professional consultation

13 experience?

14 A Okay.

15 Q I'd like to talk to you a little bit about that.

16 A You said 316; right? Okay.

17 Q Do you have it?

18 A I do, yes. Thank you.

19 Q Okay. Now, as I understand it, um -- well, let

20 me ask this: In the past two years,

21 approximately how many times would you say you

22 have testified in a court of law regarding this

23 subject matter?

24 A Two years. Uh, January, '08 to January, '10.

25 Q Right.

1 A I'm -- my estimate would be 25 to 30 times. That'd  
2 be my guess. Maybe a little less, maybe a little  
3 more.

4 Q And since August of 1997 through December, 2009,  
5 which I would cover a little bit more than  
6 12-and-a-half years, you tell us you've  
7 testi -- testified approximately 187 times in a  
8 court of law?

9 A Correct.

10 Q All right. So that's about 15-and-a --  
11 15-and-a-half times per year?

12 A I think that's roughly right.

13 Q All right. So, in other words, you're testifying  
14 in a court of law on this material on the average  
15 of more than once a month?

16 A Correct.

17 Q As a matter of fact, you indicated you were just  
18 here in Wisconsin a month ago?

19 A Correct.

20 Q In Chippewa Falls?

21 A Correct.

22 Q That did not go too well for you; right?

23 A Well, for me it went fine. It didn't go so well for  
24 the defendant.

25 Q You also indicated that you testified in 111

1 trials?

2 A Correct.

3 Q So that means you're testifying at least -- over  
4 nine times a year in a -- in a trial where the  
5 issue of a -- of whether or not a statement is a  
6 false confession or not has become an issue?

7 A Mathematically averaged out, I think that's right.

8 Q Um, and 65 motions to suppress where you've  
9 offered testimony?

10 A Correct.

11 Q And 11 post-conviction hearings?

12 A Correct.

13 Q Now, um, I'm assuming that the vast majority of  
14 this testimonial experience comes from the state  
15 of California. Would that be accurate?

16 A Yes.

17 Q And I believe you indicated on direct examination  
18 that for you to consider a -- a -- a  
19 consultation, you don't consider it a  
20 consultation unless you actually review materials  
21 and are compensated for your work?

22 A Or I've agreed to do pro bono. But, yes.

23 Q Okay. Now, in this particular case you advised  
24 us you're compensated at \$250 an hour. How long  
25 have you been compensated at that rate for your

1           advice or consultation in cases such as this?

2    A        Since 2001.

3    Q        Okay. All right. Now, as I understand it,

4            you've consulted in 48 -- 47 states and the

5            District of Columbia?

6    A        Correct.

7    Q        In the 12 years -- almost 12-and-a-half years,

8            now -- that we've, uh -- examining this material,

9            you've consulted, as you said, 1,132 times or --

10           does that consultation include testimony or is

11           that consultation in addition to testimony?

12   A        No, that -- that's all the cases that I've reviewed.

13            The 100, um --

14   Q        That includes the testimony?

15   A        Yeah. Yeah. The 187 cases are subset of the 1,132

16            cases.

17   Q        All right. So then that's about 80 to a hundred

18            case consultations a year.

19   A        Correct. If you mathematically average it out, yes.

20   Q        Right. Now, when you're asked to evaluate a

21            case, your role is primarily that of interpreting

22            facts and offering opinions based on those facts;

23            correct?

24   A        Um, well, I think about it as consulting and offering

25            opinions. So some sort of professional assessment

1 and evaluation as well, yes.

2 Q Well, that can only come from a review of  
3 whatever are believed to be the known facts in a  
4 given case?

5 A Correct. Or the facts that I'm being told, yes.

6 Q All right. And, thus, you're offering an  
7 opinion, based on your training and skill, which  
8 interprets what you think the meaning of those  
9 facts may be?

10 A Correct.

11 Q Okay. All right. Now, unless one can actually  
12 demonstrable -- demonstrably prove that a  
13 confession is false, then what your role is in a  
14 given case is simply to interpret those --  
15 interpret the facts and, in essence, give us an  
16 opinion or a judgment as to whether certain  
17 police techniques were coercive and could have  
18 led to a false confession; correct?

19 A Yes. But sometimes there's more than that, because  
20 cases have idiosyncratic facts and there may be some  
21 nuanced aspect of this research or this area of  
22 expertise that a particular attorney is -- is asking  
23 for an opinion about, um, or -- or possibly expert  
24 testimony about.

25 Q All right. But if you're -- if you're not

1           allowed to offer an opinion, for instance, that  
2           certain police tactics could have led, or were,  
3           in fact, coercive, and could have led to a false  
4           confession, there would be no role for you  
5           otherwise; right?

6    A       No. I would disagree. And much of the testimony  
7           could be general, it could be about frameworks for  
8           understanding how interrogation works, or what we  
9           know about the phenomena of false confessions.

10                        So I -- I don't think your  
11           characterization is inclusive of all possible  
12           applications of this kind of expertise.

13   Q       All right. In your testimonial experience, do  
14           you, um, charge more for the testimonial  
15           experience or is it the same fee for time  
16           invested?

17   A       No. I charge one rate for -- for -- for my time.

18   Q       All right. One rate?

19   A       Meaning the 250 an hour is my standard rate. I  
20           don't --

21   Q       And then --

22   A       -- change the rate for testimony. Yeah. Correct.

23   Q       Very good. All right. Well, let me ask this,  
24           generally: Would you agree that cases of  
25           psychological coercion by the police constitute a

1 minority of the cases in the criminal justice  
2 system?

3 A Yes.

4 Q Would -- would also be fair to say, would it not,  
5 that the frequency of interrogation-induced false  
6 confessions is completely unknown?

7 A Correct. There's no scientific way of estimating it.

8 Q As a matter of fact, that's an -- an opinion that  
9 you reached in a law review article entitled, *The*  
10 *Problem with False Confessions in the Post-DNA*  
11 *World*; correct?

12 A Um, I -- I don't remember if we mentioned that in  
13 that article. It's certainly possible.

14 Q And, if I remember correctly, you also opined  
15 that the percentage of interrogation-induced  
16 false confessions leading to wrongful conviction  
17 is likewise unknown?

18 A Correct.

19 Q Have you worked with the Northwestern Law School  
20 innocent project prior to this case?

21 A You mean as a consultant on a case?

22 Q Yes.

23 A I don't believe so.

24 Q All right. Have you worked with other innocent  
25 project staffs around the country?

1 A I have, yes.

2 Q All right. And how often?

3 A I guess I maybe worked on a dozen cases. I'd have to  
4 look through my records. But maybe one -- one case  
5 or two cases a year. For most years. Not all years.

6 Q As a matter of fact, you've collaborated with  
7 Mr. Drizin on a number of research projects;  
8 correct?

9 ATTORNEY DRIZIN: Just -- just for the  
10 record, Judge, it's Drizin.

11 ATTORNEY FALLON: Very well.

12 THE WITNESS: We've --

13 Q (By Attorney Fallon) Mr. Drizin on a number of  
14 projects?

15 A Yeah. We've -- we've written two articles together  
16 and one chapter for an edited volume. Correct.

17 Q I'm sorry, one --

18 A One chapter for an edited volume.

19 Q All right. Uh, you wrote the North Carolina Law  
20 Review article with Professor Drizin?

21 A Correct.

22 Q As I understand it, you also wrote an article  
23 that was published in the University of Wisconsin  
24 Law Review in 2006 with Mr. Drizin?

25 A Correct.



1 Q Um, I believe, also, that you've more recently  
2 published a -- at least the online version is  
3 available -- uh, *Police Induced Confessions:  
4 Risk Factors and Recommendations*, and *Law and  
5 Human Behavior*?

6 A Yes. Well, actually it's four. I had remembered  
7 three. So that's -- that's correct. So that would  
8 be three articles and one book chapter.

9 Q That's due to be actually out in print form later  
10 this year?

11 A Correct.

12 Q All right. Well, I'd like to talk to you,  
13 Doctor, about that research, if we could. And  
14 I'm going to begin with a discussion of your  
15 research that you reported in the North Carolina  
16 Law Review with professor Drizin; all right?

17 A Okay.

18 Q Now, in that particular research, and I think you  
19 testified to this today, you told us that there  
20 were four types of cases in which one could  
21 legitimately say that a confession was false;  
22 correct?

23 A Yeah, but I characterized it a little bit  
24 differently. That you could prove the confession  
25 false to near or absolute certainty. Yeah.

1 Q And, um, I believe those four were that an  
2 individual confesses to a crime and, for  
3 instance, the crime confessed to had never  
4 occurred?

5 A Correct.

6 Q Another example would be the evidence objectively  
7 establishes the -- the suspect or defendant could  
8 not have committed the crime in question?

9 A Correct.

10 Q And then a third type of case is where the true  
11 perpetrator of the crime is identified and, in  
12 reality, his guilt can be objectively established  
13 and proved?

14 A Correct.

15 Q And then, finally, the most common form would be  
16 scientific exoneration?

17 A I think that's the form, yes, that we know most  
18 about. We hear most about. But, actually, I think  
19 the most common would be the one where the true  
20 perpetrator is identified and apprehended.

21 Q And, subsequently, people are able to prove him  
22 guilty beyond a reasonable doubt?

23 A Correct.

24 Q Okay. Now, um, this is not one of those cases?

25 A Correct.

1 Q So we cannot say that this confession in this  
2 case is demonstrably false?

3 A We can't characterize it as a proven false confession  
4 if we were going to write about it for academic  
5 purposes. Correct.

6 Q Right. Now, in the research that you conducted  
7 with Professor Drizin, I believe, as you say in  
8 your world, the end was 125 cases; correct?

9 A Yes.

10 Q All right. And in that research article you made  
11 a number of -- or you discussed and offered a  
12 number of both qualitative and quantitative  
13 trends you detected?

14 A Correct.

15 Q And would it be fair to say, by the way, that  
16 that research is a descriptive study, is it not?

17 A Yes.

18 Q Now, in terms of the qualitative trends, you  
19 indicated that youth or one of young age was  
20 over-represented?

21 A Correct.

22 Q In your sample?

23 A Correct.

24 Q Uh, I believe you said that those under age 25  
25 constituted 63 percent of your sample; right?

1 A I -- I don't recall the specific number. But if  
2 that's -- if that's what the article reports, then  
3 that would be accurate.

4 Q All right. And in your sample, those who were  
5 16- to 17-year-old constituted about 16 percent  
6 of the sample? That was based on 18 out of 113  
7 for whom you actually had the ages?

8 A Again, I don't -- off the top of my head I don't  
9 remember the percentages.

10 Q If I were to give you a copy of the article,  
11 would that help as we discuss it?

12 A Yes. If you want me to verify what's published in  
13 the article.

14 Q Sure.

15 (Exhibit No. 365 marked for identification.)

16 ATTORNEY FALLON: May I approach?

17 THE COURT: Go ahead.

18 Q (By Attorney Fallon) Doctor, I show you what's  
19 been marked as Exhibit 365, and give you a moment  
20 or two to look at it to make sure that we're  
21 talking about the same piece of research.

22 A Yes. This is the North Carolina Law Review article  
23 downloaded from Westlaw.

24 Q All right. And I believe you talk about these  
25 qualitative trends several pages in. How about,

1 um, beginning at page 22 and 23?

2 A Okay. You're talking about the Westlaw pagination?

3 Q Right.

4 A Okay. So 22 and 23.

5 Q So as we were discussing, the 16- to 17-year-olds

6 in your sample, um, constituted 16 percent of

7 those who had participated in a case in which

8 their confession was demonstrably false?

9 A Correct.

10 Q And that 63 percent, or 71 out 113 were under age

11 25; right?

12 A Um, no. I don't think that's right. Under age 25, I

13 think, is 63 percent.

14 Q Yeah, 63 percent.

15 A Okay. I thought you said 73. Maybe I misheard.

16 Q No, I said 71 out of 113 comes to 63 percent.

17 A Okay. I'm sorry.

18 Q Right?

19 A Yeah.

20 Q Okay. And from this you make several conclusions

21 or observations that -- that youth, or one of a

22 young age, that's a -- a risk factor that should

23 be taken into consideration in evaluating

24 statements?

25 A Yes. We describe that, yes.

1 Q All right. Well, as a social psychologist, let  
2 me ask you this, Doctor, have you been to a  
3 prison in America lately?

4 A Depends on your definition of lately. I think the  
5 last time I went to a prison would have been December  
6 of 2007.

7 Q All right. You would agree, would you not, that  
8 the vast majority of offenders are young  
9 offenders in American prisons?

10 ATTORNEY DRIZIN: I would object. You  
11 know, what does young mean?

12 THE WITNESS: Yeah.

13 ATTORNEY FALLON: Well, all right. If  
14 you want some ages, we'll get some ages on there.

15 Q (By Attorney Fallon) Let's start with the vast  
16 majority of men in prison in the United States  
17 are clearly under age 40; right?

18 A I mean, I believe so. But I would want to go to the  
19 Department of Justice or Bureau of Justice  
20 statistics.

21 Q Would it be fair to say, based on your own  
22 anecdotal experience, that the -- the largest  
23 amount of men in prison are probably ages 18 to  
24 30? You wouldn't quibble with that generality,  
25 would you?

1 A I wouldn't quibble with it. I just want to get the  
2 actual statistics.

3 Q Now, so tell me then, this; what is the  
4 percentage of offenders under age 25 who have  
5 truly confessed to their crimes?

6 A Um, well, this is only a study of false confessions.  
7 It's not a study of true confessions. And these are  
8 only the numbers from the study of false confessions.  
9 So that may or may not reflect, um, all false  
10 confessions. I don't know the answer to your  
11 question.

12 Q Right. You don't know the number of those under  
13 age 25 who truly confessed to the crime?

14 A Correct. Because we don't know -- we don't -- we  
15 don't know how many people have truthfully confessed.  
16 There's -- the Department -- the government doesn't  
17 keep records of this so we don't know at any age.  
18 You -- you can't answer that question for any age.

19 Q That's correct. You could not answer it, what's  
20 the percentage of offenders under age 40 who have  
21 provided true confessions; correct?

22 A Correct.

23 Q You don't know that?

24 A Correct.

25 Q So, Doctor, you can't say with any degree of

1           certainty that young age necessarily  
2           discriminates between those who give true  
3           confessions and those who give false confessions?

4    A       Correct.  You can't take the fact of somebody's age  
5           and say that it will tell you whether or not a  
6           confession is true or false.

7    Q       Because you have nothing to compare your  
8           descriptive study with?  In other words, there is  
9           no, um -- no group of individuals known to have  
10          truly confessed?

11   A       Well, I agree with your conclusion, but I disagree  
12          with your reasoning.  Um, even if you had that  
13          information, you still wouldn't be able to say,  
14          because of somebody's age, uh, that the confession,  
15          itself, is true or false.  You'd have to do the  
16          post-admission narrative analysis that I described  
17          earlier.

18                         What youth gives you is a -- a risk  
19          factor, um, for explaining why somebody would  
20          have falsely confessed, but it doesn't  
21          discriminate between true or false confessions.

22   Q       In your research you also talk about length of  
23          interrogations; correct?

24   A       Yes.

25   Q       And I believe, as I understand it, you opine that



1 the average length of an interrogation leading to  
2 a false confession was 16.3 hours; correct?

3 A In this study for the cases where we had that data,  
4 yes.

5 Q Where you had demonstrably false confessions?

6 A No, no, no. Where -- where we had, um, information  
7 about the length of interrogation because we didn't  
8 have it. We couldn't get it for all the cases.

9 Q Right. So you're -- you're -- and, as it were,  
10 was less than 125?

11 A Correct.

12 Q Um, now, as a matter of fact, in your recent  
13 publication from this summer in *Law and Human*  
14 *Behavior*, the online publication, and the  
15 article, *Police Induced Confessions: Risk*  
16 *Factors and Recommendations*, you, um, also,  
17 again, refer to the fact that, um, most of the  
18 false confessions occur in cases where there's  
19 been 16 hours of interrogation on average;  
20 correct?

21 A I think it references this study as part of a  
22 discussion about how length is a risk factor in  
23 interrogation.

24 Q Now, in this particular case, the questioning of  
25 Brendan Dassey was not lengthy in any of those

1 interviews; correct?

2 A If you take them individually, no. And certainly not  
3 16 hours. Um, but if you add them together, then,  
4 yes.

5 Q All right. Well, let's talk about that. He was  
6 questioned on November 6, 2005. Do you know how  
7 long?

8 A No, I don't recall off the top of my head.

9 Q Would you quibble with 53-and-a-half minutes?

10 A Because I don't remember, I'm not going to quibble.

11 Q How about the November 10, 2005, questioning by  
12 law enforcement?

13 A No, I don't recall.

14 Q I believe the reports that you read suggest that  
15 the interview occurred from 12:05 to 12:30. So,  
16 by my calculation, that's 25 minutes?

17 A If they're accurate, that would be my calculation  
18 too.

19 Q But you didn't review the transcripts or listen  
20 to the audios of those questioning sessions, did  
21 you?

22 A I don't believe I did. I'd have to double-check.  
23 But I don't believe I did.

24 Q So you have no idea as to how confrontational, or  
25 non-confrontational, or what tactics, or

1 techniques may have been used in those  
2 interviews; right?

3 A Correct, if I didn't review them.

4 Q Now, with respect to the questioning at the  
5 school on February 27, do you recall how much --  
6 how long the interrogation was there?

7 A I think it was around an hour-and-a-half, but I could  
8 be mis-recalling.

9 Q And I believe that's exactly on an  
10 hour-and-a-half. There was a break after 60  
11 minutes; right? Five-minute break?

12 A I don't recall, specifically, but if it's there,  
13 then -- then, yes.

14 Q And there was another break to, uh -- devoted to  
15 writing a statement that was about 14, 15 minutes  
16 long where they were -- after the break he was  
17 writing a statement; correct?

18 A You might characterize that as part of the  
19 interrogation process.

20 Q But there wasn't a lot of active questioning --

21 A Correct.

22 Q -- back and forth, was --

23 A Correct.

24 Q -- there?

25 A Yeah.

1 Q The statement at the Two Rivers Police  
2 Department, um, was actually 41 minutes; right?

3 A I don't recall, specifically. Um, if -- if that's  
4 what the records indicate, then, yes. I thought it  
5 was a little longer but I could be mis-remembering.

6 Q Now, with respect to the March 1 statement --  
7 talk a little bit about that -- before we get  
8 into the details of the statement, I want to  
9 talk, just generally, context and time.

10 How much time did the officers actually  
11 spend with Mr. Dassey before he confessed to the  
12 events which are the subject of this hearing?

13 A I, um -- well, you're talking about the March 1  
14 interrogation. I'd have to look at it to give you a  
15 precise answer. I don't recall, specifically, the  
16 length of time off the top of my head.

17 Q Well, based on all the materials that you  
18 reviewed, including the clips that were just  
19 played for you during direct examination, would  
20 it be fair to say that Mr. Dassey pretty much had  
21 given it all up in the first 90 minutes of that  
22 interview; right?

23 A I'd have to look it over to confirm that.

24 Q Well, I believe the tape begins at 10:52, and I  
25 think some of the first clips that were played

1 for us today began at 10:58, and there was a  
2 break at 12:28, was there not?

3 A Well, again, I don't know this information off the  
4 top of my head. I'd have to look at the record to  
5 confirm that.

6 Q I'm sure you'll have an opportunity tonight.  
7 Will you do that for me?

8 A Sure.

9 Q Thank you. Um, and during the course of that  
10 break, after the first hour-and-a-half,  
11 Mr. Dassey -- there's about a half an hour break.  
12 He's offered food and drink. In fact, he's  
13 actually telling the investigators that he's  
14 feeling pretty good; correct?

15 A Again, I'd have to review that, which I'm happy to do  
16 tonight. I just don't recall it off the top of my  
17 head.

18 Q All right. So a -- all right. Then I -- I guess  
19 I'll wait for you to review that so we can finish  
20 up with more of these detailed questions  
21 tomorrow.

22 But let me ask this question: Just like  
23 the, um -- the age factor, the length factor of  
24 an interrogation as a risk, the length of the  
25 interrogation as a risk factor, you can't tell us

1 the average length of an interrogation that leads  
2 to a true confession, can you?

3 A Um, no we can't tell you that, um, but we estimate it  
4 to be around an hour or so based on field studies and  
5 surveys of police. But nobody really knows that.

6 Q And so you can't really say that longer  
7 interrogations are over- or under-represented --  
8 or over- or under-representative of a false  
9 confession?

10 A Well, if -- if the surveys are accurate and if the  
11 field studies are accurate, then we could say that,  
12 yes. Um --

13 Q All right. Let's talk about some of the  
14 qualitative findings. I believe they were  
15 qualitative findings in this case. Or, excuse  
16 me, in your research. In your research in that  
17 article, which I think you follow up and confirm  
18 in the *Law and Human Behavior* article from the  
19 summer, you tell us that, um, low intelligence is  
20 a risk factor?

21 A Correct.

22 Q In your sample of -- in the North Carolina -- I'm  
23 going to refer to it as a study. I'm sure it's  
24 not a North Carolina study. But in the study  
25 referred to in the North Carolina Law Review

1 article, of that 125, or whatever the number was  
2 for which you had intelligence data, what was the  
3 average, um -- or how many people in the sample  
4 had an IQ below 100?

5 A Um, I don't know how many have an IQ below one  
6 hundred. I don't even think we asked that question.  
7 I think we were interested in the question of how  
8 many had an IQ of 70 or below, and were defined as  
9 mentally retarded.

10 And I know that it's somewhere in the  
11 article. But I'm not sure if it's -- if -- if  
12 it's in a table.

13 Q How about in the back? Keep going further  
14 through. There's a discussion regarding, um,  
15 mentally retarded. I'm -- I'm not getting to  
16 that yet, but that's coming up.

17 THE COURT: Do you have a page he can turn  
18 to, Mr. Fallon?

19 ATTORNEY FALLON: I might be able to help  
20 him out there, Judge.

21 THE WITNESS: I think you're talking  
22 about page 35 on the Westlaw pagination.

23 Q (By Attorney Fallon) I think that sounds right.  
24 Yes, I am. Exactly.

25 A Okay. Now, is there a pending question?

1 Q Yes. Um, I know you look for, um, intelligence  
2 quotients or data reflecting cognitive abilities  
3 for individuals who were believed to be mentally  
4 retarded?

5 A Or low level cognitive functioning, yeah.

6 Q Or low level cognitive functioning.

7 A Yeah.

8 Q Well, what about individuals who aren't in that  
9 category? Uh, in terms of your data for that  
10 study, of those who weren't, um, mentally  
11 retarded, how many of them had an IQ quotient  
12 of -- of, say, 75? Or functioned at a level of  
13 75 to 85?

14 A We don't know.

15 Q Okay. What is the average, um, cognitive  
16 ability, or IQ quotient, to be redundant, I  
17 guess, of an individual in cases who has truly  
18 confessed?

19 A Well, again, we don't know, because we don't have a  
20 universal cases in true confessions.

21 Q All right. And the reason is, is because there's  
22 no real control sample with this study?

23 A No. The reason is because nobody's gathered that  
24 data. The government doesn't keep those kinds of  
25 records on true confessions.



1 Q But in research, as a researcher, as a social  
2 psychologist, there are some kinds of studies in  
3 which to actually have them stand for the  
4 proposition that you would like them to stand  
5 for, you would need to have a control sample to  
6 compare data?

7 A You're saying very, very generally, yes.

8 Q All right. And in this particular case you did  
9 not have a control sample.

10 A Well, I don't think in this case it's necessary to  
11 have a control sample. The point that we're making  
12 is that relative to their numbers in the population,  
13 they're vastly disproportionate in their -- in -- in  
14 the population of proven false confessions.

15 Q But -- but, Doctor, you can't distinguish, you  
16 can't tell us, whether low intelligence, length  
17 of interrogation, um, or age, truly discriminates  
18 between leading to a -- a -- a false confession  
19 or a true confession?

20 A No. I can tell you that it does not discriminate.  
21 Right. The same answer as before. That these  
22 explain why somebody would give a false confession.  
23 They are risk factors, but that they don't tell you,  
24 in and of themselves, that the confession is false.

25 Q But you still don't know if they really are a

1 risk factor, because -- only that they were  
2 described and found in your study. You have  
3 nothing to compare them with. You have no  
4 control sample to compare them with of known true  
5 confessors to -- to discern whether or not youth,  
6 um, or cognitive ability, or length of  
7 interrogation are -- correlate directly with  
8 false confession?

9 A No. I disagree with you. I can explain my  
10 disagreement, part of which I've already done. But,  
11 no, I disagree with that.

12 THE COURT: Mr. Fallon, is this a good  
13 point to end it for the day?

14 ATTORNEY FALLON: As good as any, Judge.

15 THE COURT: All right. Eight-thirty  
16 tomorrow.

17 (Recess had at 4:30 p.m.)  
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STATE OF WISCONSIN )  
  )SS.  
COUNTY OF MANITOWOC )

I, Jennifer K. Hau, Official Court Reporter for Circuit Court Branch 3 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 24<sup>th</sup> day of March, 2010.

*Jennifer K. Hau*  
\_\_\_\_\_  
Jennifer K. Hau, RPR  
Official Court Reporter