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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
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STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL
TRIAL DAY 8

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: APRIL 24, 2007

BEFORE: HON. JEROME L. FOX
Circuit Court Judge

APPEARANCES:

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

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

NORMAN A. GAHN
Special Prosecutor
On behalf of the State of Wisconsin.

MARK R. FREMGEN
Attorney at Law
On behalf of the defendant.

RAYMOND L. EDELSTEIN
Attorney at Law
On behalf of the defendant.

BRENDAN R. DASSEY
Defendant
Appeared in person.

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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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DR. JAMES ARMENTROUT

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(Reconvened at 8:32 a.m.)

THE COURT: Good morning, counsel. Uh, this is State of Wisconsin vs. Brendan R. Dassey, 06 CF 88. Appearances, please.

ATTORNEY KRATZ: The State continues in its appearance by Special Prosecutors Ken Kratz, Tom Fallon and Norm Gahn.

ATTORNEY FREMGEN: Attorney Mark Fremgen, Attorney Ray Edelstein appear with Brendan Dassey in person.

THE COURT: Are you set to proceed?

ATTORNEY KRATZ: Yes, Judge.

THE COURT: Do so.

ATTORNEY FREMGEN: Call Dr. Robert Gordon.

DR. ROBERT GORDON,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

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

THE WITNESS: Could I get prepared first, please?

THE CLERK: Sure.

THE WITNESS: My name is Robert H. Gordon, G-o-r-d-o-n.

DIRECT EXAMINATION

1 BY ATTORNEY FREMGEN:

2 Q Doctor, do you -- can you describe what your, uh,
3 educational background is?

4 A Sure. I have a Bachelor's Degree from Purdue
5 University. That was obtained in 1972.

6 I received my Doctorate in clinical
7 psychology from Washington University in 1976.

8 I completed a one-year internship at the
9 University of Tennessee, School for Health
10 Sciences.

11 And I subsequently audited two classes
12 in the early 80's at the University of Wisconsin
13 Law School.

14 I've, uh, attended a variety of
15 workshops in the meantime and, likewise, have
16 given oral presentations, seminars and training
17 than I've gone to workshops.

18 Q Where do you -- where are you currently employed?

19 A Until, uh, Friday, I'm currently employed with
20 Forensic Psych Associates. Its, uh, office -- main
21 office is in Janesville. Uh, other offices are
22 located in Chicago, Milwaukee and Rockford.

23 Q And you said until Friday. Are you changing
24 positions as of Friday?

25 A I am.

1 Q And where are you -- where will you be working at
2 that point?

3 A As of, uh, Tuesday, May 1, I will be the Director of
4 Forensic Evaluation Services at St. Louis Behavioral
5 Medicine Institute Health -- St. Louis Behavioral
6 Health Institute, affiliated with St. Louis
7 University.

8 Q What other work or, uh, employment history do you
9 have involved with clinical or forensic
10 psychology?

11 A Well, I began my career, primarily, as a clinical
12 psychologist. I worked for the first two years out
13 of -- after I completed my graduate degree, at the
14 Janesville Counseling Center down -- that's what is
15 currently known as -- it's a part of the Rock County
16 Health Care Center System. Uh, county system. And I
17 was a clinical supervisor there.

18 And, then, from 1978 until present, I
19 have been in private practice, running my own
20 office, employing some staff, and doing
21 counseling, consulting to different agencies,
22 probation and parole, counseling -- other
23 counseling services, uh, Department of Human
24 Services, etc.

25 And, then, over the past, uh, five

1 years, I've, uh, exclusively, uh, limited my
2 practice to forensic work, except I do a few free
3 counseling sessions and run a free group at a
4 church, and I -- I will continue that on a
5 one-time per week -- or one-time per month basis,
6 uh, by phone, once I gets to St. Louis, but with
7 everyone else in a church -- in a group.

8 Q Are you a member of any professional
9 organizations or associations?

10 A I am.

11 Q Can you describe those organizations related to
12 your field of expertise?

13 A Well, they're listed on my CV, and they include the
14 American Psychological Association, of which I'm a
15 member. I was designated, uh, oh, maybe 20 years
16 ago, as being a Fellow of the Wisconsin Psychological
17 Association.

18 I'm also a member of the Division of
19 Wisconsin Psychological Association called the
20 Society of Clinical and Consulting Psychologists.
21 Then, there's the Division of the American
22 Psychological Association, of which I'm a member
23 of the American Psychology Law Society.

24 I'm also, um, a member of three smaller
25 organizations. The Association for the Treatment

1 of Sex Abusers, the Illinois Sex Offender
2 Management Board, and the Milwaukee Area
3 Psychological Association.

4 I'm sorry for reading, but I want to
5 make sure it's accurate.

6 Q You mentioned that this is on your CV?

7 A That's correct.

8 Q And CV, you mean by that, Curriculum Vitae?

9 A Precisely.

10 Q Another word for resumé?

11 A Yes, sir.

12 (Exhibit No. 226 marked for identification.)

13 Q I'm going to show you what's been marked as
14 Exhibit 226. Is that the Curriculum Vitae you're
15 referencing?

16 A Yes.

17 Q Now, you had mentioned -- or I think you were
18 going into discussing psych -- certain boards,
19 and I think you mentioned, "up until recently."
20 Can you describe, first of all, what boards, and
21 what you mean by "up until recently?"

22 A Yes. I was on three boards and resigned due to my
23 changing position. The, uh, boards include, uh, in
24 the past, being on the advisory committee to the
25 University Wisconsin-Whitewater, uh, Chancellor, the

1 Dean of, uh, Arts and Sciences.

2 I, also, was on the Circle of Friends
3 for the court appointed special advocate in Rock
4 County. Um, I also, in the past, was a -- on the
5 board of directors for the Society of Clinical
6 and Consulting Psychologists that I referred to
7 already. There may have been one or two others.
8 I didn't check my notes. I'm sure I omitted one.

9 Q Now, you've mentioned clinical psychology along
10 with the term "forensic psychology." Can you
11 describe what the difference is between the two?

12 A Sure. There are many components of Psychology,
13 whether it's clinical psychology, um, experimental
14 psychology, industrial psychology. There are
15 different specific aspects of psychology.

16 But when you apply that body of
17 knowledge to matters that come before the court,
18 to assist the court or a jury in making
19 decisions, that's when it becomes forensic in
20 nature. So that you can have a forensic social
21 psychologist or forensic engineer.

22 Forensic means, a body of knowledge that
23 qualifies you by the court to be an expert, to
24 offer any information to the court and to the
25 jurors.

1 Q How long have you been involved in forensic
2 psychology, for instance?

3 A I've been involved in forensic psychology since 1978.
4 But it's been on a increasing basis since that time.
5 I began by doing mental commitment evaluations and
6 guardianship evaluations.

7 Q Have you ever testified in court before?

8 A Yes.

9 Q Do you -- can you recall how many times you've
10 been in court as a -- testifying in this type of
11 capacity?

12 A Uh, Mr. Fremgen, I -- I came to a better estimate of
13 that, and it's an estimate, last night, uh, as I
14 calculated it, and that would be roughly 2,500. But
15 that number is inflated, because many of those have
16 been done at the request of the Department of
17 Probation and Parole, where I consult or I consulted
18 up until this past Thursday.

19 And, also, they contain -- those numbers
20 are -- are higher because the significant portion
21 also are mental commitment evaluations and
22 guardianship evaluations.

23 Q So it's not necessarily jury trials, for
24 instance?

25 A No, sir. Uh, the majority are not jury trials. The

1 majority are before the judge.

2 Q So, just a judge, is what you're saying?

3 A I wouldn't say, just the judge, I'd say before the
4 judge.

5 Q Before the court.

6 A Yes.

7 Q Have you authored or co-authored any
8 publications, or any articles, or any books?

9 A Yes.

10 Q You, again, briefly listed, described the topic
11 of the -- the, uh, publication?

12 A Could you -- could I --

13 Q Briefly list, describe what that authored
14 publication is?

15 A Uh, I co-authored one book called, *Substance Abuse,*
16 *Homicide and Violent Behavior.* I have also, uh,
17 self -- self-published a facilitator's guide and a
18 learner's workbook regarding treatment of sex
19 offenders.

20 Then, I have a number of articles that
21 have been published. Some have been published in
22 what's called peer reviewed journals where you
23 submit it to psychologists and other mental
24 health professionals. And they decide whether
25 it's worthy of publication.

1 In other occasions, my, uh -- some of
2 the 12 articles that I've written have been in
3 more like trade journals, like put out by the
4 different -- like a bar association or psychology
5 association. And those would not be called peer
6 reviews. Those are re -- reviewed by editors of
7 the journals or -- or trade publications.

8 Q Have any of those peer review publications
9 involved aspects of forensic psychology?

10 A One did, indirectly.

11 Q And what was that?

12 A Well, that was my dissertation. And I didn't foresee
13 it as being forensically-related, but it is. And
14 it's entitled, "Diagnostic Compliance in Rorschach
15 Interpretation as a Function of Group Member Status."
16 That was my dissertation to get my Ph.D. And, also,
17 I summarized it better than I did the title, uh, to
18 be published in a peer-related article.

19 Q How often do you spend time familiarizing
20 yourself with the current research in the field
21 of forensic psychology?

22 A Well, my wife thinks that I do that quite often, and
23 that she's right. Um, I receive journals, I review
24 journals. I, uh, go to -- go to particular workshops
25 and seminars. And I also, thanks to the modern-day

1 technology, um, probably spend an average of one to
2 two hours in the evening, four days a week on the
3 average, uh, seeing what current articles are
4 published in a variety of areas regarding cases in --
5 forensic cases in general or cases that I'm
6 consulting on.

7 Q Why is it important to continue to follow the
8 research or follow, um, trends in forensic
9 psychology?

10 A Well, it's -- it's two reasons. One is, ethically
11 required by the ethic code -- ethical codes that I
12 subscribe to, or ascribe to, simply by my
13 participation in these organizations I've mentioned.

14 The other reason is more important to
15 me. It's personal. When I am offering
16 information that may be helpful to judges or
17 juries that in -- affect, life, liberty,
18 finances, um, people's rights, then, uh, that's
19 something that I personally take very seriously.

20 Q Have you ever presented or trained -- you
21 mentioned you've gone to training sessions. Have
22 you ever trained others in your field of
23 psychology?

24 A I have.

25 Q Can you briefly describe those presentations or

1 trainings?

2 A Well, they've been on a variety of forensic topics.
3 I could enumerate those, if you like. But I can
4 summarize by saying that I counted them up, and there
5 are 100 or -- give or take a couple hundred
6 presentations that I've provided to either attorneys,
7 and they've been continuing legal education approved
8 for all, and I have also presented to probation
9 officers, social workers, federal probation chiefs
10 regarding a variety of forensic matters.

11 Uh, some of them have been small. Only
12 10, 15, 20 individuals at, uh, a bar association.
13 Others have been large. When it's been, for
14 example, uh -- most recently, I testified -- not
15 testified, but spoke at, regarding sex off --
16 sexual assault homicide in capital cases, in,
17 uh -- in Texas at a -- a national conference.
18 So, it -- it runs the gamut.

19 Q Previously, you indicated you've testified over,
20 approximately, 2500 times in various, uh, types
21 of proceedings. When you've testified in the
22 past, do you testify solely for one side or the
23 other?

24 A No, sir.

25 Q Do you have any percentage as to what -- how --

1 how often you're called by one side or other?

2 A Pardon me?

3 Q Do you have any percentage, that you're aware of,
4 as -- as far as how often you're called by, let's
5 say, for instance, the defense?

6 A That's a different question than you asked before.
7 By the defense, probably 60 percent. By the
8 prosecution, probably 40 percent. But that's still
9 the minority of who request my services.

10 Q Now, let me just, uh, skip ahead. Are you
11 familiar with the term, quote, false confession,
12 unquote?

13 A Yes.

14 Q And how is this term fam -- familiar to you as a
15 forensic psychologist?

16 A Well, it's familiar to me by cases I've been involved
17 in, by my understanding of the literature and the
18 tests available to evaluate them. And it's related
19 to evaluating whether, um, or -- it's, uh, related to
20 helping address, uh, false confessions, and -- which
21 are admitting to wrongdoing when it didn't exist, uh,
22 or overstating one's involvement in a crime and --

23 Q Is there another term that's used in this field?

24 A Well, beginning in 1908, there was Münsterberg, who
25 wrote his first book on causes of false confession at

1 the turn of the century.

2 Also, not this century, Binet, uh,
3 showed pictures, and then saw if there was a -- a
4 change in responses when the pictures were shown
5 again.

6 And, most recently, in the -- in the
7 1980's, uh, Gisli, and I've been -- I've been
8 told it's Gudjonsson, uh, developed what's called
9 "interrogative suggestibility." And that was in
10 the 80's. And he has done extensive research,
11 uh, and come up with a Gudjonsson Suggestibility
12 Scales to assess for two aspects of, uh,
13 interrogative suggestibility.

14 Q Is Gudjonsson the foremost expert in this field?

15 A He's certainly one of the leading experts. Uh, he
16 was originally a -- a detective in Iceland. He went
17 over to London. He became a psychologist. He was
18 asked to consult about confessions. He now is the
19 Professor of Forensic Psychology at the Institute of
20 Psychology at Kings College in London.

21 He's written a -- a -- I didn't bring it
22 with me, a thick handbook, which, not to be
23 blasphemous, but would be the bible of, uh, the
24 psychology of false confessions and psychology of
25 false confessions. I don't have the exact title

1 with me, but, uh, it's one that's heavily relied
2 upon.

3 Q Is the Gudjonsson Scale of Suggestibility, what
4 you've just recently described, the only tool
5 that a forensic psychologist has available to him
6 in determining whether a person has the
7 psychiatric or psychological characteristics that
8 may cause him to be vulnerable to give any false
9 confession?

10 A No.

11 Q What -- what other tools do you believe, as a
12 forensic psychologist, are important to consider
13 in making a determination of suggestibility?

14 A Focusing on tools as your --

15 ATTORNEY KRATZ: Judge, I -- I'm sorry. If
16 I may interpose an objection? Perhaps Mr. Fremgen
17 is doing this intentionally, but he's interposing
18 the terms "suggestibility" and "false confession."
19 If we're talking about false confession, I'd ask
20 that he ask that question. If he's talking about
21 suggestibility, I'd ask that he phrase it in those
22 terms.

23 THE COURT: So, you're objecting to the
24 form of the question as a compound question?

25 ATTORNEY KRATZ: I am, Judge. They are

1 two, I think, distinct, uh, concepts, and I'd ask
2 that those be, uh, referenced to any specific
3 questions. Thank you.

4 THE COURT: Mr. Fremgen?

5 ATTORNEY FREMGEN: I'll change -- I'll --

6 THE COURT: Okay.

7 ATTORNEY FREMGEN: -- rephrase.

8 Q (By Attorney Fremgen) Can you describe the other
9 tools that you would consider important in making
10 a determination whether a person, uh, has those
11 personality or psychological characteristics that
12 make them vulnerable to suggestion?

13 A Yes. Uh, generally speaking, there are tests
14 regarding intellectual functioning, IQ, uh, they
15 could be memory, they could be tests associated with
16 assessing personality traits, characteristics
17 associated with the likelihood of being suggestible.
18 Uh, those are the main ones.

19 Q Now, are these --

20 A The main categories.

21 Q I'm sorry. Are these tests developed solely to
22 determine whether a person may be suggestible?

23 A The, uh, only one that was solely developed that
24 personal is the Gudjonsson Suggestibility Scales.

25 Q So the other tests that you were just talking

1 about in a -- more of a generic form, are they
2 used in other, um, evaluations in forensic
3 psychology, for instance?

4 A In forensic psychology and non-forensic psychology,
5 true.

6 Q Why is it that, uh, these tests that have,
7 potentially, nothing to do with suggestibility,
8 are important tools to consider as a forensic
9 psychologist in making that determination?

10 A Well, there are different psychological
11 characteristics that an individual might exhibit or
12 might possess that, in turn, would increase or
13 decrease the likelihood that they would be
14 suggestible. And those include, intellectual
15 functioning, learning problems, memory problems,
16 personality characteristics. Whether a person, for
17 example, is passive, withdrawn, socially introverted,
18 quiet, anxious, wanting to be ple -- desiring to
19 please, uh, being in terms of social desirability,
20 um -- I must be missing something, but I don't recall
21 right now.

22 Q Now -- and -- and, again, is this something that,
23 for instance, Gudjonsson recommends forensic
24 psychologists to consider in addition to his
25 suggestibility scale?

1 A Absolutely.

2 Q Have you performed these tests on actual subjects
3 to determine whether a person may be susceptible
4 or vulnerable to suggestion before?

5 A Yes.

6 Q And -- and do you -- can you tell us how often or
7 how many times, that is, that you performed these
8 tests to assist you in making determinations of
9 whether a person is vulnerable to suggestion?

10 A I should keep better records, but the number is --
11 compared to the 2,500, is definitely lower. It's
12 more like 5 to 10.

13 Q And have you ever testified in a court, such as
14 this, in that regard?

15 A Yes.

16 Q And -- and how often have you done that?

17 A Three times. Well, three that I can recall.

18 ATTORNEY KRATZ: Judge, I -- I'm sorry.
19 Again, I interpose an objection as to vague. "In a
20 court, such as this." Are we talking about a jury
21 trial? Or are we talking about just before a judge?

22 THE COURT: That's fair.

23 ATTORNEY KRATZ: I ask that -- that
24 be --

25 THE COURT: Sure. It's a fair objection.

1 It's sustained. Why don't you rephrase the
2 question, Counsel?

3 Q (By Attorney Fremgen) How often did you testify
4 before a judge in regards to this type of topic?

5 A Before a judge, that I can recall of those five to
6 ten times, uh twice.

7 Q How often have you testified --

8 A Three -- three times. I'm sorry.

9 Q How often have you testified in this same regard
10 in front of a jury?

11 A This is the first time.

12 Q Now, you had a -- a large number of cases that
13 you've test -- you indicated you testified before
14 a court in the past?

15 A That's true.

16 Q And this seems like a very small fraction; is
17 that correct?

18 A That's true.

19 Q Why is it that you have such a smaller fraction
20 in this type of, uh, evaluation, or forensic
21 psychology versus the other types that you
22 testified about?

23 A Well, it's just an expansion -- a gradual expansion
24 of my practice. I mean, when I first started doing
25 this, as I indicated, I only did mental commitment

1 evaluations and guardianship. And, then, I began to
2 do maybe a -- a few custody evaluations, and, uh,
3 fitness to stand trial or, uh, proceedings regarding
4 disposition of cases regarding children or -- or
5 sentencing.

6 And, then, it just -- with the seminars
7 I -- I attended, with presentations I've given
8 that required me to learn the material to present
9 in a meaningful way to attorneys, then I
10 gradually expanded my areas of expertise. Not --
11 not -- not to the point -- I'm not a
12 neuropsychologist, for example, so I -- there's
13 no way I'm going to expand to the point of
14 talking about traumatic brain injury from a car
15 accident, and get up here and try to help the
16 Court. I mean, there's certain limitations.

17 Q When you began your practice in, um, psychology,
18 uh, was there sex offender groups at that time
19 that you were aware?

20 A Not that I was aware of.

21 Q And, now, you testified earlier that one, uh,
22 function of your, um, employment is you are a
23 facilitator in sex offender groups?

24 A I'm proud to say that I get to continue that by web
25 cam on a weekly basis for the three groups I already

1 run once I get to St. Louis. So, yes.

2 Q So that's something that's kind of progressed
3 throughout your career?

4 A Even that has progressed to web cam. That's true.

5 Q But the sex offender type of -- of involvement in
6 your field?

7 A I started off with six individuals that were in a
8 group, and, now, I've seen three thousand.

9 Q Your -- would it be fair to state that your
10 involvement in suggestibility evaluations is
11 similar? That is, it's begin -- it's just
12 beginning, and it's beginning to progress?

13 A It's just beginning. Beginning to progress. But
14 whether expands to the degree -- I doubt it will
15 expand to the degree that my sex offender work has,
16 because I'm 56 and don't have that many years to have
17 it expand. You know.

18 Q Specifically, turning to Brendan Dassey, you're
19 familiar with Brendan; correct?

20 A I am.

21 Q And how did you become familiar, first, with
22 Brendan Dassey?

23 A You contacted my office.

24 Q Did you have an opportunity to review collateral
25 materials in preparation for meeting with

1 Brendan?

2 A I did.

3 Q Can you describe what those materials were?

4 A Uh, it -- it was, uh, sheriff, uh, transcript
5 regarding his, uh, being interrogated. And I also
6 viewed the actual video of -- of those -- some
7 individuals call them interviews when they're
8 victims, interrogations when they're suspects. Uh, I
9 viewed that as well. And I, subsequently, reviewed,
10 after my report was prepared, uh, school records
11 regarding, uh, Mr. Dassey, Brendan, that date back at
12 least to fourth grade. If not, before.

13 ATTORNEY KRATZ: Judge, if I may, and I
14 don't mean to -- I don't mean to interpose an
15 objection, but when he indicates reviewing
16 videotapes, if he could explain the dates of those
17 interview videotapes so that we know what interview
18 he was talking about, that might be helpful for us
19 as well.

20 THE COURT: That's fair. If you're going
21 to be alluding to materials that are dated,
22 Dr. Gordon, why don't you, as part of your answer,
23 reference the date.

24 A Yes, sir.

25 THE COURT: Okay.

1 THE WITNESS: Do you want me to do that
2 now?

3 THE COURT: Go ahead.

4 THE WITNESS: The, uh, written narrative
5 was based on inter -- an interview that took
6 place on February 27, 2006. I may have reviewed
7 another one as well. I don't recall. But I know
8 one was based on an interview of -- or
9 interrogation of February 27, 2006 -- 2006.

10 Q Did you have an opportunity to review a DVD of a
11 videotaped statement on March 1, 2006?

12 A Yes.

13 Q And you indicated you'd also reviewed a number of
14 school records as well; correct?

15 A I sure did.

16 Q And at one point were you provided with tran --
17 or a -- copies of a CD involving phone calls from
18 the jail?

19 A I was.

20 Q Before you conducted any -- well, let me ask you
21 this: Did you conduct any tests on Brendan
22 Dassey?

23 A Yes.

24 Q Now, before you conducted those tests, did you
25 also perform a mental status examination of

1 Brendan Dassey?

2 A I did.

3 Q Why is it important to do a mental status
4 evaluation of a, uh, individual?

5 A Well, it's important because it's -- it's important
6 because it's advisable to obtain a variety of sources
7 of clinical information, both collateral, as well as
8 testing, as well as interview, in order to conduct a
9 comprehensive evaluation to com -- in order to come
10 up with the most reliable and valid conclusion as
11 possible.

12 Q What observations, if any, did you have following
13 your mental status evaluation of Brendan Dassey?

14 A Uh, Brendan Dassey's thought process was slow. He
15 was -- there was, even in the interview, indication
16 of mild to moderate mental impairment. He was slow
17 to respond. His eye contact was poor. His affect
18 was bland. To put that -- his affect was blah. To
19 put it unprofessionally.

20 He, uh -- there was -- a mental status
21 evaluation also often includes a -- a history. A
22 social history. And he has a history of -- of,
23 uh, learning problems, as I noted, per his
24 report, confirmed by collateral data.

25 He also talked to me about feeling very

1 anxious and a loner in school, having few
2 friends, and feeling anxious, for example, when
3 getting up to talk before a class, uh, he felt
4 very socially phobic and, uh, uncomfortable, and
5 alienated from friends.

6 Q Is the information that you, um, obtained through
7 the mental status examination important, uh, to
8 consider, as a forensic psychologist, prior to or
9 during the time that you perform additional
10 tests?

11 A It's important to consider it prior to or during the
12 administration of additional tests, because I have,
13 at my office, for example, 150 tests, and you want to
14 tailor-make the evaluation, to use tests that most
15 directly address a given case.

16 I mean, there's some tests that I would
17 always use in a suggestibility evaluation. Such
18 as Gudjonsson, for example. But there might be
19 others that I would include, depending on the
20 interview and the initial results of the initial
21 testing. And, then, I might add others as well.

22 Q So, would it be fair to state that, for instance,
23 a person, um, uh -- if, after you interviewed the
24 person, and they appeared to be of average or
25 below average intelligence, you may not need to

1 use tests that want to examine them for profound
2 mental retardation?

3 A Well, if they had average intelligence, I would -- I
4 might confirm it with a -- I might have confirmed it
5 with abbreviated IQ testing. If it was a person who
6 was profoundly mentally retarded, they wouldn't have
7 the capability of formulating attempt to commit a
8 crime, and they would be in an institution, having
9 their own personal daily needs taken care of. So,
10 if --

11 Q So you're not going to have somebody who's
12 profoundly mentally retarded, for instance,
13 complete the evaluations or probably read at a
14 significant level?

15 A Well, they won't -- they won't even be charged with a
16 crime.

17 Q Uh, just in, Doctor -- in regards to your
18 evaluation, Doctor, you wouldn't provide those
19 type of tests that don't fit -- appear to fit the
20 personality of the individual you're examining?

21 A True.

22 Q Okay. Can you briefly describe what tests you
23 did conduct in regards to your evaluation of
24 Brendan Dassey?

25 A Yes. The one, uh -- do you want me to talk about the

1 Gudjonsson Suggestibility Scale?

2 Q However you wish to start. Did -- did -- do you
3 want to go chronologically with the tests that
4 you performed?

5 A I have a list of them right here. I'm going to go
6 straight from the top to the bottom, if that's okay?

7 Q That's fine.

8 A Uh, one is the Minnesota Multiphasic Personality
9 Inventory, adolescent version. It's based on a
10 der -- uh, derivation. It's -- it was altered and
11 normed with thousands of subjects, uh, from the
12 Minnesota Multiphasic Personality Inventory, which
13 had originally came out in the 1930's by Starke and
14 Hathaway, psychiatrists and psychologists,
15 respectively, from the University of Minnesota.

16 It was subsequently revised as the
17 MMPI-2, because they needed a more representative
18 cross-section of individuals who, uh, represent
19 the United States population, and they changed
20 some, uh, given questions, and they re-normed it.

21 And, then, at the same time, uh,
22 James Butcher, uh, who did -- was instrumental on
23 that, as well as Robert Archer, two
24 psychologists, uh, came up with the MMPI-A, which
25 is the most widely used and researched objective

1 test of adolescent emotional problems. It has
2 many specific scales on it that one can review to
3 form conclusions.

4 Q Why did you choose this test, for instance, in
5 your evaluation of Brendan Dassey?

6 A One is because it's so well-respected and well-
7 researched. Secondly, it -- it comes -- it has
8 scales on it that relate to suggestibility. Such as,
9 uh, passivity, social avoidance, social alienation,
10 uh, anxiety. Uh -- or, in contrast, those that
11 aren't indicative of suggestibility, which would be
12 the absence of those, but, instead, it would be a
13 person that's assertive, or aggressive, or even that
14 would -- those factors could be evaluated from the
15 MMPI.

16 Q How many questions are involved in the -- in the
17 MMPI?

18 A I was supposed to look that up, wasn't I? I -- I
19 believe 566 or 567.

20 Q And -- and how do you assess the answers?

21 A But it might be -- I'm sorry to interrupt. It -- it
22 might be shorter on the MMPI. I might be talking
23 about the MMPI-2 with my prior answer.

24 Q Do -- do you recall how many questions you asked
25 of Brendan when you performed the MMPI-A?

1 A I administered the entire test. So, it was at least,
2 uh, 450 questions long or more.

3 ATTORNEY KRATZ: Judge, I'll stipulate
4 it's 478 questions.

5 THE WITNESS: Thank you, sir.

6 THE COURT: All right.

7 Q (By Attorney Fremgen) And how do you go about
8 assessing the answers that the individual, for
9 instance, in this case, Brendan, provided to you?

10 A Well, I used the true/false questions and see which
11 items, per scale, were scored in a given direction
12 which would cause a scale, such as depression, or
13 anxiety or social introversion, to be lower or
14 higher. And then I put it on a graph.

15 I also used the validity scale scores
16 to, um, ascertain whether the profile is valid.
17 Whether it's accurate in terms of prescript -- in
18 terms of describing a person's personality.

19 Q In regards to assessing the test, then, would you
20 base your opinion on, let's say, any one answer
21 of the 478 questions or a small number of
22 answers?

23 A Absolutely not.

24 Q Why not?

25 A Well, the test is constructed so that one looks at

1 scales, not at individual answers, because, taken out
2 of context, a person's true or false answer to a
3 given question could -- or provide, uh, confusing
4 results, and it's just -- it's not proper protocol.
5 It's not the way that -- that we're instructed to do
6 that as psychologists, uh, to -- in order to render
7 reliable conclusions.

8 Q I'm going to place on the screen Exhibit 229. In
9 performing the MMPI, were you able to obtain
10 results to the tests provided to Brendan?

11 A Yes.

12 Q And what were those results?

13 A Well, the results -- there are approx -- there are
14 probably -- there are ten basic clinical scales, but
15 there are probably 100 or 50 supplemental scales that
16 can be interpreted. All were within the average
17 range, including the validity scale, showing that the
18 profile was valid.

19 All were in the average range except for
20 four, and those were the ones that you see on
21 that screen.

22 Q Can you, uh -- I believe you have a pointer.

23 A I don't want to blind anybody here. Okay.

24 Q And, so I'm clear, you were able to assess
25 Brendan on a number of topics and found him to be

1 average in many of those -- those areas?

2 A I assessed him on a number of scales, and all of them
3 were in the -- within the average range except for
4 four.

5 Q And -- and these are the four here?

6 A Yes, sir.

7 Q Why were these four, in particular, um, important
8 to note in regards to your evaluation of Brendan?

9 A Well, I'll point out the one that was not
10 hypochondri -- hypochondriasis. That's not
11 particularly related to suggestibility.

12 Q Why did you include that on this --

13 A I just wanted to be straight forward and honest
14 and -- and say the scores that were high. I didn't
15 want to leave any out.

16 Q What -- what is hypochondriasis?

17 A It's, uh, either a person that has significant -- has
18 a person's -- who has significant concern about
19 bodily functioning, health, and, sometimes, it can be
20 because they have bona fide, real health concerns.
21 Cancer, migraine headaches, or whatever. Or it can
22 be that they don't have physical symptoms, but they
23 have a concern with their health anyway, or
24 stress-related symptoms, and, then, that score would
25 be elevated in those cases.

1 Q So even though this doesn't have any, uh, um,
2 relevance to the issue of suggestibility, you
3 included it, uh, because it was in the top four
4 of the high scores?

5 A I present information that is un -- that's abnormal.

6 Q Okay. Can -- can you then go through the other
7 three? I'm going -- going to -- I don't want to
8 put words in your mouth, Doctor, but were these
9 the three that you felt were important in
10 consideration of the suggestibility issue?

11 A Yes.

12 Q Okay. Can you, uh, go through your results,
13 first with, I guess, the top?

14 A The top one is social avoidance. The T-score was 72.
15 It's easier to explain the percentile of one.

16 Q What -- first of all, if you can, can you
17 describe what is per -- percentile and what is
18 the significance of percentile?

19 A I can. Out of 100 individuals who would have taken
20 that test, 99 out of a hundred would have scored in a
21 more normal range than did Brendan.

22 Q And, so, for instance, on the social avoidance,
23 99 would have scored at a more normal range? And
24 of social avoidance or of being --

25 A Social --

1 Q -- socially --

2 A -- avoidance.

3 Q Okay. What is the significance in -- in regards
4 to that in your assess -- assessment of
5 suggestibility?

6 A Individuals who have social problems, who are
7 passive, who are withdrawn, have a greater likelihood
8 of being suggestible.

9 Q What -- what's the next category that you looked
10 at with the MMPI-A?

11 A Well, I'd like to skip down, if I could, please, to
12 social introversion. Uh, the reason being, that
13 social introversion is a separate scale from social
14 avoidance, and you rely on different questions that
15 go into those scales from the MMPI-A, but they're
16 still, basically, evaluating the same thing. Social
17 withdrawal, social avoidance. And on that particular
18 one, for social introversion, his percentile was 2.3.

19 In other words, uh, roughly, uh, 97
20 people -- 97 adolescents out of 100 would have
21 scored in a norm -- more normal fashion. A lower
22 fashion than he on that scale.

23 Q So he is more socially introverted than 97
24 others; is that correct?

25 A Accor -- according to this scale, yes.

1 Q And, then, there was one other scale that you
2 looked at?

3 A Yes. And that's social alienation. And social
4 alienation, his score was 1.5 percentile. Again, uh,
5 98 1/2, if we could call half -- 98 1/2 individuals
6 would score on a more normal range on that scale than
7 did Brendan.

8 Social alienation is different than the
9 other two, because a person who is socially
10 avoidant and socially introverted would tend to
11 be socially alienated. They would be cut off
12 from those with whom they interact and avoided by
13 those with whom they interact, because they don't
14 reach out, and they -- and so they're -- they're
15 just alienated from -- from people who could be,
16 otherwise, friends, or they -- they live, not
17 psychotically, but they live in their own world,
18 alienated from society, so to speak.

19 Q These scales, these terms, are these your terms
20 or are these terms that you receive from the
21 tests?

22 A They're straight from the MMPI manual, and the, uh,
23 from the manual and scales from the MMPI.

24 Q The test preparers?

25 A The test preparers.

1 Q What -- what other tests did you, uh, administer
2 for Brendan, or to Brendan?

3 A Well, I think I'll -- I'm sorry. I think I'll skip
4 the suggestibility scale and I'll skip down to the
5 16-PF. The 16-PF was developed 15 years ago at the
6 University of Illinois by a psychologist by the name
7 of Dr. Raymond Cattell.

8 He did what a -- what's known as factor
9 analysis. He put down a number of normal
10 questions that would -- that would measure normal
11 traits of normal individuals, and then he did a
12 statistical procedure to pull out similarities of
13 those items. And he found 16 factors, um, and
14 one global factor. So, one, the global factor,
15 overall factors, the accommodation, independence.

16 The other two on the exhibit there, shy
17 and deferential versus socially bold and
18 dominant, are factors -- one of the -- two of the
19 16 factors contained on the instrument that
20 measures normal personality traits.

21 Q How does this test assist you in, uh, developing
22 an opinion or determining whether someone might
23 be vulnerable to suggestion?

24 A Review of research shows that individuals who are
25 accommodating, that is, dependent, shy, differential,

1 more passive, have a greater chance of being --
2 substan -- depending on the degree that it's shown,
3 is substantially greater chance of being suggestible.

4 And that comes from research, and, also,
5 uh, my training, and the books that I've
6 reviewed, and the research I've done online,
7 suggest the very use of this test showed this,
8 and to review the outcome on these three
9 particular scales.

10 Q What, uh, results did you obtain from this test
11 in regards to Brendan?

12 A Well, unfortunately, I don't have, and wasn't able to
13 easily obtain, the percentile. So, all I can do is
14 show to the jury that for accommodation, he's on the
15 lower end of the scale. Not every one, but, still,
16 the lower end of the scale on accommodation, the
17 lower end of the scale on shy, and the over -- the
18 lower end of the scale for being deferential, or
19 passive, which are all consistent with each other and
20 are consistent, by the way, with the MMPI results.

21 Q What other tests did you perform in regards to --
22 to Brendan?

23 A I performed, also, the, uh, State Trait Expression,
24 uh, beg your pardon. The State Trait Anger
25 Expression Inventory, which is an objective test that

1 measures normal and abnormal ways of expressing
2 anger.

3 Q Why did you choose that test to conduct in
4 regards to -- to this evaluation of Brendan?

5 A Well, I wanted to see if he was angry. If a person
6 is angry and dominant, then they tend to not be
7 suggestible. If they -- if the score shows that
8 they're passive, and deal with their anger by keeping
9 it to themselves, or not really being angry very
10 often, then that would, again, be related to -- to
11 suggestibility.

12 Q What results, if any, did you determine in
13 regards to this test as it applied to Brendan?

14 A The test scores showed that he is passive and, uh,
15 subdued.

16 Q Before I go to the next test, you -- let me go
17 back to the 16-PF, and, I suppose, possibly, in
18 regards to the State Trait Anger Expression
19 Inventory -- um, you -- at the end of your -- as
20 you were finishing test -- testifying as to the
21 16-PF, you said that it's also important to
22 consider this test as a way to validate the MMPI
23 to see if it's consistent; is that correct?

24 A It's important to synthesize all of the different
25 tests into one conclusion and consider all of them,

1 yes.

2 Q So, let me ask you this, hypothetically; if, for
3 instance, you had performed four tests, and three
4 seemed to be consistent, but one seemed to be
5 well away from what you've seen thus far, would
6 that offer you some concern in the tests --
7 testing of the individual?

8 A It would not -- it would cause me concern on how to
9 most accurately synth -- put together those results
10 into a -- an opinion.

11 Q So it had an impact on your final opinion?

12 A It would. Absolutely.

13 Q Want to pull the mike a little closer?

14 A Absolutely.

15 Q Sorry for interrupting you. Let's go -- we'll go
16 to the next set of tests that you performed?

17 A Yes.

18 Q And what was that?

19 A Well, I performed two, uh, IQ tests. One is the
20 Wechsler Abbreviated Scale of Intelligence. And it
21 originally came from David Wechsler, uh, in 1932, at
22 the -- in a Bellevue clinic, and it was called the
23 Wechsler-Bellevue Intelligence Test established in
24 1939.

25 Um, since then, it's been revised and

1 abbreviated as well. And the Wechsler
2 Abbreviated Scale of Intelligence, uh, reliably
3 assesses intellectual functioning, IQ, of adults
4 and children.

5 Q Now, I have on the screen Exhibit 228. Does that
6 indicate, uh, results of those two intelligence
7 quotient tests?

8 A I don't know if the jury can read it, so I -- I would
9 need to read it, I believe, without blinding the
10 court reporter.

11 Q How's that?

12 A That's good. Now, to explain the top part, if you'd
13 like me to --

14 Q Please.

15 A It shows an average IQ is 100. That's why 50 people
16 out of a hundred would score higher -- who obtain a
17 score of higher of a hundred and 50 would score lower
18 than a hundred.

19 Then, from 90 down to 70, or, actually,
20 from 90 down to 84, is the low average range of
21 intelligence. From 70 --

22 ATTORNEY KRATZ: Judge, if I may, on what
23 scale is he referring to? That 90 to 84 is low
24 average. If he's talking about Wechsler or Kaufman,
25 I'd like him to -- to state that.

1 THE COURT: All right. Can you identify
2 which of the -- the tests, uh, reflect those
3 scores?

4 THE WITNESS: The Kaufman has an IQ
5 score of 83, which is not a test that I described
6 yet, but it's comparable to the Wechsler
7 Abbreviated Scale of Intelligence.

8 Q (By Attorney Fremgen) Doctor, I'm sorry to
9 interrupt you. I think the question by the
10 prosecutor, the objection, was, is the base used
11 to evaluate the actual results the same on the
12 Wechsler and Kaufman? That is, is the base of
13 what is average 100, what is below average, what
14 you've said was 90 to 84, and probably the other
15 numbers on the scale, the same scale used in
16 completing a base for the purposes of
17 interpreting the results in both the Kaufman and
18 the Wechsler?

19 A Yes.

20 Q Okay. Now, if you could continue -- I'm sorry to
21 interrupt you -- in regards to what the, uh,
22 actual results were with Brendan and how they
23 compare to the base -- base scale?

24 ATTORNEY KRATZ: Judge, if -- if I may just
25 sharpen my -- my point, I wanted to make sure that

1 this doctor was saying that, on the Wechsler Scale,
2 90 to 84 is considered below average. I think
3 that's what he said. And I want to make sure that
4 was, in fact, your testimony.

5 THE WITNESS: My testimony is, based on
6 the diagnostic and statistical manual of mental
7 disorders, which shows that individuals who have
8 IQ's of 84 -- 70 to 84 -- is one facet of
9 diagnosing a mental -- uh, borderline mental
10 intelligence. On the other hand, according to
11 Wechsler norms, a score of 70 to 80 is in the
12 borderline range.

13 ATTORNEY KRATZ: If I may, then, Judge, I
14 am going to object as -- as irrelevant. If he's
15 saying the Wechsler Scale goes all the way down to
16 80 for low average, doesn't go to 84, and that's
17 what this chart says, that would, uh -- would --
18 would be irrelevant. If he's using some other thing
19 to score it with, like the DSM-4, which I now heard,
20 uh, that's something other than this chart purports.
21 And I would interpose an objection.

22 THE COURT: Mr. Fremgen?

23 ATTORNEY FREMGEN: Well, I can ask the
24 doctor some more foundation questions as to the
25 chart, itself, that he created.

1 THE COURT: I -- I think we're going to
2 have to do that. And I'll rule -- I'll -- I'll
3 withhold ruling on the objection.

4 ATTORNEY KRATZ: Thank you, Judge.

5 Q (By Attorney Fremgen) Doctor, you -- you
6 provided this, um -- a chart that was used to
7 make the Exhibit 228; correct?

8 A Yes.

9 Q And you included both the Wechsler and the
10 Kaufman intelligence quotient on results and the
11 tests on the one chart; correct?

12 A Correct.

13 Q Why is it that they're both combined? Or why is
14 it you felt necessary to combine both to one
15 exhibit?

16 A To make it simpler to understand, and be -- and I
17 used the Wechsler -- I mean, I used the DSM-4, uh,
18 norms, simply because that's what's commonly used,
19 and if I would not use those, individuals would be
20 asking me why I didn't use those, because in every
21 mental status and psychiatric report under the, uh --
22 that comes out for clinical and forensic reasons,
23 they ask precisely what a person's diagnosis is on
24 the DSM-4.

25 Q Well, again, if we can set aside DSM-4 for just a

1 moment --

2 A I'm sorry.

3 Q -- specifically, regards to Wechsler and Kaufman,

4 is there a base scale under the Kaufman

5 Intelligence Test?

6 A No.

7 Q Is there a base scale from the Wechsler?

8 A You mean base scale on how to divide it into

9 categories?

10 Q Correct.

11 A Uh, yes.

12 Q Okay. Under Kaufman?

13 A No.

14 Q Just on Wechsler?

15 A Yes.

16 Q So -- so this scale, then, is actually the

17 Wechsler?

18 A This -- the scores are from the Wechsler and Kaufman.

19 Q No. I'm sorry, Doctor. The scale, not the

20 score.

21 A Oh, I'm sorry.

22 Q It's this document, here, where it says IQ

23 percentile, is this actually the Wechsler?

24 A No.

25 ATTORNEY KRATZ: Renew my objection, Judge.

1 ATTORNEY FREMGEN: Is it --

2 THE COURT: I understand. Hold on a second
3 here. This is going to get terribly confusing
4 unless the witness can segregate, one, what's on
5 this test. What -- what -- what -- or, excuse me.
6 What's on the exhibit in the graphic portion of the
7 exhibit? What that reflects. And, two, if that's
8 different than -- than Wechsler test as it appears
9 to --

10 ATTORNEY FREMGEN: I understand, Judge.

11 THE COURT: -- be, uh, that -- that he,
12 then, explains that as well. Now, can he do that?

13 ATTORNEY FREMGEN: I'm going to ask the
14 doctor that.

15 THE COURT: All right. Go ahead.

16 Q (By Attorney Fremgen) Doctor, can you
17 distinguish the two? The Wechsler versus the
18 Kaufman?

19 A Yes.

20 Q And without using the exhibit, Doctor, did you
21 have -- come to any conclusions with regards to
22 the evaluation of Brendan pertaining to the
23 Wechsler Intelligence Test?

24 A It's my conclusion that he is in the borderline range
25 of intelligence.

1 Q What score did he -- do you recall what score he,
2 um, you -- you calculated in regards to that
3 test?

4 A Which one again?

5 Q Kaufman?

6 A Kaufman was 83.

7 Q And you indicated that's in the average or below
8 average scale?

9 A That's in the borderline range.

10 Q Borderline.

11 A According to --

12 Q Can you describe what borderline means?

13 ATTORNEY KRATZ: Again, Judge, borderline
14 from what scale? I -- I have to ask.

15 ATTORNEY FREMGEN: The question was in
16 regards to Wechsler. And if the prosecutor would
17 listen to the answer, he would have heard him say
18 that scale.

19 ATTORNEY KRATZ: We'll -- we'll hear if
20 it's the Wechsler Scale. Go ahead, Doctor.

21 THE WITNESS: I misspoke. According to
22 the Wechsler Scale, it's in the low average
23 range. The lower end of the low average range.

24 Q What significance does that have, being in the
25 lower average range?

1 A It means -- well, since he's in the lower end of the
2 low average range, the significance means that he has
3 problems as shown in his school records with, uh --
4 and his need for special education, his problems
5 with, uh, learning, problems with concentration,
6 problems with -- with functioning at an intellectual
7 level that's -- that's in the average range.

8 Q What is the percentile? Is there -- or,
9 should -- I should ask you, is there a percentile
10 associated with the score Brendan received on the
11 Wechsler test?

12 A There may be. I don't have it written down. I think
13 it may have been on the chart that you took off the
14 screen. I know it was there. I don't have that
15 written down.

16 Q Do you have any, uh, notes with you as to those
17 results?

18 A No. Well, I may. I may.

19 Q Doctor, did you --

20 A I -- I do.

21 Q Okay.

22 A I do. And that's at the, uh, 10th percentile.

23 Q What significance does the percentile have? Or
24 how -- how can you -- can you describe what that
25 significance is in regards to, uh, evaluating the

1 intelligence test results pertaining to Brendan?

2 A On the Wechsler Abbreviated Scale -- Scale of
3 Intelligence, 90 people out of a hundred -- 90
4 adolescents in -- in his own age group -- would have
5 performed intellectually better than he.

6 Q Now, I'm going to ask you in regards to the
7 Kaufman test.

8 A Yes, sir.

9 Q And, again, these are both, for lack of a better
10 term, an IQ test?

11 A True.

12 Q In regards to the Kaufman test, what, uh, results
13 did you, uh, formulate, uh, when you provided the
14 test to Brendan?

15 A He had a composite, an overall IQ compound score,
16 overall IQ score, of 83, which is at the 13th
17 percentile.

18 Q And, again, what significance does that
19 percentile have in your, uh, evaluation of
20 Brendan?

21 A It shows that, uh, he has intellectual shortcomings
22 to the point that 87 adolescents his age would have
23 performed better on that test than he did.

24 Q Why perform two intelligence tests on Brendan?

25 A I, uh -- this is an important case. I wanted to be

1 thorough. I wanted to do it right.

2 Q Were the two results consistent?

3 A Yes.

4 Q What I mean by that, I suppose, be more specific,
5 consistent with each other?

6 A True.

7 Q And, previously, you mentioned you were
8 performing a number of tests in order to
9 determine, for one, whether or not your results
10 were consistent throughout the tests. Was this
11 test results consistent with other observations
12 you, um, uh, or the other observations from the
13 other tests?

14 A Not necessarily. Uh, I could say that a individual
15 with lower IQ might be more likely to be more
16 passive, more uninvolved. But, sometimes,
17 individuals with lower IQ don't want to be
18 embarrassed about their low IQ and act out, uh, and
19 cause trouble so that they -- their low IQ isn't seen
20 to others, and so they're not exposed. So I really
21 can't say it's related.

22 Q So, now, you're not saying, then, that a person
23 with low IQ is necessarily suggestible; correct?

24 A Sometimes. Within extremely low IQ score, they --
25 that could be a very significant factor. Uh, but

1 you're -- but, usually, uh, I -- a person would still
2 administer an entire battery.

3 Q So one test, in and of itself, wouldn't be enough
4 for you to make an opinion on whether a person is
5 vulnerable to suggestion?

6 A It wouldn't be enough for me. And I don't think it
7 would be enough for the majority of forensic
8 psychologists who are experienced in assisting the
9 court and juries.

10 Q Would the IQ test, in and of itself, be enough
11 for you in making that determination?

12 A In this case?

13 Q Yes.

14 A No.

15 Q Did you perform any other tests in relation to
16 your evaluation of Brendan Dassey?

17 A Yes, I did.

18 Q And what test was that?

19 A That was the Gudjonsson Suggestibility Scales. The
20 reason it's plural is there are two scales -- two
21 scales that haven't been normed to the degree that
22 they're helpful in this particular kind of hearing.

23 Two have been normed to the point where
24 they're alternate forms. So you could give one
25 form to a person one week, and another form to a

1 person another week, and -- and they -- they're
2 just alternate forms and we'll get the same
3 results.

4 Q Can you briefly describe this test?

5 A Yes. It was constructed, like I said, uh, by Gisli
6 Gudjonsson in the early 80's to deal with
7 interrogative suggestibility. Uh, rather than define
8 that, which is a lot of words, and I don't think it
9 would be that helpful, I -- I would just say that
10 there are two aspects of interrogative
11 suggestibility. Uh, suggestibility when a person is
12 being interrogated. And that's what it assesses.

13 And there are two aspects. One is yield
14 and one is shift.

15 Q Could you describe, or define, what is "yield" in
16 the Gudjonsson Suggestible Scale?

17 A Yield is when a person answers in a -- provides a
18 response to a leading question. Even respond --
19 provides a response to a leading question which is
20 not facts that have been presented to them. They
21 haven't -- they don't know about that. Or they're --
22 it's an incorrect statement.

23 Q What is "shift" under the Gudjonsson --
24 Gudjonsson Suggestibility Scale?

25 A Well, shift -- the -- the individual is -- is read

1 a -- is presented as a memory test, and they're read
2 a crime scene. And, then, they're asked to repeat
3 it.

4 Then, later on, it could be immediately
5 or later on, up to half hour, 45 minutes, you ask
6 the questions again. Or you ask questions based
7 on that -- on the story. And you see whether
8 they answer in a, yes, fashion to leading
9 questions.

10 Then, after that is done, then you exert
11 mild pressure, or mild criticism to them by
12 saying -- I could pull out the exact --

13 Q No, that's okay. If you can just recall from
14 your memory?

15 A But it's something to the point where, um, subject,
16 uh, you have, uh, made a number of errors. I know
17 you can do better. I need you to think about this
18 more carefully. And I'm going to ask you the same
19 questions and I want you to do better this time.

20 And, then, the shift is the degree to --
21 the number of times that a person changes their
22 answer from the first question -- time they're
23 questioned to the second time they're questioned
24 with the very same questions.

25 Q Now, I have on the screen, Exhibit 230. Is this

1 the results that you received when you performed
2 the Gudjonsson Suggestibility Scale on Brendan?

3 A Yes.

4 Q And if you could just -- you've already defined
5 shift and yield. If you could indicate the
6 significance of the other three, um, categories;
7 "score", "percentile", and "average"?

8 A Sure. On the yield, which should be at the -- it's
9 the first set of 25 questions that are asked. Five
10 questions are related. They're just neutral
11 questions. So they're -- on the -- but on the yield,
12 15 questions are yield questions. And he answered in
13 a yielding fashion, in terms of leading questions, 7
14 times.

15 On the shift, he changed his answers 9
16 times out of 20 potential questions.

17 And, then, the average individual taking
18 the test would shift -- would yield to leading
19 questions 4 times out of 15, and 2 times they
20 would change their answers when they were read
21 the questions again, 2 times out of 20 of the
22 questions that are designed to measure that.

23 Uh, so the difference here is 2 and 9
24 and 4 and 7, resulting in a percentile score that
25 individuals taking that test, only three out of

1 100 would shift their answers more than Brendan
2 did. And only 20 out of 100 would yield their
3 questions. To give in and go along with leading
4 questions more than Brendan.

5 So, he had a greater tendency to shift
6 his answers due to pressure than he did, simply,
7 answer them when there were leading questions
8 without pressure.

9 The way you get the total score, is you
10 add up the shift and the yield to get a total
11 score of 16. And, so, the average person would
12 get a score of 7, and the percentile for the
13 total of these two, for the total score, would be
14 95. Five people out of one hundred would obtain
15 more yielding and shifting responses than did he.
16 Ninety-five would not.

17 Q Was this the last test that you performed or
18 conducted on Brendan in regards to your
19 evaluation as to whether he was vulnerable to
20 suggestion?

21 A Yes.

22 Q And, based upon these results and the mental
23 status, uh, examination, as well as other
24 collateral information, were you able to reach,
25 uh, an opinion as to whether or not Brendan is,

1 uh, a person who is vulnerable to suggestion?

2 A Yes.

3 Q Is that opinion to a reasonable degree of
4 psychological certainty?

5 A Yes.

6 Q And what is that opinion you have?

7 A It's my opinion that -- that he's highly suggestible,
8 uh, when being interrogated, in responding to leading
9 questions or pressure, mild pressure, if that, in
10 fact, is present.

11 Q Is that based -- your opinion based solely on the
12 Gudjonsson Suggestibility Scale or a combination
13 of the other tests, the series of tests, that you
14 performed on Brendan?

15 A It's based on my knowledge of the research, based on
16 the -- the, uh, collateral data that we've talked
17 about. It's based on all of the personality tests
18 that I used, and IQ tests that I used, and it's also
19 based on the Gudjonsson Scale.

20 Q Would it be -- as a forensic psychologist, would
21 it be appropriate to consider just one test that
22 was performed in isolation from the others?

23 A It would not be recommended practice. Even if a
24 person had a substantially low IQ. Like I said at
25 the very beginning of my testimony, this is -- these

1 are important matters that I testify before, and
2 forensic psychologists testify about, and -- and to
3 not do a thorough job and not to do anything less
4 than that wouldn't be -- wouldn't be right, both
5 ethically and by my own standards.

6 Q You had indicated before that you've, uh,
7 performed similar evaluations on approximately
8 five -- in approximately five other instances?

9 A At least that, yes.

10 Q Did you perform the exact same tests in each
11 circumstance?

12 A No.

13 Q So some of the tests performed on Brendan you may
14 have not -- you may not have used on others?

15 A Either because I did not possess them or because I
16 acquired further information from seminars and -- and
17 from my review of the literature that indicated that
18 other tests might be more helpful to use as well.

19 Q Is the Gudjon -- Gudjonsson Suggestibility Scale
20 consistent within your evaluations?

21 A I did not use it on one -- at least one that I can
22 think of. I -- I didn't have it at that point.
23 It -- it was difficult to obtain. You ord -- you
24 have to order it through New York and submit your
25 credentials, via internet, to the -- to London, and

1 it's -- it's a unwielding process. But, finally, I
2 did succeed. It took me about a year to get the test
3 once I decided I wanted it. It should be made
4 much -- I shouldn't give an editorial.

5 Q In reaching your conclusion, your opinion, were
6 there any other factors that you considered, um,
7 more probative than other factors in assessing
8 Brendan's vulnerability to suggestion?

9 A No.

10 Q What --

11 A Not in this case.

12 Q Let me clarify your answer as -- would it be
13 consistent, then, that you consider all factors
14 probative?

15 A Uh, yes. And I -- I wouldn't be able to assign a
16 percentage.

17 Q Do you recall what factors that you considered
18 when you, uh, um, reached your conclusion as to
19 Brendan's, uh level of vulnerability to
20 suggestion?

21 A I considered all that I testified to, plus it -- the
22 way in which the police asked -- the detective asked
23 the questions, and, uh that's pretty much it.

24 Q Now --

25 A The length of time he was in custody. The -- the

1 soft room that he was in that made him more relaxed
2 and comfortable to talk. Uh --

3 Q Let me ask you this: Are those factors that, in
4 the research by Gudjonsson, is something to
5 consider when assessing a person's, uh,
6 vulnerability to suggestion?

7 A Yes.

8 Q And you touched upon a few. In fact, when I
9 asked you to elaborate, you touched upon what I
10 believe Gudjonsson refers to as circumstances of
11 custody. Do you recall that? Touched upon
12 duration and --

13 A Sure.

14 Q Why did -- well, what significance does duration
15 of custody have in assessing an individual's, uh,
16 uh, level of susceptibility to suggestion?

17 A The longer they're in custody, the more anxious they
18 probably become, the more fatigued they become, and
19 the more susceptible they become to offering a
20 confession, whether it be false or true. Just to
21 offering a confession when they otherwise might not
22 have.

23 Q Are you familiar with the length of custody in
24 regards to Brendan in -- in -- in regards to the
25 statement made on May -- March 1, 2006?

1 ATTORNEY KRATZ: Judge, if I may interpose
2 an objection. I think "custody" is a legal term.
3 If that could be expressed in some other way, I'd
4 appreciate that.

5 THE COURT: Well --

6 ATTORNEY FREMGEN: That's fine. I'll
7 rephrase -- I'll rephrase. That's fine, Judge.

8 Q (By Attorney Fremgen) The duration of the
9 interview process, would that -- you understand
10 what I'm asking you, Doctor?

11 A Yes.

12 Q How long he was there with the officers?

13 A I believe it was in the neighborhood of four hours on
14 at least one occasion.

15 Q But, approximately, you believe it was around
16 four hours?

17 A Yes.

18 Q Does the length of the police presence, and that
19 I -- I shall try to define better. The length of
20 time that the individual is with the police, is
21 that a factor under Gudjonsson's research to
22 consider in assessing a person's level of
23 suggestibility?

24 A Yes.

25 Q And are you familiar with how long the police had

1 been involved with Brendan prior to making the
2 March 1, 2006, statement?

3 A I don't know for sure, but I think it was at least
4 several days. That I don't have committed to memory.

5 Q Again, in regards to the Gudjonsson research,
6 what other factors does the Gudjonsson, um,
7 suggest to, for lack of a better term, that re --
8 that forensic psychologists or person's
9 performing evaluations consider as a factor in
10 pertaining to their opinions about
11 suggestibility?

12 A Uh, sleep deprivation, um --

13 Q Well, let's go through each one. Was that a
14 consideration in this case?

15 A No.

16 Q Okay.

17 A Another is the way in which the interrogation was
18 conducted.

19 Q Is that something that you considered, again, in
20 reaching your conclusions in this case?

21 A Yes. I reviewed the, uh, written data, as well as
22 reviewed the, uh, CDs.

23 Q And -- and in that regard, are you referring,
24 specifically, to this issue of yield and shift
25 from the scale?

1 A Yes.

2 Q And I'll get back to that. What other, uh,
3 factors does Gudjonsson -- Gudjonsson recommend
4 using by the evaluator?

5 A Well, considering whether promises were made, whether
6 a person was told of -- that the case was an absolute
7 certainty that they would be found guilty. Whether
8 they were told that there were other in -- there was
9 other information that showed their guilt when it did
10 not -- was not present. When they appealed to
11 different themes of -- such as, uh, we know you
12 really didn't -- minimizing the serious, we know you
13 really didn't mean to do this, or we know you're --
14 you're -- weren't really an active participant, or we
15 know you wouldn't have done this. Now, if you had it
16 to do over again, or your family will be spared a
17 lot.

18 Uh, there are all kinds of different
19 themes that can be developed by an interrogator
20 to increase the likelihood of that occurring.
21 And, then, as the person generally weakens and --
22 and get -- and becomes fatigued, there's a
23 greater chance that they will then give a
24 statement.

25 The likelihood of retraction is very

1 great in cases like this when this is a
2 confession. That's why, uh, it's important to
3 consider whether a written statement was derived
4 from it. Um --

5 Q Let -- let me get back to -- I'll -- I'll -- I'll
6 have some specific questions for you. But let me
7 get back to -- you were talking about techniques
8 or interrogation style. Um, now, again, I -- if
9 I recall correctly, this has something to do with
10 yield and shift; correct?

11 A That's true.

12 Q Now, did you note any of those specific, uh, if
13 you recall, if I might summarize it, as being,
14 you said, leading questions, for instance, and
15 praising or -- or, um, uh, feelings types of
16 questions?

17 A Yes.

18 Q Okay. Let me ask you, again, you reviewed the
19 March 1, 2007 -- or, sorry, 2006 statement;
20 correct?

21 A Correct.

22 Q I'm going to show you what has been marked as
23 216. Do you recall also receiving that
24 transcript of the March 1, 2006, video state --
25 statement?

1 A Yes.

2 Q As an example, I'd like you to turn to page 615?

3 A I am -- I found the page.

4 Q Three down. I guess it would be three names
5 down. I think it starts, "Fassbender." That's a
6 large paragraph.

7 A I see that.

8 Q If you could, uh, begin reading from, "again --
9 ATTORNEY KRATZ: Judge, I'm going to --
10 excuse me. I'd like to interpose an objection. Uh,
11 and if we could approach or if I could be heard
12 outside the presence of the jury, I'd appreciate it.
13 We can probably do it by approaching.

14 THE COURT: All right. Approach.
15 (Discussion off the record)

16 Q (By Attorney Fremgen) I'm sorry. Doctor, do you
17 have before you, now, that same transcript?

18 A I do.

19 Q Okay. You're at page 615?

20 A I am.

21 Q And starting with, um, that same line where it's,
22 "Fassbender," begins, "again," or -- could you
23 read -- and it's a long paragraph. I'm not going
24 to ask you to read the whole paragraph, but if
25 you can read through to, I believe it's the

1 fourth sentence, where it starts, "I just don't
2 see that." If you can read that, please? I'm
3 sorry, read it out loud if you could?

4 A I -- I had to find out where I was supposed to stop.

5 Q Okay.

6 A Sorry.

7 Q That's fine.

8 A (As read) "Again, er, whether Blaine saw it or not,
9 the time periods aren't adding up. They're not
10 equaling out. We know whether -- we know when Teresa
11 got there."

12 In parenthesis, "Brendan nods yes." End
13 parenthesis. "Um, and, I know -- I guarantee ya,
14 Teren -- Teresa's not standing on a porch when
15 you come home from school."

16 Q Okay. Then, if you could skip down to where it
17 says, "Brendan" right after that paragraph? And
18 what is his -- what is the response?

19 A "I got off the bus. I walked down the road, and when
20 I got to that thing, uh, the other house, I just sit
21 in there for nothing. I can see her jeep in the
22 garage just sitting there, and I didn't see Steven
23 and her on the porch."

24 Q The next line that starts with "Wiegert?"

25 A "You -- you did or you didn't?"

1 Q And then "Brendan?"

2 A "I didn't."

3 Q Okay. Is this an example, for instance, of

4 the -- the two -- one of the two phenomenons,

5 yield or shift?

6 A Yes.

7 Q And what is it?

8 A It's a phenomenon -- uh, I -- I -- it may be leading

9 in terms of -- it -- it's likely both. And --

10 Q I'm -- I'm sorry. You said likely both?

11 A Both.

12 Q It -- it's -- and is that possible when you're

13 doing, uh, an evaluation under Gudjonsson, that

14 you might have something that is a kind of a

15 hybrid of both?

16 A On the high -- on the Gudjonsson, it -- the -- only

17 measures leading to keep it pure and shift. Uh, it

18 doesn't have the two combined. But in real life,

19 oftentimes questions contain both. There's mild

20 pressure, as well, of some sort, or mild attempts to

21 have a shift along with com -- combination with a

22 leading question with a --

23 Q And in this example, was Brendan's answer a

24 shift?

25 A It was both.

1 Q A response to leading -- to yield and to shift?

2 A Yes.

3 Q Back on 615, Doctor, the same paragraph, that

4 large paragraph, where it begins "Fassbender?"

5 A Yes.

6 Q Near the very end of that paragraph, it -- it

7 begins, "I can tell you, we don't believe." Can

8 you read that line?

9 A (As read) "I can tell you, we don't believe you

10 because there's some things that are wrong, but you

11 got to tell the truth."

12 Q And, again, is that that factor you were

13 discussing in consideration of yield and shift?

14 A That's in consideration of a shift.

15 Q That's the interrogation factor that you were

16 talking about?

17 A True.

18 Q Let me ask you if you could skip to page 587?

19 A I'm there.

20 Q And if you could go eight lines down? Starts

21 with -- the person speaking is -- it says,

22 "Wiegert?"

23 A Yes.

24 Q If you could read from there until I ask you to

25 stop?

1 A How many lines down?

2 Q Uh, eight. Starts with, "Wiegert." It starts,
3 "So Steve stabs."

4 A Okay. (As read) "So Steve -- Steve stabs her first
5 and then you cut her neck."
6 "Brendan" -- in parenthesis, "Brendan
7 nods, uh, yes." End parenthesis.
8 "What else happens to her in her head?"
9 "Fassbender: It's extremely, extremely
10 important you tell us this for us to believe
11 you."
12 "Wiegert: Come on, Brendan, what else?"
13 "Pause."
14 "Fassbender: We know. We just know.
15 You need to tell us."
16 Q I'm sorry. Could you read that line again?
17 A "We know. We just need you to tell us."
18 "Brendan: That's all I can remember."
19 "Wiegert: "All right. I'm just going
20 to come out and ask you, who shot her in the
21 head?"
22 "Brendan: He did."
23 "Fassbender --
24 Q That's -- that's fine, Doctor, right there.
25 A I'm sorry.

1 Q And -- and -- and, again, at that point, is --
2 Uh, my question is, essentially, the same as
3 before. Is this an example of the yield or shift
4 that you were describing previously in the
5 Gudjonsson Suggestibility Scale?

6 A Shift.

7 Q And -- and why is it shift?

8 A Because there's pressure to give a statement rather
9 than merely elicit information.

10 Q And I'm going to ask just one last example. If
11 you could skip to page 574?

12 A Yes, sir.

13 Q If you, uh, go seven lines down. Again, it
14 starts with Officer Wiegert. And it says, "We
15 know what happened." Start with that line?

16 A (As read) "Wiegert: We know what hap -- we know
17 happened."

18 "Fassbender: It's hard to be truthful."

19 "Wiegert: We know what happened. It's
20 okay. What did you do?"

21 "Brendan: I didn't do nothing."

22 "Brendan. Brendan. Brendan, come on,
23 what did you do?"

24 That's what it says.

25 Q If you can go a little further?

1 A (As read) "Fassbender: What does Steven make you
2 do?"

3 "Wiegert: It's not your fault. He
4 makes you do it."

5 "Brendan: He told me to do her."

6 Q And at that point, again, are -- is this, again,
7 an example of these lines, uh, the officers'
8 questions, and the responses, example of the
9 technique you were referring to in how one shifts
10 their answers or yields?

11 A It's an example of using a theme of minimizing, uh,
12 responsibility or culpability or seriousness of a
13 crime, and being sympathetic in an attempt to have a
14 person answer leading questions.

15 Q Okay. And that's the yield that you're
16 describing on Gudjonsson?

17 A Yes.

18 Q I won't go through any further examples, but
19 would it be fair to state that you did review
20 both transcripts, as well as the tape and
21 observed other examples?

22 A I certainly did.

23 Q I -- what I want to go back to is, uh, some
24 additional factors that you considered in regards
25 to, uh, your evaluation. Did you consider

1 character of the defendant? His age, for
2 instance?

3 A Yes.

4 Q And what significance does his age have on your
5 opinion that he is, uh, um, susceptible to
6 suggestion?

7 A Individuals, who are minors, have a greater
8 likelihood of being susceptible, especially, even
9 when they're older minors, i.e., or, that is 15 or
10 16, uh, they have a much higher likelihood of being
11 susceptibil -- susceptible, especially when
12 they're -- when that's coupled with low intellectual
13 functioning.

14 Q Does a lack of life experiences or maturity level
15 also impact?

16 A It's --

17 Q On that decision?

18 A Yes.

19 Q Were you able to -- well, do you have any opinion
20 in regards to Brendan, as far as lack of life
21 experiences or maturity level?

22 A His life experiences are limited because of his
23 social withdrawal and social alienation, and his
24 living within -- within himself and within a --
25 mostly relating to his family, not friends.

1 Q Does one's familiarity with the police, is that a
2 factor to consider based on the research of -- in
3 the Gudjonsson, um, research in formulating an
4 opinion on one's susceptibility to suggestion?

5 A Based on Gudjonsson research and others, yes, that's
6 true.

7 Q And was that a consideration with you when you
8 spoke to -- when you rate -- uh, reached your
9 conclusions about Brendan?

10 A Yes.

11 Q How so?

12 A Individuals, who have minimal or no contact -- with
13 no criminal history, have a greater chance of -- or a
14 greater susceptibility to being suggestible.

15 Q Does anxiety -- is that a factor to consider, uh,
16 in the research or in the Gudjonsson research
17 when reaching your conclusions as to
18 susceptibility to suggestion?

19 A Yes.

20 Q And was that a factor in this case when you met
21 with Brendan?

22 A Yes, because both state anxiety, anxiety at the time
23 of an incident, of an interview, as well as trait
24 anxiety, whether a person has a trait of being
25 anxious, in general, during their life, is correlated

1 with increased suggestibility as well.

2 Q In regards to, uh, learning disabilities, is that
3 a factor that you would consider in reaching your
4 conclusion?

5 A Yes.

6 Q And was that a factor in this case?

7 A Brendan told me that it was a factor during the
8 interview, and I, subsequently, had an opportunity to
9 review about two inches, uh, worth of, uh -- two
10 inches of collateral data from the school system
11 showing that he had been having substantial learning
12 problems, and special programming, and individual
13 education programs throughout his education.

14 Or, I should restate. At least that --
15 back to fourth grade. Maybe earlier. And it was
16 pointed out to me.

17 Q But -- but you only had the material back to
18 fourth grade?

19 A I believe so.

20 Q Um, would you consider any one of these
21 characteristics, or traits, individual? Away
22 from the -- I guess the context of it in its
23 totality when making your determination whether
24 one is susceptible to suggestion?

25 A No.

1 Q Why not?

2 A It's essential to do a comprehensive evaluation to
3 get the most accurate -- have the most accurate,
4 valid conclusions to let this jury know what the
5 status is of Brendan's suggestibility, or lack
6 thereof. And to do that, I administered a variety of
7 tests, as do other forensic psychologists, who do
8 this type of work, to provide that information.

9 Q When you reached your conclusion that you've
10 previously stated, did you consider all of these
11 factors?

12 A I should answer out loud. Absolutely.

13 Q Is the factor -- is another factor to consider,
14 memory or memory deficits?

15 A It is.

16 Q Now, in that regard, did you actually perform any
17 tests on Brendan to assess his memory?

18 A No.

19 Q Did you review any collateral information that
20 might, uh, have, uh, assisted you in determining
21 what level of -- or what type of memory he has?

22 A Yes.

23 Q And what were those records?

24 A Records were --

25 ATTORNEY KRATZ: Judge, excuse me.

1 A -- school records.

2 ATTORNEY KRATZ: I'm going to ask that
3 that question be phrased before or after he's
4 rendered his opinion in this case.

5 ATTORNEY FREMGEN: That's fine.

6 ATTORNEY KRATZ: In other words, when they
7 were -- when they were reviewed and -- and were they
8 included in his opinion.

9 THE COURT: Go ahead. Rephrase it.

10 ATTORNEY FREMGEN: That's fine.

11 Q (By Attorney Fremgen) And my question is, did
12 you review any records that reflected upon
13 Brendan's memory? Whether he has a deficit or
14 not? And was -- did you review those before or
15 after you performed your original evaluation of
16 Brendan?

17 A That's two questions. I, uh reviewed documents
18 regarding memory, but those documents were from the
19 school, and they occurred after the time that I wrote
20 a report summarizing my findings.

21 Q Did it impact -- did those additional records
22 impact on your opinion?

23 A They reinforced, uh, and were consistent with my
24 opinion.

25 Q In regard to your opinion, in case I may have

1 forgotten to ask, are all of your opinions today,
2 in regards to Brendan, within a reasonable degree
3 of psychological certainty?

4 A Yes.

5 ATTORNEY FREMGEN: Judge, I have nothing
6 else.

7 THE COURT: Uh, we'll break until 10:35.

8 ATTORNEY KRATZ: That's fine.

9 THE COURT: Presumably you have some
10 cross-examination questions?

11 ATTORNEY KRATZ: I certainly do, Judge.

12 (Recess had at 10:15 a.m.)

13 (Reconvened at 10:38 a.m.)

14 THE COURT: Mr. Kratz.

15 ATTORNEY KRATZ: Thank you, Judge.

16 **CROSS-EXAMINATION**

17 BY ATTORNEY KRATZ:

18 Q Good morning, Dr. Gordon. Thank you, once again,
19 for -- for coming this morning.

20 A Good morning. My pleasure.

21 Q First of all, I want to talk about your
22 profession, generally. That is, the profession
23 of psychologist. Uh, it's not unusual for
24 psychologists, whether clinical or forensic
25 psychologists, to appear and testify in a court

1 proceeding; is that correct?

2 A No, it's not unusual.

3 Q Are there, however, rules of professional conduct
4 for a practicing psychologist, similar to the
5 rules of professional conduct that lawyers have
6 to -- have to live by?

7 A I don't know if there -- whether there's rules.
8 There are ethical standards and principles, yet, for
9 both the American Psychological Association and, as
10 promulgated by, uh, the, uh, forensic component that
11 I referred to, of the APA.

12 Q All right. And I understood, at least from, uh,
13 a last opportunity that you and I had to talk,
14 uh, about this case, that, uh, you are vigilant
15 in complying with those rules? In other words,
16 and not to put too sharp a point on it, but, uh,
17 you pride yourself in not just giving the answer
18 that a client wants to hear, but, uh, in giving
19 both sides, if, in fact, that is what the
20 evidence points to; isn't that true?

21 A I try my best.

22 Q Do your, um, ethical rules, in fact, uh, prohibit
23 or frown upon promising, um, what you might say
24 in advance of being retained by a specific
25 client?

1 A Yes.

2 Q Do they frown upon a prediction or an advanced,
3 um, promise of what you might say in court or in
4 a testimony kind of setting?

5 A They don't frown on saying whether the case seems
6 like it's worthy of evaluation, but in terms of
7 promising results in writing or at testimony, that's
8 not proper.

9 Q As an example, it's not proper to promise that
10 you won't change your opinion, or you won't
11 change your answer, as a result of what we're
12 going to do now, which is cross-examination?
13 That's true; isn't it?

14 A My opinion is my opinion. So, it -- it's not
15 changing.

16 Q My question is, is it improper, uh, within your
17 rules of professional, um, standards, to promise
18 or predict that you will not change your opinion
19 after being cross-examined in court?

20 A I can't answer that yes or no. It depends.

21 Q So, no matter what I might present to you, um, to
22 the contrary, or what facts that I may, uh,
23 present you, uh, do you still believe that you
24 are open to revising the opinion that you have
25 first, or during direct examination, furnished to

1 this jury?

2 A If I obtain additional research information or
3 additional collateral data that I didn't have before,
4 then that's true.

5 Q Okay. And I -- I think that's what I was -- that
6 I -- that's what I was talking about. You talked
7 about your qualifications on, uh, direct
8 examination, and uh, you have indicated that this
9 is the first time, uh, that you've ever presented
10 this suggestibility theory or the suggestibility
11 findings before a jury; isn't that true?

12 A That is true.

13 Q And isn't it also true, Doctor, that, to your
14 knowledge, since you're a forensic psychologist
15 you may know this, this is the first time ever in
16 Wisconsin that this kind of testimony's been
17 offered to a jury?

18 ATTORNEY FREMGEN: I would object. I don't
19 think that's necessarily accurate.

20 ATTORNEY KRATZ: If he knows, Judge. If he
21 doesn't know, I'll --

22 THE COURT: With that stipulation, go
23 ahead, you can answer.

24 THE WITNESS: I don't honestly know.

25 Q (By Attorney Kratz) All right. The fact is,

1 though, Doctor, that when you talked about other
2 psychologists that do this kind of work, and I --
3 and that's a quote that I wrote down --

4 A Uh, uh, if I can go back to the prior question. I --
5 I misstated.

6 Q Okay.

7 A I -- I did testify, on one occasion, up in Wausau,
8 and it was before a jury regarding this very matter.
9 I for -- I forgot. I'm sorry.

10 Q Back to my original question. When you talked
11 about others doing this kind of work, do you know
12 of other psychologists, uh, in the state of
13 Wisconsin, who are going around offering
14 suggestibility testimony to juries?

15 A Going around and offering. I -- I don't know of
16 other psychologists who are conducting such
17 evaluations and providing information like this to
18 the Court. Although, they may exist. I don't know.

19 Q All right. Well, you -- you've told this jury
20 about how well, um -- how well read you are, at
21 least how you keep up on this particular area,
22 uh, of, uh, forensic psychology. If that was
23 something that was commonly done, or even in
24 Wisconsin if it was something done, you'd likely
25 know about it, wouldn't you?

1 A If was commonly done, that's true.

2 Q Let's talk about the specific tests that you did
3 perform. Uh, I interposed some objections about
4 the Wechsler, uh, test, and how it was scored or
5 how it was scaled. Do you remember those
6 objections?

7 A I do.

8 Q The, uh, original chart that was placed up there
9 found Brendan to have a full scale Wechsler
10 Intelligence, uh, score of 81. And at least your
11 suggestion, uh, was that that fit within the
12 borderline, um, intelligence category.

13 My question for you, Doctor, is, um,
14 under the Wechsler, uh, scale itself, under the
15 Wechsler, um, analysis of that particular IQ
16 score, and I think you correct yourself, that he,
17 in fact, fits in a category called low average;
18 isn't that right?

19 A He's in the lower end of the low average, according
20 to Wechsler's norms. True.

21 Q All right. Now, I'm going to be skipping pretty
22 far ahead. But your eventual, um, opinion is
23 going to be based, in large part, on something
24 called the Gudjonsson Suggestibility Scale,
25 which, as I understand, includes a consideration

1 of an individual's IQ level. Is that true?

2 A That's an in-- that's a mischaracterization of my
3 testimony. It -- you said, in large part, it would
4 be based on Gudjonsson. And I said I -- I couldn't
5 assign a percentage. That it was relying on all the
6 different tests, collateral data and interview.

7 Q The term "vulnerability to suggestibility." Does
8 that depend upon IQ levels? Or at least that's
9 one of the factors that you have to consider?

10 A Yes.

11 Q To render that opinion, or to, um, have a
12 particular subject fit within a category that is
13 consistent with vulnerability to suggestibility,
14 uh, is it a fair statement that, uh, that
15 hypothesis is furthered -- or that hypothesis is
16 supported if an individual has a borderline
17 intellectual capability or borderline IQ rather
18 than low average? Or am I overstating that --
19 that, uh, distinction between Wechsler and your
20 original testimony?

21 A I think you're overstating it. Uh --

22 Q All right.

23 A The -- the percentile is what's most important to
24 consider. That -- that standard across the Wechsler
25 norms and the DSM norms.

1 Q All right. In your, uh, performance of the IQ
2 tests, you mentioned that that was, um, important
3 to you. In other words, getting a, uh -- a
4 relatively accurate read of Brendan's current IQ
5 level was important?

6 A True.

7 Q Is that what you said? I think you mentioned
8 that, because this was such an important case,
9 and, um, because of the, uh, opinion that you
10 wanted to give to this jury, uh, coming up with
11 a, um -- a, uh -- an accurate value, or at least
12 a, uh -- a range, uh, was important for you.
13 That's fair, isn't it?

14 A It's fair.

15 Q All right. The Wechsler, uh, Intelligence Scale,
16 even the abbreviated version that you give, how
17 many sub-tests are included in that particular
18 test?

19 A There are -- either two can be administered or four
20 can be administered. I administered two.

21 Q What does that mean, either two or four can be
22 administered? I assume one can be administered;
23 isn't that true?

24 A That's not true.

25 Q Why did you administer two instead of the four

1 sub-tests of that?

2 A I wanted to obtain an overall IQ estimate and compare
3 it to the Kaufman Brief -- it's Brief Intelligence
4 Test, uh, to see if there was consistency. If there
5 was no consistency, uh, then I would have found the
6 need to go into more comprehensive intellectual
7 testing. As I indicated before, the interviewing and
8 the testing process determines what tests I
9 administer to --

10 Q Was this anything that prevented you from
11 administering all four of the sub-tests for this
12 IQ test to Mr. Dassey?

13 A No.

14 Q You next talked about -- or at least in your
15 report, you talked about the 16-PF, which I think
16 you described as a -- called it a test, uh, that
17 evaluates, quote, unquote, normal
18 characteristics, at least under general
19 circumstances. Is that a fair characterization?

20 A It's a --

21 Q As opposed to the MMPI, or something that looks
22 at the more deviant or -- or problematic
23 individuals?

24 A I would agree with what you said, except you said,
25 under normal circumstances. I mean, I -- I -- I

1 get -- I guess I'm not understanding your question.
2 I beg your pardon.

3 Q Well, I -- we can get right to the -- the
4 conclusions of the 16-PF. Did you agree with the
5 findings of your -- or of the results from the
6 16-PF test?

7 A I found them to be consistent with the other test
8 results and the rest of the evaluation.

9 Q I assume you've been asked to bring your file and
10 the results with you here to court; is that
11 right?

12 A Yes, I have.

13 Q If you'd be so kind, Doctor, as to turn to your
14 results of the 16-PF test. And as you're doing
15 that, or as you're looking for that, I'm sure you
16 can, um, also answer this. How was this test
17 scored? In other words, do you score it or do
18 you send it away to be scored by somebody else?

19 A Uh, it's computer scored from my office. Um, and the
20 scores are then interpreted into a report. Uh, bear
21 with me, please.

22 Q I will.

23 A I'm looking. I'm looking. I'm sorry.

24 Q And so the jury understands what you're looking
25 at, it is a -- a printout, a report, if you will,

1 of the results of the, uh, administration of the
2 examination to Brendan; is that right?

3 A It's a computer-generated report of hypothesis
4 regarding individuals who have scales that he
5 obtained on this particular questionnaire.

6 Q Okay. If you'd be so kind as to turn to page,
7 three, then, the very last category is called,
8 uh, cognition and communication. Do you see
9 that?

10 A Yes.

11 Q Within this report, it suggests that, although
12 not necessarily a measure of general
13 intelligence, it does test one cognitive skill,
14 namely, the ability to manipulate verbal
15 concepts. I was curious as to what that meant.
16 Maybe you can describe that for the jury? What
17 is the ability to manipulate verbal concepts?

18 A Well, I can only tell you what the test -- it's a
19 component of the test where there are analogies, uh,
20 such as, uh, a -- a pear is to an apple as a dog is
21 to, fill in the blank. And maybe there'd be cat,
22 tree and whatever. Uh, that's an example.

23 Uh, there are also, uh -- this is not on
24 the test, but for sake of discussion, uh, please
25 fill in what would be the proper number in

1 sequence. If you have the numbers one, three and
2 five, and then they have six, seven, eight and
3 nine, and you're supposed to pick the --

4 Q All right.

5 A -- correct answer. I mean -- and, so, it -- it does
6 not yield an IQ score, it just yields a general idea
7 of how they answered those questions. It's not --
8 it's a personality test. It's not an IQ test.

9 Q But this report, if believed, suggests that
10 Brendan does function adequately in his ability
11 to manipulate verbal concepts. Isn't that what
12 it says?

13 A Well, it was -- says, in its entirety, as well as
14 scale, does not necessarily measure general
15 intelligence. It does test one cognitive skill,
16 namely, the manip -- ability to manip -- manipulate
17 verbal concepts. In this area, appear -- he appears
18 to function adequately on this particular scale,
19 which is not an IQ test.

20 Q Okay. Do you agree with that statement?

21 A No.

22 Q Really?

23 A You act surprised.

24 Q Do you know what the term "cherry picking" means?

25 A I do.

1 Q And "cherry picking," at least in the concept of
2 professionals who testify, is they present to
3 juries what might support their client's
4 position, but they keep from them, or they don't
5 report, the things that don't, or that, uh, might
6 undermine their opinion. That's a fair
7 characterization of that term?

8 A That is true.

9 Q By the way, anywhere in your report or your
10 conclusions, did you include the 16-PF conclusion
11 that Brendan's ability to manipulate verbal
12 concepts, uh, was of an adequate functioning
13 level? Did you include that anywhere in your
14 report?

15 A I did not include that computer-generated hypothesis
16 in my report. That's correct.

17 Q Next test that you had Brendan perform, or the
18 next one that you talked about, was something
19 called the State Trait Anger Expression
20 Inventory. You're familiar, I know, with that
21 particular test. And, in fact, in your report,
22 uh, dated November 15, 2006, you discuss how the
23 State Trait Anger Expression Inventory factored
24 into, or was considered by you, in your ultimate,
25 uh, analysis and conclusion. That's true; isn't

1 it?

2 A That's true.

3 Q In your written report, that is, the report that
4 you have provided to Counsel and to Court, you
5 indicate the following: And I'll just read this
6 to you. You're not going to have to -- to look
7 at this. I'm sure you'll recognize this
8 sentence.

9 (As read) "The State Trait Anger
10 Expression Inventory was further used to assess
11 for features of anger, passivity and anxiety."
12 You remember writing that?

13 A Yes.

14 Q And, in fact, did you, uh, take the results of
15 this particular instrument and apply it to the
16 features that you suggest in your report? That
17 is, anger, passivity and anxiety?

18 A I'm sorry. Um, I considered the results.

19 Q Now, the State Trait Anger Expression Inventory,
20 first of all, is that a test? Is that something
21 that psychologists normally call a test or not?

22 A No. We normally call it an inventory.

23 Q All right. The difference between inventory and
24 tests are, uh, and -- and correct me if I'm
25 wrong, but a test are something that have norms.

1 That is, it's something that can be objectively
2 scored; isn't that true?

3 A No. Tests more are synonymous with tests of IQ,
4 tests of achievement abilities, academic abilities.
5 The personality inventories are more to do with
6 assessing personality traits, emotional problems,
7 that sort of thing, uh, as compared to the IQ part.

8 Q All right. Let me just ask you, then, about the
9 State Trait Anger Expression Inventory. Um, do
10 the results of that particular test have norms to
11 compare it to?

12 A Yes.

13 Q By the way, um, the term "anxiety," which you
14 express in your report, was one characterasistic
15 (phonetic) -- characteristic that you used this
16 instrument to examine. Is there anything in this
17 particular instrument that talks about anxiety at
18 all?

19 A I might have been confused. As a State Trait --
20 there -- there are two tests by Charles Spielberger,
21 out of Florida. Uh, one primarily measures anxiety,
22 one measures anger.

23 Q Correct.

24 A And I may have confused the two and thought that
25 ang -- anger expression inventory also included

1 anxiety.

2 Q But it doesn't, does it?

3 A I -- from the way you're looking at me, I don't think
4 it probably does.

5 Q Why, if -- if anxiety was something that you
6 thought was important to gauge with this young
7 man, which I think your report indicates it is,
8 why didn't you give the State Trait Anger -- or,
9 excuse me, State Trait Anxiety Inventory instead
10 of the Anger Inventory?

11 A Because I gave the -- another test that would measure
12 that on a variety of anxiety scales, and that would
13 be the Minnesota Multiphasic Personality Inventory,
14 slash, Adolescent version.

15 Q A perfect segue to my next questions, Doctor.
16 The MMPI-A, or the adolescent version, I think
17 you cautioned before that you can't really look
18 at any specific answer to any specific question,
19 that that might be somehow misleading, and I was
20 confused as to why that would be. Can you
21 explain that again?

22 A Uh, by reading one particular response, one can then
23 conclude that that -- conclude that that can be used
24 to draw definitive conclusions. And, uh, taking it
25 out -- out of context is very likely to mislead a

1 jury. And I'm sure you wouldn't want the jury to be
2 misled.

3 Q I'm sure I wouldn't either. And -- and that's
4 why I'm going to ask you some of these, uh --
5 some of these specific questions. Brendan, when
6 provided these questions, or when asked questions
7 on what's called the MMPI, uh, was asked series
8 of 478 true/false questions. He could either say
9 true or he could say false on the answers; isn't
10 that right?

11 A That's right.

12 Q Now, as you told this jury, there -- after the
13 results are obtained, there's various scales. In
14 other words, how he answers questions on --
15 particular answers or, I guess, more
16 appropriately stated, uh, the combination of
17 certain answers, uh, can, um, oftentimes, be, um,
18 considered by trained professionals and some
19 tendencies might be able to be developed
20 regarding characteristics -- personality
21 characteristics. That's fair, isn't it?

22 A True.

23 Q Did you assume that Brendan, when asked these 478
24 questions, gave truthful or accurate responses,
25 at least as he believed them to be?

1 A It was my interpret -- my conclusion that they were
2 accurate, because there are validity scales on the
3 MMPI, and on most personality inventories, that show
4 whether a person is answering in a straight forward
5 fashion, minimizing or exaggerating.

6 Q All right.

7 A And if those are scores -- the validity scores are so
8 abnormal to such a degree that it shows that person
9 was extremely (inaudible) or exaggerating, then I --
10 I can't interpret the pro -- I don't -- you can't
11 interpret the profile because the -- the scores
12 either over or underestimate emotional problems.

13 Q Now, in the interpretation of these answers or
14 the profiles, um, this particular instrument
15 allows trained psychologists to look at various
16 scales. You talked about one that, uh, is, um --
17 or included shyness or social anxiety, um, or
18 social alienation, uh, is that -- is that
19 correct?

20 A Shyness was on the 16-PF, social alienation was on
21 the MMPI-A.

22 Q All right. Social -- and social avoidance as
23 well?

24 A That's true.

25 Q What -- what's that scale called, by the way,

1 when you test for those particular
2 characteristics? Which scale are we looking at?
3 A Social avoidance.
4 Q Have any other name to it on the MMPI? Often
5 referred to as the zero scale?
6 A No. No, not at all. Uh, that's a different scale.
7 That's social introversion. But there are other
8 supplementary scores. And, so, the -- social
9 avoidance is -- comes from the social introversion
10 scale. It's in parenthesis, SI-2. It's one
11 component of the Social Introversion Clinical Scale.
12 Q All right. And so this jury understands, there
13 were other things that you could have scored this
14 test for? There are other, um, personality
15 characteristics that you could have rendered
16 opinions about in this case, but that you chose
17 not to. Is that true?
18 A Although there are hundreds of scales that could be
19 scored, I used the ones that are recommended by the
20 University of Minnesota and the original test
21 constructors in James Butcher and Doctors Archer and
22 Doctors Ben-Porath, among others.
23 Q For what? I mean, you must have been looking for
24 something.
25 A No.

1 Q You -- you were looking for suggestibility --
2 A No, I was just --
3 Q -- issues, weren't you?
4 A I'm sorry for not letting you --
5 Q Go ahead.
6 A Uh, I was not looking -- I was looking for
7 information designed to address those questions, and
8 there are a broad range of questions that are
9 computer scored that come back -- or, actually, are
10 done on my computer, electronically sent to Minnesota
11 and back, and I could count the number of scales.
12 There -- There's, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
13 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,
14 25, 26, 27, 28, 29, 30, 31 --
15 THE REPORTER: Please slow down.
16 THE COURT: Slow down. Just take your
17 time.
18 THE WITNESS: Sorry, sir.
19 Q There's lot of scales. That -- that's --
20 A I can go on. And I'm just -- so I would guess that
21 70 scales are -- are on what is called the -- from
22 the MMPI, um, it's from the, uh, extended score
23 report for the MMPI-A.
24 Q And of those over 70 scales, how many did you
25 score for?

1 A All of them were scored.

2 Q Oh, good. Then I can ask you some questions
3 about the ones we haven't heard about, I assume?

4 A Sure.

5 Q Good. By the way, um, you were asked to provide,
6 and I assume you brought with you, the individual
7 questions that Brendan was asked, and you have
8 available for you individual answers that he
9 gave. Isn't that true?

10 A I have -- I have the individual answers he gave, but
11 I gave the, um, test questions, even though it's a
12 violation of my contract with the University of
13 Minnesota, um, I provided that to my -- or to my,
14 uh -- the attorney that retained -- retained me.

15 Q All right. But you've got the answers, then,
16 with you at least?

17 A I -- I -- I -- yes, I do.

18 Q When was this test administered to Brendan?

19 A November 13, 2006.

20 Q Who was it administered by?

21 A Me.

22 Q Did you record the answers that Brendan gave when
23 you asked him specific questions?

24 A At this point, uh, Counsel, I don't recall whether
25 I -- whether I read the questions to him or if I had

1 him read the questions and answered them.

2 Q All right.

3 A If I -- I don't recall.

4 Q I'm going to ask you to refer to your answer
5 sheet, and I'm going to ask a couple of specific
6 questions and ask how Brendan answered them.

7 I'll first ask you, question number 265,
8 Brendan was asked, (as read) "I think nearly
9 anyone would tell a lie to keep out of trouble."
10 Two sixty-five. Tell the jury how Brendan
11 answered that question, please?

12 A Well, again, saying that it's going to be misleading,
13 and -- it -- it says, "True."

14 Q He said, "True." Anyone would lie to keep out of
15 trouble.

16 Question number 391, Brendan was asked
17 this question:

18 "When I am concerned, I tell that
19 portion of the truth which is not likely to hurt
20 me."

21 Tell us what Brendan's answer was to
22 391, please?

23 A Well, as I said on direct, this is a misuse of the
24 test, but he said --

25 Q Doctor --

1 A He said, "True."
2 Q Is there a problem? You don't understand my
3 question or you --
4 A Well, I can't -- well, then, I can't answer it when
5 it mischaracterizes my testimony.
6 Q You can't answer true or false to what his answer
7 was?
8 A Not when it's in a misleading --
9 Q Oh, I see. All right.
10 A I'm sorry.
11 Q Well, let's talk about misleading the jury, then.
12 The MMPI could be scored for something called
13 anti-social personality traits. In other words,
14 to determine whether or not somebody lacks guilt
15 about criminal exploits that they're involved in.
16 That's true, isn't it?
17 A There are several such scales.
18 Q Did you score for any of those?
19 A Yes.
20 Q Now, anti-social or --
21 A Well --
22 Q Oh, I'm sorry. Because he's under 18, did you
23 want to say something about that or not?
24 A No. You -- you're right. You can't make a diagnosis
25 of anti-social personality disorder for an individual

1 under the age of 18. But there is no scale,
2 specifically, listed as anti-social traits or
3 whatever you referred to. There are similar
4 statements, but not that one.

5 Q All right. Suffice it to say, Doctor, uh,
6 Gordon, that that scale and those results were
7 not included in your official written report to
8 the Court?

9 A Which scale?

10 Q Any scale that dealt with Mr. Dassey's, um,
11 personality characteristics takes that might show
12 a conduct disorder or anti-social personality
13 disorder?

14 A That was --

15 Q It was not included; isn't that right?

16 A Because it wasn't, uh, indi -- so-indicated. Yes.

17 Q You interviewed Brendan, you said, on the 3rd and
18 10th of November?

19 A Yes.

20 Q Now, during your interview with Brendan, you
21 described him as being sad, polite and passive.
22 That's correct, isn't it?

23 A Yes.

24 Q Within your report to the Court, you noted that
25 Brendan was nervous getting up in front of

1 people; is that right?

2 A That's what he told me.

3 Q Do you feel that that was significant to the

4 ultimate conclusion that you rendered in this

5 case as to vulnerability to suggestibility?

6 A It is a -- it's a factor that's related to it, yes.

7 Q Oh. Lot of people get nervous standing up in

8 front of crowds or in front of people?

9 A Socialphobia is the number one, uh, fear there is.

10 Q All right. And death is number two; isn't that

11 right?

12 A I -- I -- I -- I'm just told the number one, which --

13 Q People are more nervous about getting up in front

14 of a crowd than they are about dying. That's the

15 point?

16 A That's your point. I don't know that that's number

17 two.

18 Q All right.

19 A They might be socially phobic about standing up and

20 talking about death, for all I know.

21 Q Brendan also said that he was nervous when

22 meeting new people; isn't that right?

23 A That's right.

24 Q Lots of people get nervous meeting new people; is

25 that right?

1 A Some people do.

2 Q During your interview, you also mentioned,
3 however, that Brendan exhibited no symptoms of
4 depression, no appetite problems, or any of those
5 kinds of -- of issues. Is that fair?

6 A That's what he told me. Except -- and the only thing
7 that was indicative of sadness was the, uh -- the
8 look on his face and the poor eye contact.

9 Q Poor eye con -- I'm sorry?

10 A And the poor eye contact.

11 Q All right. Now, contrary to what you saw, in
12 other words your observations of Brendan, the
13 MMPI suggests that Brendan has the type of
14 personality that, uh, he might exhibit many, uh,
15 of such or of those kinds of complaints. Is that
16 what the MMPI report says?

17 A I'm sorry?

18 Q Isn't that what the MMPI report says?

19 A The -- do you want me to read from what --

20 Q No. What I want you to do is -- does the MMPI
21 conclusion contradict, or is it different than
22 what you personally observed of Brendan?

23 A It doesn't contradict.

24 Q Is it different then?

25 A No, uh, he -- he didn't exhibit -- he denied feeling

1 depressed and he denied having physical vegetative
2 signs of depression like, sleep, appetite, headaches
3 stomachache. He's denied that. Um, but it does say
4 he seems generally un -- unhappy and pessimistic
5 about life. My observation of him was consistent
6 with that.

7 Q Were there any instances, whether it's in your
8 report or not, Doctor, where the test results
9 that you obtained from any of these instruments
10 were in contrast to what you personally observed
11 with Brendan?

12 A I'm sorry, Counsel, I --

13 Q I'll ask that again.

14 A I wasn't -- I was -- my mind went off in --

15 Q Were there any circumstances where the test
16 results that you obtained, or the test result,
17 um, conclusions, were in contrast or were
18 different to what you personally observed from
19 Brendan?

20 A On the MMPI?

21 Q On anything. Any of the test results. I'm just
22 wondering if that phenomenon ever occurred?

23 A The only one, is there -- there -- he -- as I said
24 before, he was elevated on a scale of hypochondriasis
25 and also on other subscales measuring semantic

1 complaints. And that's -- he didn't report that to
2 me.

3 Q All right. When that happens, when the test
4 results differ from what you see with your own
5 eyes, um, how do you reconcile that? Which of
6 the two do you, um, adopt, if you will?

7 A Research has shown that testing -- actuarial testing,
8 as well as objective testing, is usually a better --
9 there's usually better reliability and validity of
10 that than a person's conducting an interview.

11 Q All right. Doctor, uh, Gordon, when you
12 interviewed Brendan, you said that he appeared
13 polite and was responsive to all of your
14 questions; is that right?

15 A He answered all of my questions. There's a slow
16 reaction time. He was polite, yes.

17 Q He appear hostile at all to you?

18 A No, sir.

19 Q Have you ever had a interview in your many years
20 of being either a clinical or forensic
21 psychologist where, uh, the subject that you were
22 interviewing had a dislike for either you,
23 personally, or members of your profession?

24 A I'm sorry. Yes, I have.

25 Q All right.

1 A It's not funny, but it -- it definitely has happened.

2 Q Tell us about when, uh -- when that happens,
3 because I'm sure lawyers have that as well, um,
4 what do you observe when an individual has a, uh,
5 uh -- either a personal dislike or that of your
6 profession?

7 A Well, they don't -- usually don't dislike only my
8 profession. They dislike judges, uh, attorneys,
9 guards. And they feel like they're the victim of a
10 system, and they can be -- have histories of being
11 aggressive and, uh, they can, uh, specialize in
12 swearing and being vulgar. And, uh, I am -- I never
13 needed to push the alarm button yet, but, uh, I am --
14 I don't push things too hard when I'm trying to get
15 information because I value my personal safety.

16 Q Let's at least start or, uh, confine ourselves to
17 the -- the -- the -- the lower end of that scale,
18 that at least they're not physically, uh,
19 assaultive towards you. It's fair that it's more
20 difficult to obtain information from them? They
21 aren't as free to provide you with answers or
22 with information than you otherwise might like;
23 isn't that true?

24 A If a guard -- person is guarded or hostile, it's much
25 more difficult to obtain information.

1 Q They're certainly not predisposed to cooperate
2 with you; right?

3 A No. No, sir.

4 Q Well, wouldn't the same be expected if somebody
5 had a dislike, generally, for police officers?
6 Wouldn't you expect them to be more guarded and
7 less free to provide inculpatory information?

8 A In general, that would be true. In con -- if you
9 don't -- if you're only considering that and not
10 other factors.

11 Q If -- let's assume, for the sake of argument,
12 that this young man, Brendan Dassey, uh, had a
13 predisposition or a dislike of law enforcement or
14 police officers, generally. Wouldn't you expect
15 Brendan to be less forthcoming instead of more
16 forthcoming with information in the course of an
17 interview?

18 A If I only considered that factor alone, then that's
19 probably true.

20 Q You talked about the concept of suggestibility,
21 and I want this jury to understand my first
22 series of, uh, objections earlier in your direct
23 examination.

24 You talked about something -- about
25 false confessions, and then you talked about

1 suggestibility. Do you agree that those are two
2 distinct -- those are two separate concepts;
3 isn't that right?

4 A Yes.

5 Q In fact, somebody who is suggestible, that is,
6 somebody who is vulnerable to suggestibility, is
7 just as likely to provide a true confession as
8 they would be to provide a false confession;
9 isn't that true?

10 A I don't know if just as likely, but -- but I can tell
11 you that individuals who are suggestible certainly --
12 increasingly suggestible -- certainly have a -- a
13 greater chance of providing a confession, period.
14 And it could either be true or false.

15 Q All right. So -- so this jury understands,
16 you're not commenting on the, um, truthfulness or
17 reliability or believability of an admission or a
18 confession that might be provided by a
19 suggestible person? Just that they may be more
20 vulnerable to suggestibility?

21 A I'm not commenting on truthfulness and falseness.
22 But I am here to talk about reliability and
23 suggestibility. That I can comment on. That is
24 different than being truthful. Reliable is different
25 than being truthful or false. I can't tell this

1 Judge, or this jury, or anyone in here whether --
2 That's not my job. I'm not here to do that.

3 Q Doctor Gordon, do you remember, the last time we
4 had a chance to speak, me asking you the specific
5 question that Brendan was just as likely to
6 provide a true confession as a false confession?
7 Remember me asking you that?

8 A Yes.

9 Q Remember --

10 A I mean --

11 Q -- what your answer was then?

12 A No, but you can tell me.

13 Q I'm asking you if you remember?

14 A No, I don't.

15 Q Your answer today, if I can -- if I could ask you
16 that specific question again, is what?

17 A He --

18 Q Isn't Brendan just as likely to provide a true
19 confession as a false confession?

20 A I don't know. Just -- he has -- he has a -- it's
21 like -- it's -- it is possible that if he provides a
22 confession, it could either be true or false.
23 That -- that is what I would say.

24 Q Now, the concept of suggestibility is not a -- a
25 discipline or an area that is just unique to

1 police interrogations. It's something that we
2 see every day with marketing, or advertising, or,
3 uh, fields like that. Isn't that true?

4 A That's true. But, uh, there are different -- the
5 research regarding suggestibility in criminal matters
6 cannot always be applicable to other kinds of
7 suggestibility. For example, suggestibility scales
8 for hypnotism and likelihood to be hypnotized are --
9 are not correlated at all.

10 Q I'm not asking what hypnotic suggestibility --
11 My -- my question is whether somebody is
12 suggestible? And this kind of goes to the true
13 or false confession. The suggestibility doesn't
14 remove somebody's ability to reason? In other
15 words, to choose one, um, answer or another?
16 That's true, isn't it?

17 A Suggestibility -- if they're more suggestible, it
18 reduces the likelihood of that.

19 Q I'm sorry?

20 A What's your question again, please? Maybe --

21 Q Suggestibility doesn't remove somebody's
22 decision-making ability? They still get to
23 choose whether they're going to adopt that
24 suggestion or not; isn't that right?

25 A They still get to choose, but their choosing can be

1 affected by their psychological characteristics
2 and -- and the way they're being interrogated.

3 Q I'm not talking about interrogation. As an
4 example, if somebody tells you to buy a Chevy
5 over a Ford, they may be suggesting that you buy
6 a Chevy, but you still get to make that
7 decision --

8 A In that case, that's true.

9 Q If somebody tells you you should order a pizza,
10 you get to decide if you're going to order a
11 pizza; is that right?

12 A That's true. If my wife says, order a pizza, and I
13 don't want it, I -- there might be a little bit of
14 persuasion for me to get the pizza. You see?

15 Q I appreciate there's those other factors. By the
16 way, the area of suggestibility is not a
17 recognized specialty or even a sub-specialty in
18 the area of psychology, whether forensic or
19 otherwise; isn't that true?

20 A Sub-special -- it -- it -- fitness -- that's true.
21 Fitness to stand trial, NGI, uh, those are not
22 sub-specialties. Forensic psychology is a
23 sub-specialty.

24 Q I asked about suggestibility. Doesn't -- doesn't
25 fall under those categories of specialty or

1 sub-specialty?

2 A No.

3 Q Now, you told this jury that you reviewed the
4 videotaped interview of Brendan on the 1st, and
5 some written narrative or a transcript, I
6 suppose, of an interview on the 27th of February;
7 is that right?

8 A True.

9 Q And that some time later you got some school
10 records to, um, review in case you were asked
11 about that here at trial? Or -- or -- let me ask
12 it a different way. To, um, consider and
13 determine whether or not it might affect your
14 opinion of Brendan?

15 A That's true.

16 Q By the way, how did watching that interview, and
17 this jury got to see that, uh, interview, they
18 got to see about -- just under three hours of
19 what you've called the four-hour interview, but
20 how did watching the first three hours of that
21 interview impact or affect your, um, report? You
22 understand my question? Or would you like me to
23 be more specific?

24 A I could try to answer, but if you could be more
25 specific, that might be helpful.

1 Q Whether you watched that interview or not, would
2 you have been able to render these same
3 conclusions? That is, that Brendan was, uh,
4 vulnerable to suggestibility? Or did you need to
5 watch that March 1 interrogation to come to that
6 conclusion?

7 A It wasn't absolutely necessary, but it was helpful.

8 Q You're telling the jury that it wasn't absolutely
9 necessary to watch the interrogation that you
10 were being asked to render an opinion about? To
11 render an opinion about it?

12 A No.

13 ATTORNEY FREMGEN: That wasn't the answer,
14 Judge. It was -- I believe the answer was not
15 necessary -- absolutely necessary, but helpful. So
16 if you --

17 THE COURT: That's a correct statement.
18 I'm sorry. That's a correct statement of the
19 answer. Why don't you just recast the question.

20 ATTORNEY KRATZ: Sure.

21 Q (By Attorney Kratz) You're telling this jury
22 that it wasn't absolutely necessary to watch that
23 interview to render this opinion about Brendan's
24 suggestibility?

25 ATTORNEY FREMGEN: Judge, again, that's not

1 the -- I believe the answer was, it's not absolutely
2 necessary, but helpful. If that's -- if he wants to
3 rephrase it that way.

4 THE COURT: The question was fairly asked.
5 Go ahead. You may answer.

6 THE WITNESS: Could you read back the
7 question, please?

8 Q I can ask it again if you'd rather. Are you
9 telling this jury that it wasn't absolutely
10 necessary to watch the March 1 interview in order
11 to render this opinion about Brendan's
12 suggestibility?

13 A Not absolutely necessary, no. It was helpful.

14 Q Let's talk about what might have been helpful or
15 omitted from your report. The report that you've
16 rendered, that talks about Brendan's
17 suggestibility, is devoid of any -- any examples
18 where Brendan actually resisted attempts by
19 officers to suggest answers; isn't that true?

20 A That's true.

21 Q In watching that video, Doctor Gordon, don't you
22 remember several instances, in fact, over a dozen
23 instances, where a specific suggestion was
24 presented to Brendan, and Brendan actively
25 resisted? In other words, Brendan said, that

1 didn't happen that way. Do you remember that?

2 A Uh, yes.

3 Q That's not in your report?

4 A No.

5 Q Did you think that was important to include in
6 your report?

7 A Well, obviously, I didn't, or I would have included
8 it.

9 Q Go back to the very first question about
10 including things that help versus don't help your
11 ultimate opinion. Is this one of those
12 circumstances? In other words, when Brendan
13 actively says, no, it didn't happen that way,
14 that doesn't support your opinion about
15 vulnerability to suggestion, does it?

16 A No.

17 Q You said that Brendan's school records weren't
18 provided to you until after you rendered this
19 opinion. Those school records, uh, correct me if
20 I'm wrong, but they include behavioral records,
21 and, um, progress notes, and what are called IEP
22 reports; isn't that right?

23 A That's right.

24 Q Those are notes from school teachers, and school
25 psychologists, and even, on occasion, a parent or

1 two, talking about some problems or some areas
2 that Brendan needed to work on in a school
3 setting; is that right?

4 A True.

5 Q One of the areas that the school record
6 specifically addressed was Brendan's memory; is
7 that true?

8 A True.

9 Q Now, what was the state, at least from the
10 records that you received -- at least up through
11 the fall of 2005, what was the state of Brendan's
12 memory? And are you able, in reviewing those
13 school records, to differentiate between a
14 short-term memory and his long-term memory?

15 I know it was a longer question, and I
16 can break it up, if you need me to. I suspect
17 that you'll be able to answer that.

18 A I could answer that if I -- I reviewed the records.
19 I dog-eared the pages. I took a close look, but --
20 but I didn't commit it to memory.

21 Q All right.

22 A So I -- I could look again if you'd like.

23 Q Brendan, at least from the school records, didn't
24 have the greatest memory in the world; is that --
25 is that fair?

1 A That's fair.

2 Q All right. And whether it was long-term or
3 short-term memory, at least for Brendan, and from
4 a school or a book learning, um, standpoint,
5 Brendan had some challenges or deficits in that
6 area; is that right?

7 A That's true.

8 Q Would you expect, by the way, somebody with a,
9 um -- not only a fourth grade reading level, but
10 somebody with Brendan's memory deficits, to be
11 able to, um, in great detail, uh, remember a --
12 let's say, facts or details of a novel that he
13 read maybe four years ago?

14 A I can't really comment on that because I don't -- if
15 it was a complicated novel, no. But that if -- I
16 don't know the book.

17 Q How about a novel written for adults rather than
18 for kids?

19 A Well, then, I doubt that.

20 Q That just wouldn't seem reasonable to you, would
21 it?

22 A Uh, I don't know.

23 Q The school records don't mention anywhere about
24 suggestibility, do they? In other words, did you
25 see any notations in the records that Brendan

1 was, um, either highly suggestible or influenced
2 by either classmates or other people?

3 A I didn't read the word "suggestible" in the school
4 records.

5 Q Did you read the word "influence" anywhere?

6 A I don't recall.

7 Q That Brendan was easily influenced?

8 A I don't recall that.

9 Q If a school psychologist, Chris Schoenenberger-
10 Gross, who, um, the testimony established, uh,
11 knew Brendan, administered tests directly to
12 Brendan, and did review all of those records, uh,
13 testified that there were no such entries, you
14 wouldn't quarrel with that conclusion, would you?

15 A Uh, I de -- no, I depend on the -- the opinions of
16 school psychologists.

17 Q And school psychologists and teachers and those
18 that meet with Brendan on a more regular or daily
19 basis, at least from a historical standpoint, are
20 probably in a better position to gauge those
21 kinds of things than you, after meeting with him
22 twice; is that right?

23 A No, that's not right, because they didn't administer
24 the same tests and review collateral data that I did.
25 Um, although it's very helpful to have that kind of

1 collateral data from the teachers.
2 There (inaudible) --
3 Q So you don't -- I'm sorry you. You don't know --
4 A -- (inaudible) very important.
5 Q You don't know if those teachers administered IQ
6 tests, do you?
7 A Teachers don't generally administer IQ tests, but
8 they sometimes, uh --
9 Q I'm sorry. The school psychologists. Don't know
10 if she administered IQ tests? I misspoke.
11 A I can look. I don't recall. I have to get them out.
12 It will take me awhile.
13 Q Well, maybe -- I'm going to go on to -- to
14 another question. It isn't -- do you know if the
15 Mishicot School District characterized or
16 categorized Brendan as having any cognitive
17 disability?
18 A I do know that.
19 Q And do you know what that result was?
20 A It was.
21 Q That he did have a cognitive disability?
22 A Well, that he had learning problems. And I'm --
23 and --
24 Q Why don't you look at his 2005 IEP report? There
25 will be some boxes checked there about whether he

1 has a cognitive disability or not. That should
2 be easy to find.

3 A Two thousand five. What date, please?

4 ATTORNEY FREMGEN: Are there, uh --

5 Q (By Attorney Kratz) Probably late --

6 ATTORNEY FREMGEN: Are there exhibits that
7 can actually be used and would --

8 Q (Attorney Kratz) While Mr. Fallon is looking for
9 that, I can go on to a another series of
10 questions. Did you ever talk to this school
11 psychologist, Chris Schoenenberger-Gross?

12 A No.

13 Q Why not?

14 A I felt no need to.

15 Q I'm sorry?

16 A I -- I -- I didn't feel it was necessary.

17 Q Did you ever talk to any of Brendan's teachers?

18 A No. I reviewed their comments. There are some
19 standard scores, now that I find them, if you would
20 like me to go over them, Counsel.

21 Q No. I'm asking for whether or not the school
22 believed Brendan to have a cognitive disability?
23 That was my question.

24 A I can't find that. I just can find the standard
25 scores of some --

1 Q You didn't talk to Chris -- I'm sorry to
2 interrupt you. You didn't talk to Chris
3 Schoenenberger-Gross, or any of his teachers,
4 because you didn't think you needed to. Is that
5 your answer?

6 A I thought this information was, uh, sufficient and
7 helpful to me.

8 Q All right. How about Brendan's parent or
9 parents? Did you talk to Brendan's mother?

10 A No.

11 Q How come?

12 A Uh, for -- I felt that I was able to form a
13 conclusion without, uh, relying on her input.
14 Without relying on her input.

15 Q All right. You didn't think you needed, uh,
16 family opinions as to Brendan's suggestibility,
17 or that -- whether or not he was easily
18 influenced, to render this opinion?

19 A No, I would place more value on opinions of
20 individuals who are teachers and psychologists,
21 because their opinions were made before this court
22 case and more likely to be objective.

23 Q All right. Let's talk about other statements
24 that Brendan made. You said that you reviewed
25 the February 27 interview of officers. You

1 interviewed a May 1, uh, videotape to officers.
2 Were you also made aware, several months before
3 February 27, of statements Brendan made to other
4 family members? Specifically, to one of his
5 cousins, Kayla Avery?

6 A I was made aware of those, but -- but I don't recall
7 it now. I'm sorry.

8 Q Were you aware that in late December, Brendan
9 Dassey told one of his cousins that he saw Teresa
10 pinned up in Steven Avery's house?

11 A I was aware of that, yes.

12 Q You were?

13 A Yes.

14 Q Did you consider that statement, and the fact
15 that it's three months before the, uh, March 1
16 statement? The one where suggestibility is
17 commented upon? The fact that that statement was
18 made three months before, you find that
19 significant or did you include that in your
20 report?

21 A That was included in my report.

22 Q Did you find that significant as to your ultimate
23 opinion as to Brendan's suggestibility?

24 A It could. But sometimes individuals make statements
25 for sensational reasons, including even, uh, um,

1 admitting that they stole the Lindbergh baby, and
2 there were hundreds of people that came forth
3 acknowledging that, so --

4 Q Okay. Well, setting Mr. Lindbergh aside, if you
5 can talk about this case --

6 A That's good.

7 Q -- did you not think that Brendan Dassey's
8 cousin, re -- telling a school counselor and
9 telling the police that Brendan Dassey said that
10 he saw Teresa tied up or pinned up in a house,
11 was relevant as to the March 1 statement, wherein
12 you commented as to his suggestibility? It's a
13 yes or no question.

14 A It -- it's relevant, yes.

15 Q Did you believe that Brendan's statement to his
16 cousin that he saw body parts in a fire at the
17 same time was relevant as to your opinion as to
18 suggestibility?

19 A It's relevant that he said it, yes.

20 Q The fact that Brendan Dassey said, in late
21 December, that he heard Teresa screaming before
22 he went into that house, you believe that's
23 relevant to your opinion as to suggestibility of
24 the March 1 statement?

25 A It's relevant, but I can't make an -- a determination

1 regarding the accuracy of those statements and their
2 reliability thereof, for all the questions you've
3 been asking me in this series.

4 Q Those are statements that are several months --
5 or at least they're alleged to have been made
6 several months -- before this March 1 statement.
7 Do you understand that?

8 A I do.

9 Q Are you also aware of, and did you include,
10 statements that Brendan Dassey made, admissions
11 that Brendan Dassey made, uh, a couple of months
12 after the March 1 statement?

13 A Yes.

14 Q You were aware of statements he made to his
15 mother about the confession? Uh, that is, um,
16 "Why didn't you tell me?" Brendan answered, "I
17 was scared." Do you remember, and did you review
18 that statement made from Brendan to his --

19 A Yeah.

20 Q -- mother?

21 A I'm sorry. I thought you were finished. Yes.

22 Q That Brendan's mother told him, "If you would
23 have told me, Teresa would have still been
24 alive." And Brendan said, "Yeah." Do you
25 remember reviewing that particular telephone

1 call?

2 A I don't remember that telephone call. I'm sorry.

3 Q Do you remember Brendan being asked by his
4 mother, "Did you do all of that stuff to her?"
5 And Brendan replying, "Some of it." Do you
6 remember reviewing that particular statement?

7 A I believe so.

8 Q By the way, are any of those statements, made
9 months after the March 1 statement, do you
10 believe to be relevant to your conclusion as to
11 suggestibility, at least as it relates to the
12 March 1 statement?

13 A It may -- it's relevant to consider. Whether it --
14 It's relevant to consider.

15 Q It would be relevant if Brendan Dassey apologized
16 to the victim's family, in his words, "for what I
17 did to her." Would that be a relevant statement
18 as to suggestibility of the March 1 statement?

19 A It would be something to consider.

20 Q Did you consider it?

21 A Yes.

22 Q And despite all of those statements, despite the
23 statements months before and months after,
24 consistent with what he told the police, you
25 still believe that Brendan was vulnerable to

1 suggestibility; is that true?

2 A Absolutely.

3 Q Doctor, my client -- or my colleague --

4 Mr. Fallon's going to show you Exhibit 219.

5 First of all, tell us what that is and what the
6 date on the top of that report is?

7 A What that is, it's evaluation report for Brendan
8 Dassey, determination of eligibility for special
9 education dated September 29, 2005.

10 Q Does that particular form have a check box or a
11 place where the school can determine whether or
12 not, in their opinion, Brendan has a cognitive
13 disability?

14 A It has a place for that.

15 Q And is that box checked on Brendan's form?

16 A No. What is checked is specific order of disability.

17 Q Some speech and language issues --

18 A Specific learning disability. And the other one was
19 speech or language impairment. Those are the two
20 that were checked.

21 Q Now, Brendan's statement to his cousin about
22 seeing Teresa tied up or pinned up in the house,
23 seeing body parts in the fire, and hearing Teresa
24 screaming, and Brendan's statements, uh, months
25 afterwards to his mother, did those impact or did

1 you consider those statements when Brendan told
2 you he was scared he was going to be arrested?

3 A I don't know, because I don't know in what order I
4 received that information or reviewed it, at which
5 time I interviewed him. After the fact, um, it could
6 be related.

7 Q Okay. Doctor Gordon, the concept of false
8 confessions, we -- we -- we heard about that
9 as -- as set aside or as different from
10 suggestibility. I want to ask you just a couple
11 of questions about that.

12 You're aware, in your, um, work in this
13 area, of several studies that deal with false
14 confessions; isn't that true?

15 A Yes.

16 Q A couple of the preeminent authors in this area
17 are two individuals in California named, uh,
18 Mr. -- is it Drezin or Drizin, and Leo; is that
19 correct?

20 A That's right.

21 Q And another is a person by the name of Brett
22 Trowbridge. You're familiar with their work?

23 A Yes.

24 Q Is it fair --

25 A Trowbridge, no. I -- I'm thinking of that name.

1 There must be someone else. Or the same -- I printed
2 up, last night, regarding, uh, sexually violent
3 person and sex offender commitment, uh, so --

4 Q I -- I'll limit my inquiry, then, to what you are
5 familiar with. Would be the Drizin -- is it
6 Drizin or Drezin?

7 A That I don't know.

8 Q Drizin and Leo. D-r-i-z-i-n. You understand?

9 A Yes.

10 Q You read that name at least? And in their study,
11 which is, uh, in fact, one of the preeminent
12 works in false confession, you'd agree with that,
13 wouldn't you?

14 A They've conducted many studies, so I don't know which
15 one you're referring to.

16 Q Mr. Drizin and Leo indicate, and do you agree
17 with this statement, that most false
18 confessions -- now, we're getting into the area
19 of false confessions versus suggestibility -- are
20 the result of, um, tactics by police which are so
21 impermissible, most of which include physical
22 violence, like beatings, is that what you find?

23 A That's not my reading. Well, we need to back up.
24 There are -- they are not the only authorities in the
25 field.

1 Secondly, um, not only they -- are they
2 not the only authorities in the field, but they
3 do talk about extreme torture as a way to get
4 false confessions. There are chapters that
5 they've done and studies on that. But they've
6 also published, extensively, like I said, even on
7 things such as mild pressure, criticism, so --

8 Q How about we do this, if you can't answer yes or
9 no, then you can let me know, all right? If --
10 if you can, Doctor, I'd appreciate it. Are you
11 familiar with Mr. Drizin and Leo's proposition
12 that most false confessions are the result of
13 such extreme police conduct, impermissible
14 conduct, that can, and often does, include
15 physical violence or beatings of suspects?

16 A Yes.

17 Q Familiar that their studies indicate that most
18 false confessions are the result of very long,
19 sometimes, uh, interrogations that last into the
20 days, rather than just, uh, an hour, two or even
21 three hours. You're familiar with that?

22 A True.

23 Q Now, in our case, that is, in the March 1, um,
24 videotape of Mr., um, Dassey -- Mr. Fallon will
25 take care of that for you.

1 A Thank you, sir.

2 Q Brendan's first admissions, that is, his first
3 admissions of criminal involvement in this case,
4 don't happen at the three-hour or the four-hour
5 mark, but they happen, really, within and right
6 around the one-hour mark. Is that a fair, uh,
7 recollection of --

8 A Yes.

9 Q -- your review?

10 A Yes.

11 Q So that, at least as it relates to false
12 confessions, is extremely inconsistent with Mr.
13 Drizin and Leo's findings. Uh, that is, it being
14 within an hour or two, rather than six, eight
15 hours, twelve hours, days of confession. That's
16 fair, isn't it?

17 A I can't answer that. Not the way it was phrased.

18 Q You told this jury that you were not familiar
19 with the works of, uh, Brett Trowbridge when he
20 deals with the three different types of false
21 confessions?

22 A Oh. Um --

23 Q If I asked you questions about that, might that
24 refresh your -- your -- your memory?

25 A I think others have characterized it in those three

1 categories as well. Uh, so --

2 Q Let me ask you about that. The first, um, area
3 of false confessions, uh, at least Mr. Trowbridge
4 calls a voluntary confession, these are the
5 people that come off the street and confess to a
6 notorious murder that they didn't do.

7 The JonBenet Ramsey fellow, who comes
8 forward. That's the first category. You're
9 familiar with that first category; is that right?

10 A Yes.

11 Q The second is something Mr. Trowbridge calls
12 coerced compliant. That is, that an individual
13 confesses to a crime for a perceived gain.
14 Whether it's real or just perceived, that's why
15 they confess to a crime that may not be true.
16 You agree with that?

17 A Coerced compliant can be for more than just that
18 reason. But it -- it's when it's coerced and they
19 comply and give a false statement.

20 Q All right. But they do it for a gain? That is,
21 uh, something, um -- something that they perceive
22 as of benefit to them? You'd agree with that
23 second component, wouldn't you?

24 A Yep. Many -- there are many different things that
25 they can benefit from.

1 Q And the third that Mr. Trowbridge, uh, talks
2 about, and maybe Dr. Trowbridge, uh, is something
3 called, coerced internalized. That is, that they
4 are convinced, or they, in fact, convince
5 themselves, that their memory is so bad, uh, that
6 either due to intoxication, mental illness, or
7 something else, uh, that they actually did it.
8 They believe at the end of the interview that
9 they did it?

10 A Or brainwashing. You could think of Patty Hearst,
11 for example.

12 Q Okay. Now, with that backdrop, or with that
13 understanding of the three kinds -- or recognized
14 kinds of false confessions, are you familiar with
15 any category of false confession where an
16 individual confesses just to get themselves into
17 trouble? Are you familiar with -- with that as a
18 recognized area of false confession?

19 A Unless it would be voluntary, uh -- I mean, some
20 people do things for notoriety, and knowing of the
21 consequences they -- they -- they do that. It might
22 be kind of hard to understand, but it's -- it's
23 not -- it -- it's done.

24 Q Doctor, I'm going to try to -- actually, I'm
25 going to skip over some things.

1 ATTORNEY KRATZ: And, Judge, with the
2 indulgence of the Court, if I promise to be done
3 by 12:15, then can I finish my -- my cross? Uh,
4 promise, Judge.

5 THE COURT: All right. Go ahead.

6 ATTORNEY KRATZ: Thank you. Then I don't
7 have to come back after -- after the lunch hour.

8 Q (By Attorney Kratz) You said, uh, Dr. Gordon,
9 that the -- one of the areas that you considered
10 in forming your opinion was the circumstances,
11 themselves, that surrounded this interrogation;
12 is that right?

13 A That's -- those are some of the factors. Yes.

14 Q Now, you're not an expert, and I think on a
15 previous occasion you admitted you were not an
16 expert, in interrogation strategy or, uh, in
17 circumstances that surround the interrogative
18 process; is that right?

19 A Uh, that is not my area of specialization, but I am
20 knowledgeable, or I have some knowledge of it.

21 Q Well, that's good. Then, I can ask you, isn't it
22 true that most confessions, at least when a
23 confession is obtained, uh, has stages to it? In
24 other words, uh, suspects typically, and almost
25 universally, start with a denial? They start as

1 denying their involvement in any crime? That's
2 true, isn't it?

3 A True.

4 Q They move towards some version of events that
5 substantially minimize their involvement.

6 There's a minimization component, uh, at least as
7 they move towards confession?

8 A That's common.

9 Q True? And third, then, there is details, or at
10 least some, um, degree of detail, that is,
11 ultimately, provided or given, again, assuming
12 the truthfulness, uh, of the confession. We're
13 not talking about false confessions. We're
14 talking about those that actually happen. Is
15 that all true?

16 A That's common.

17 Q You're aware, uh, Dr. Gordon, that in the
18 interrogative process, it's important for law
19 enforcement officers to not only consider the
20 spoken word, that is, the, um, information or the
21 amount of information that's obtained, um, but
22 they've got a responsibility to look at the
23 quality of the statement? That is, is it
24 something that can be or ought to be believed?
25 Would you agree with that statement?

1 A Yes.

2 Q Again, that process law enforcement officers
3 often look at whether or not there's physical
4 evidence that would corroborate what it is that
5 the suspect is telling them? That you
6 understand, don't you?

7 A Physical evidence displayed by the suspect during the
8 interview?

9 Q That there's physical evidence available during
10 the investigation that corroborates what the
11 suspect is saying? That that's a factor that
12 they consider when deciding the quality of what
13 it is that the person says?

14 A True.

15 Q They also consider information that the general
16 public doesn't know yet? That is, that's
17 purposely withheld from the general public. That
18 you agree with?

19 A Yes.

20 Q And, lastly, and, perhaps, most importantly, law
21 enforcement officers consider what they don't
22 even know yet? In other words, when a suspect
23 tells them something, and that suspect gives
24 sufficient detail that they can later
25 corroborate, the fact that they -- that the cops

1 didn't even know it yet, goes a long way towards
2 considering the quality of what they're being
3 told. That's fair, isn't it?

4 A Yeah, that's true.

5 Q Let me talk about this Gudjonsson Suggestibility
6 Scale. You are going to need to pull out the,
7 uh, Gudjonsson test, because I have some
8 questions for you, which was developed, you said,
9 by a gentleman by the name of Gudjonsson, who
10 started in Iceland, moved to England, and, in
11 fact, did most of his, uh, study and most of his
12 work continuous to, as I understand, in Great
13 Britain; is that right?

14 A London, precisely.

15 Q All right. Now the purpose of this test, as I
16 understand, is, although you tell the suspect, in
17 this case you told Brendan, it was a memory test,
18 this isn't a memory test at all, is it?

19 A No. Well, it's not design -- designed to be a memory
20 test. Although, you do ask them to respond with --
21 by restating the -- the story. And, so, you can, to
22 some degree, assess their -- informally, their --
23 their memory. But it's not designed to be a memory
24 test. That's true.

25 Q You've got the -- the test in front of you, as

1 well as the scoring sheet?

2 A Yes.

3 Q Thank you. So the jury understands the basic
4 premise of this test, as you read them a story,
5 you read Brendan a story, and you first asked if
6 they can recall, something called immediate
7 recall, if they can recall the facts that was
8 read to them; is that correct?

9 A That's correct.

10 Q The test, itself, was developed, uh, you said, by
11 this person from Iceland, later going to England.
12 Um, the test that you provided to us, that is, to
13 the defense, was this, the very story, the very
14 test that was administered to Brendan?

15 A Yes.

16 Q Was it on the 3rd or the 10th of November?

17 A I don't recall. I'm sorry.

18 Q That's fine. If you'd, uh, be so kind, uh,
19 Doctor, to read -- I'm not going to have you read
20 the whole story. But I want you to read the
21 first sentence of that story to the jury so they
22 can get a flavor for how, uh, Brendan was read
23 this particular story. Think you'd be able to do
24 that for us?

25 A Well, if that's a part of the court order for me to

1 do that, then I -- I understand it is?

2 THE COURT: It is.

3 A (As read) "Anna Thompson of South Croydon was on
4 holiday in Spain when she was held up outside her
5 ho -- outside of her ho -- outside her hotel, and
6 robbed of her handbag, which contained 50 pounds" --
7 and I'd say 50 dollars -- "worth of traveler's
8 checks, and her passport."

9 Q You say what? Fifty dollars?

10 A Yes.

11 Q What do you mean you say 50 dollars?

12 A When I read it. That -- there is a Engl -- there's
13 American version of this, too, but it's not as well
14 normed of the story.

15 Q Well, that -- my first series of questions, first
16 of all, was whether or not Brendan even
17 understood what it meant to be on holiday? Do
18 you know if Brendan knew what being on holiday
19 meant?

20 A I don't know, because that wasn't stated in the
21 memory portion that he repeated back to me, um,
22 immediately after I read him the story.

23 Q Now, the memory portion that he repeated back to
24 you, are you reading from something?

25 A Yes, I am.

1 Q What is that?

2 A It's what I wrote down as -- to try to -- as my best
3 to write as fast as I could to write down what he was
4 telling me at the time.

5 Q Did you send that to -- to me? To the defense?

6 A No.

7 Q Wasn't that asked for, Doctor?

8 A Um, yes, it was. And I apologize.

9 Q So we asked for your file. You're reading from
10 that now, and that's something you didn't provide
11 the State.

12 A I might have provide -- I might have provided it to
13 Mr., uh, Fremgen, and he may not have provided it to
14 you. I don't know.

15 Q All right. I'll move on.

16 ATTORNEY KRATZ: Uh, Judge, I would at
17 least note I'd like to make a record at the end
18 of this, but I'll move on at this point.

19 Q (By Attorney Kratz) Doctor, the -- the issues of
20 "on holiday," uh, you said that, uh, you didn't
21 know whether or not Brendan even understood that.
22 When it indicates that this Anna Thompson woman
23 from South Croydon -- by the way, where is South
24 Croydon?

25 A I don't know. It's in -- I assume it's in England.

1 Q Do you think Brendan knows where South Croydon
2 is?

3 A If I don't know, I'm sure he doesn't.

4 Q Doesn't say Cincinnati or it doesn't say
5 something where somebody from the upper midwest
6 might actually understand this? Doesn't say
7 that, does it?

8 A It says --

9 ATTORNEY FREMGEN: Objection, as to whether
10 someone from the upper midwest might understand.

11 THE COURT: The objection is sustained.

12 ATTORNEY KRATZ: I'll -- I'll move on.

13 Q (By Attorney Kratz) When it says that "contained
14 50 pounds worth of traveler's checks," is it your
15 testimony in this case that, kind of on your own,
16 you just changed the, uh -- the story?

17 A I changed that one word.

18 Q Okay. Do you know how the changing of the --
19 that one word, uh, affects the results or affects
20 the norms that you're later going to ask this
21 jury to believe?

22 A I don't believe that one word of, uh, seventy has any
23 appreciable --

24 Q How do you know that?

25 A Uh, I said I believe. There's a difference. I don't

1 know that.

2 Q And isn't the whole point of norms and
3 administration of these kind of tests, do it the
4 same way every time and with every suspect?

5 A Yes.

6 Q After reading this story about this Anna Thompson
7 woman from England, um, Brendan is then asked to
8 recall the story and to provide you with, um, the
9 details that he can remember; is that right?

10 A That's right.

11 Q Now, is there a -- a scoring system for that? In
12 other words, is he given a particular score or is
13 that available, even, in this test?

14 A I don't believe so.

15 Q The bottom of the first page where it says,
16 immediate recall, on the test, it looks like a
17 score. Memory recall, maximum of 40. Can you
18 tell us what that means?

19 A I stand corrected. It -- it could be scored.

20 Q All right. So whether Brendan even knew what the
21 heck you were talking about with this lady from
22 England, could have been scored by you; is that
23 right?

24 A That -- that could have been scored, but there are no
25 norms for those.

1 Q All right. Could have been scored? You didn't
2 do it?

3 A That's true.

4 Q After reading this story, Brendan is then
5 provided what are called leading questions. That
6 is, questions not only leading, but, also, have
7 false information within them. That's true,
8 isn't it?

9 A That's true.

10 Q In fact, the information is what's known as false
11 alternatives. I'll give an example. It's not in
12 here, but it's a good example. Uh, if this Anna
13 Thompson woman wasn't wearing a hat, one of the
14 questions might be, Brendan, was she wearing a
15 red or a blue hat? That's what's called a false
16 alternative question that presupposes false
17 information. That's true, isn't it?

18 A True. True.

19 Q And, then, if Brendan says, she was wearing a red
20 hat -- he guesses, if he says she was wearing a
21 red hat -- he'd get a point or either a checkmark
22 on something called "yield." That is that he
23 would be yielding to that false suggestion; is
24 that right?

25 A True.

1 Q I'm going to skip ahead. We're going to go back
2 to -- to some examples here. But halfway through
3 this test, you express disappointment. In other
4 words, you fold your arms, or something to that a
5 point, tell Brendan, I'm disappointed in your
6 answers. You can do better this time. Uh, I'm
7 going to ask you the same question.

8 Was she wearing a red or a blue hat?
9 And this time, if Brendan, knowing he said red
10 the first time, says she's wearing a blue hat,
11 you give him a checkmark for shifting. That he
12 shifted his answer. That's kind of accurate,
13 isn't it?

14 A That's accurate for one of -- one type of question.

15 Q All right. Importantly, Doctor, tell this jury,
16 if Brendan gives you the right answer the second
17 time, the correct answer, if Brendan, the second
18 question, when you say, I'm disappointed, you
19 gave the wrong answer, and Brendan tells you, you
20 know what, Doctor, she wasn't wearing a hat. How
21 would you score that?

22 A As shift.

23 Q So you're telling this jury that even when
24 Brendan corrects himself, even when he gives you
25 the right answer the second time, he gets marked

1 off, or something as to your scale then gets
2 added against him as a shift?

3 A Because it shows he's suggestible, yes.

4 Q What happens, by the way, and how is this scored
5 if Brendan was provided with a true answer? In
6 other words, if Brendan was asked, did the lady
7 have a hat or not? And Brendan said, no, I
8 didn't have a hat, are there questions like that
9 in this test?

10 A Repeat it again, please?

11 Q If Brendan was asked a question that contained a
12 true answer, something that was really part of
13 this story, and asked a question like, did the
14 woman have a hat on or not? How is that scored?
15 How is that kind of question scored on --

16 A That is not -- I'm sorry. Was it -- you finished?
17 Uh, it was -- it's not scored as a yield, but it's
18 scored as a shift. If -- let me think of an example.

19 If a person has the question, uh, did
20 you -- was anyone walking outside the building?
21 And there someone was. And they said, yes, then
22 it wouldn't be scored as a -- a leading question.
23 Or -- or what -- or did you see anyone outside?
24 But, then, if they later on change that answer,
25 then, even though it was a correct, and not a

1 leading question to start with, it wouldn't be
2 scored as a shift later on. You look puzzled.

3 Q I am puzzled, because if he answers it correctly,
4 and you fold your arms and you tell this person
5 to change his answer, and he does, how does that
6 have anything to do with this jury as to whether
7 or not he's suggestible?

8 A It shows that he responds to pressure and changes his
9 answers, whether they be correct or not. It shows he
10 responds to -- to, uh, pressure.

11 Q He responds to his psychologist folding his arms
12 and saying, I'm disappointed in you, Brendan, you
13 should change your answer. Wouldn't you expect
14 Brendan to change his answers?

15 A I think I'd expect Brendan to because of all the
16 other factors in this case. Uh, if I -- if he
17 was -- if he had a advanced degree, had -- was a
18 lawyer, had contact with the law, uh, he was
19 independent, he was outgoing, he was, uh, risk-
20 taking, he had a high IQ, uh, he had no learn --
21 history of learning problems, then it would surprise
22 me.

23 Q But you didn't consider, during this
24 interrogation, what this jury has to consider,
25 that Brendan was able to resist suggestibility?

1 You used this test instead; isn't that true?

2 A I used this standardized test, which is --

3 Q Irrespective of whether he actually, in real
4 life, was able to resist suggestibility? Is that
5 what you're telling this jury?

6 A I reviewed what he did in real life, and he was -- he
7 changed his responses in response to both leading and
8 pressure.

9 Q But in real life he wasn't provided false
10 alternatives. He was asked, did you kill her or
11 didn't you? And he said, yeah, I killed her.
12 That's different than this Gudjonsson test, isn't
13 it? Because this presupposes false alternatives.

14 ATTORNEY FREMGEN: I would object to --

15 Q Isn't that true, Doctor?

16 ATTORNEY FREMGEN: Judge, I object to
17 the form of question. I don't think that was a
18 false alternative.

19 THE COURT: Uh, I'm going to overrule the
20 objection. This is cross-examination. It's wide.
21 It's broad. I think that's -- I think that
22 question's, uh, within the realm of it. Go ahead.

23 Q (By Attorney Kratz) When provided with a true
24 answer, and Brendan given an opportunity to adopt
25 that answer, isn't that different than the

1 Gudjonsson test? That's my question, Doctor.

2 A It's different than part of the Gudjonsson test
3 because only a minority of the questions on the
4 Gudjonsson test are false altern -- alternative
5 questions.

6 Q Only a what?

7 A A sm -- a small percentage of them.

8 Q A small -- 15 out of 20 are false alternative
9 questions.

10 A That's not correct, Your Honor. Uh, Counsel.

11 Q Okay. How many -- how many out of 20 are false
12 alternatives?

13 A Um, I can count. One, two, three, four, five. Five
14 out of twenty questions. One-fourth.

15 Q You said that this test -- or at least one of the
16 things it tests for is memory; is that right?

17 A Well, it assesses memory, but it's not really a
18 memory test. It's not -- that's not the purpose of
19 it.

20 Q Now, Doctor, you're aware of different kinds of
21 memory? Uh, that is, how individuals remember
22 things? How they process and remember
23 information?

24 A Sure.

25 Q You're aware of something that is called, uh,

1 semantic memory? Or what my teachers used to
2 call book learning? Uh, that they can remember
3 things that are read to them or things they see
4 in a classroom?

5 A Okay.

6 Q And that's different than something called event
7 memory or autobiographical memory? Things that
8 people actually live through. You understand
9 that people remember those things differently;
10 isn't that right?

11 A I understand they're -- they're different.

12 Q Now, reading a story about some lady from
13 England, what kind of memory is involved there?
14 Is it the book learning kind of memory? Or
15 something that Brendan actually lived through?

16 A It's -- it's not experiential learn -- uh, memory.

17 Q All right. You're familiar, Doctor, with studies
18 that show that individuals, especially, uh, with
19 low average IQ's, do significantly better with
20 event memory? That is, with things they've
21 actually lived through, rather than parroting
22 back or recalling things that are read to them?
23 You're aware of that?

24 A I'm not aware of that, but that doesn't surprise me.
25 I mean, if a person has learning problems, uh, it's

1 hard to understand more abstract things than things
2 they experience.

3 Q Well, importantly, police interrogations have
4 everything to do with event memory, things that
5 people have actually lived through, when asked
6 about, uh, whether or not they were involved in
7 something. Uh, they can use that kind of memory;
8 isn't that true?

9 A True.

10 Q Event memory? And people with -- or at least
11 that are asked to call upon their event memory of
12 higher accuracy, less tendency to acquiesce,
13 which is called yield, uh, and are more resistive
14 to suggestion, less chance of shifting, you'd
15 agree with those propositions, wouldn't you?

16 A That question went by too fast for me to agree or
17 disagree, Counsel.

18 Q I'm sorry?

19 A You went -- You went too fast for me.

20 Q People with low -- Brendan would be better at
21 event memory than with semantic or book learning
22 kinds of memory. Would you agree with that?

23 A For that particular factor, yes.

24 Q Since I have two minutes I have to complete my
25 examination with this doctor, would you agree

1 that the norms, that is, uh, who the Gudjonsson
2 test is compared against, um, do not necessarily
3 reflect the population of -- of people like
4 Brendan Dassey? In other words, uh, they aren't
5 compared against other people who are currently
6 being charged with homicide; is that true?

7 A They're not being -- yes.

8 Q And, so, whether these are some students in
9 England at Oxford, or something, who took this
10 particular test, uh, they -- when told to change
11 their answers, they may be more reluctant to do
12 that, than somebody whose expert, whose doctor
13 told him, Brendan, I want you to change your
14 answer, that's fair, isn't it?

15 A I don't know.

16 Q Finally, the more suggestible a person is, the
17 less detail they're able to provide? That is,
18 the less, um, recall they may have about a
19 particular event; is that true?

20 A Yes.

21 Q Conversely, then, the amount or the quality of
22 information, the quality of detail that Brendan
23 could provide, in fact, doesn't support the
24 proposition that this statement was the product
25 of suggestibility, does it?

1 A Read that back, please. Or repeat it.

2 Q Sure. The quality, that is, the detail, that
3 Brendan was able to provide, in fact, does not
4 support your conclusion. Is inconsistent with
5 your conclusion as to suggestibility; isn't that
6 true?

7 A If that is considered in isolation, that's -- that's
8 true. But there are other factors, obviously,
9 involved.

10 Q I appreciate it very much. Thank you.

11 ATTORNEY KRATZ: Thank you, Judge.

12 THE WITNESS: You're welcome.

13 THE COURT: All right. We're going to
14 adjourn until 1:30. Um, you may step down. I'll
15 remind the jury, don't talk about this or anything
16 related to this.

17 (Jurors out at 12:15 p.m.)

18 ATTORNEY KRATZ: Judge, could I just put
19 that one thing on the record that I wanted to --

20 THE COURT: Oh, go ahead. All right.

21 ATTORNEY KRATZ: As we know, Dr., uh,
22 Gordon referred to some of his notes that I had
23 specifically --

24 THE COURT: You can -- you can step
25 down.

1 ATTORNEY KRATZ: -- I had specifically
2 asked for and were not provided to me. I would
3 ask that during the break, perhaps Mr. Fremgen go
4 through with Dr. Gordon, his file to make sure
5 that was the only thing that wasn't provided to
6 me as ordered and as requested.

7 I'll tell the Court, if that's the only
8 thing I didn't get, I'm not asking for any
9 sanction order. I'm sure it was an oversight.

10 But, uh, at least Mr. Fremgen probably
11 should go through that file and make sure I got
12 the rest of that information.

13 THE COURT: Mr. Fremgen? Do that.

14 ATTORNEY FREMGEN: All right.

15 THE COURT: All right? Uh, five minutes
16 in chambers, please.

17 (Recess had at 12:18 p.m.)

18 (Reconvened at 1:30 p.m. Jury in)

19 THE COURT: Mr. Fremgen, you may proceed.

20 ATTORNEY FREMGEN: Thank you, Judge.

21 THE COURT: You're welcome.

22 **REDIRECT EXAMINATION**

23 BY ATTORNEY FREMGEN:

24 Q The, um, prosecutor asked you a couple of
25 questions I want to follow up on from before.

1 Uh, Doctor, one question was asked of you whether
2 you're familiar with any other psychologists in
3 Wisconsin who have, uh, performed similar
4 evaluations and testified similarly. You
5 indicated, no?

6 A That's correct.

7 Q Are you aware of any other jurisdictions where
8 that might have occurred?

9 A Yes. And other states.

10 Q In other states. Your report, would it be fair
11 to call it a summary of all of your observations,
12 evaluation and tests?

13 A Yes.

14 Q Did you include in that summary report -- and,
15 again, I believe it's a five-page report? Do you
16 recall that?

17 A I --

18 Q And, actually, you know what I'll do? I'll mark
19 that as an exhibit if the State has no objection.

20 ATTORNEY KRATZ: No, I think it's
21 appropriate, Judge.

22 (Exhibit 231 marked for identification)

23 THE COURT: All right. Is that Exhibit 230
24 then?

25 THE CLERK: Two thirty-one.

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THE COURT: Two thirty-one?

Q (By Attorney Fremgen) I'm going to show you what has been marked Exhibit 231. Is this the report that was what you were talking about -- or, do you believe this is the report that was discussed on cross-examination?

A Yes.

Q Now, one question of you, Doctor, was whether or not you included all of the, uh, questions and answers from the 16-PF in that summary report; correct?

A Did it include all of the responses to all the questions?

Q Correct.

A No.

Q Why not?

A It would not have helped with the interpretation and, secondly, it would have been very unwieldy to include all reports. I mean, all questions and responses. And it would have been a violation of my ethics.

Q Well, what do you mean by "unwieldy?" Do you mean that it would have been a 50- or 60-page report?

A Oh, at least that, if I would have included an interpretation of -- of each question for each item

1 on all of the personality tests.

2 Q And, again, that would -- you know, if I would go
3 further and ask you the same with the MMPI, if
4 you included all 478 questions and responses, how
5 would that have affected or impacted on the --
6 the summary report in and of itself?

7 ATTORNEY KRATZ: Judge, I'm going to
8 interpose an objection. I think my question was are
9 those items that were contrary or contradictory to
10 his opinion, why they weren't included. I didn't
11 ask this doctor whether he included every answer to
12 every test.

13 THE COURT: That's my recollection of the
14 question, Counsel.

15 Q (By Attorney Fremgen) Doctor, is it normal
16 procedure by a forensic, or, for that matter,
17 clinical, psychologist to include the actual
18 question and answers of tests in a summary
19 report?

20 A Absolutely not.

21 Q Why not?

22 A Well, like I -- I said, it's a -- I -- I -- when you
23 purchase these tests, you -- you agree that you have
24 a certain level of training, and I document that
25 for -- so you even can buy it. And, then, there's

1 contractually, you agree that you won't disseminate
2 this to anyone other than psychologists.

3 Uh, secondly, by extracting individual
4 questions, it -- it -- it would not -- it would
5 be misleading. It would not provide for a solid
6 report.

7 Q How do you view a summary report?

8 A I do my best to summarize all of the objective data
9 that's relevant to a given case so that the
10 conclusions, uh, in my report could be understood,
11 based on what precedes it in the report.

12 Q Do you believe that Exhibit 231, essentially,
13 complies with your understanding of what should
14 be in a summary report?

15 A Yes.

16 Q Upon cross-examination, an issue was brought up
17 about, um, anxiety; correct?

18 A Correct.

19 Q Uh, observations of anxiety and, um, whether
20 there was -- may have been -- I -- I believe it
21 was the 16-PF, or could have been the, uh -- I'm
22 sorry, I believe it was the 16-PF, some
23 observation on a question that deals with
24 anxiety; correct?

25 A Correct.

1 Q Did you, in your mental status evaluation, ever
2 observe what you believed, based upon your, uh,
3 training and experience as a clinical, as well as
4 forensic psychologist, anxiety when you spoke
5 with Brendan Dassey?

6 A Yes.

7 Q So even if it's not in a test, could you still
8 discern whether someone might be exhibiting
9 anxiety?

10 A Even if it's not in a test, uh, I could form some
11 conclusions regarding anxiety, uh, just from a
12 interview.

13 Q The, uh, MMPI-A that you testified about, uh, you
14 indicated you weren't sure, or can't recall, if
15 you actually asked the questions and circled the
16 answers, or whether Brendan actually circled the
17 answers on the score sheet; correct?

18 A Correct.

19 Q That's the 478 questions you had talked about?

20 A True.

21 Q Are the results interpreted by you?

22 A They're interpreted by me and hypothesis come from a
23 computer, initially.

24 Q Let me ask you this, Doctor: When you -- after
25 you complete the test, where do you send it? Or

1 do you send it somewhere?

2 A I, or one of my assistants, hand enter the responses
3 into a computer, and it electronically is sent to,
4 uh, Minnesota, and a report is immediately generated,
5 including the scores, and sent back to my --

6 Q And you -- when you receive that, you receive,
7 basically, the -- the scores, and I believe it
8 was Exhibit, uh -- I'm showing you what's been
9 marked as Exhibit 229? And, again, this is what
10 the results would show from the MMPI-A?

11 A Those are four scales contained on the MMPI-A.

12 Q So four of the 70 scales you had discussed on
13 cross-examination were on this exhibit; correct?

14 A Correct.

15 Q But what you receive is the number, where it says
16 score; is that correct?

17 A Correct.

18 Q And percentile, you receive that also from the
19 manufacturer who -- who tallies up the answers
20 and provides you with a computer-generated score?

21 A No, I -- I personally know from charts and books and
22 how to look up what particular T scores -- the, uh,
23 72, for example, and I know how to convert that into
24 the percentile. So I do that on my own.

25 Q So the score, itself, is generated by the

1 computer and you provided perc -- a percentile to
2 that?

3 A True.

4 Q Are all 70 scales that you testified about on
5 cross-examination pertinent, in your opinion, as
6 to the issue of suggestibility?

7 A No.

8 Q Are the scales on Exhibit 229 that you've
9 included from the MMPI, in your opinion,
10 pertinent in reaching your conclusion as to
11 suggestibility?

12 A Are the -- what -- what's Exhibit 229?

13 Q I'm sorry. The one on the screen. The MMPI?

14 A Three of four are pertinent. I -- I listed the high
15 scores from the -- high -- high scores from the
16 clinical scales, and the basic clinical profile, and
17 the high scores from the additional scales beyond the
18 basic ten.

19 Q Why are these three pertinent, where the other 70
20 are not pertinent, in your opinion, in reaching
21 the conclusions about suggestibility?

22 A My review of the other scales sh -- was -- shows that
23 those scores were either not consistent with, or
24 consistent with, uh -- they weren't related to
25 whether a person was suggestible or not. So I -- I

1 didn't include them.

2 Q Is that information that you incorporate from
3 your research, uh -- or from the research from
4 Gudjonsson?

5 A Gudjonsson and others.

6 Q In totality, the -- all the tests and inventories
7 that you've used, are these considered objective
8 inventories and tests or subjective?

9 A Objective.

10 Q Why is it that you want objective tests in
11 addition to your clinical judgment?

12 A Objective tests are based on research from a variety
13 of institutions with thousands of subjects and result
14 in reliable scores that are the same scores obtained
15 over and over. And by obtaining the same score over
16 and over on a given scale, then you can see if
17 they're valid. That is, if those scores are
18 connected to other variables, such as, uh,
19 depression, such as, whatever the case might be. And
20 that's how those scales are obtained, based on -- on,
21 uh, well-accepted research that's been taught to me
22 in 197 -- early '70's, and for that as well, up until
23 now.

24 Q And getting back to the objective nature of these
25 tests, they're actually -- would you -- well, do

1 you actually make the test yourself or does
2 somebody else make them?

3 A I don't make the tests. That's -- someone else
4 take -- has made the test.

5 Q And you've testified previously that you've, uh,
6 performed thousands of evaluations before?
7 Clinical as well as forensic?

8 A True.

9 Q And you use objective tests in those types of
10 evaluations as well?

11 A I only use objective tests, uh, since 1978. I --
12 I -- my review of the literature suggests that, uh,
13 projective tests are not useful.

14 Q So you use objective tests along with your own
15 clinical analysis and judgment?

16 A Yes.

17 Q And, at times in the past, when you've done
18 evaluations, um, using objective tests, have the
19 results always been consistent?

20 A No.

21 Q Were your results in this case consistent?

22 A All of the personality tests were consistent, as were
23 the IQ tests, which were consistent with my
24 conclusion -- my conclusion.

25 Q What significance would you place on the

1 consistency of the objective tests with your
2 conclusion?

3 A It's highly unusual that that occurs and it provided
4 me with more competence in the interpretation and
5 conclusions that I reached regards -- regarding the
6 present case.

7 Q On cross-examination, the prosecutor asked you
8 about the March 1, 2006, video; correct?

9 A Correct.

10 Q You indicated that was not absolutely necessary,
11 but was helpful, in your determination of
12 suggestibility; correct?

13 A True.

14 Q Why was it that you feel it was not absolutely
15 necessary in making that determination?

16 A Because one can rely on interview and objective tests
17 that I use to assess whether a person has
18 psychological characteristics that cause them to be
19 susceptible to suggestibility and giving confessions
20 when, uh, there's pressure applied.

21 Q What -- what was helpful then, about the video
22 once you made your initial opinion about
23 suggestibility?

24 A It confirmed that, in various cases, uh, yield and
25 shift-type of questions, uh, and different ways to

1 obtain a confession were -- were evident.

2 Q Well, and let me just follow up on the yield and
3 shift, um, answer. The -- the prosecutor, in
4 cross-examination, mentioned that you left out of
5 your report examples of times Brendan resisted
6 suggestion; correct?

7 A Correct.

8 Q And you said you did?

9 A I did.

10 Q And -- and you -- I think you also confirmed that
11 you noted times on the tape that he resisted
12 suggestion; correct?

13 A True.

14 Q Did you also note times or examples of Brendan,
15 initially, resisted, but later changed, based
16 upon questioning?

17 A True.

18 Q So both occurred on that video; correct?

19 A Yes, sir.

20 Q Is this an example of that shift or yield that
21 you were discussing in regards to the Gudjonsson
22 Suscept -- Suggestibility Scale?

23 A The Gudjonsson shift and suggestive shift, in, excuse
24 me, response to yield are similar to which -- that
25 which was found in the, uh, in -- in -- in

1 interviewer interrogation, depending on what you
2 choose to call it.

3 Q When you did review the school records, you
4 reviewed those after your, uh, initial opinion;
5 correct?

6 A That's right.

7 Q Did you note anything in the records that
8 indicated that the school had ever tested Brendan
9 for his level of -- or whether there was a lack
10 of suggestibility?

11 A I didn't note that that was done.

12 Q In your psych -- in your experience, is that
13 an -- uh, normal for schools to make
14 determinations of suggestibility or lack of
15 suggestibility?

16 A No.

17 Q So it wasn't unusual not to see that in the
18 records; correct?

19 A Absolutely.

20 Q In the, uh, actual example, the Gudjonsson
21 Suggestibility, uh, test that you performed on
22 Brendan, and I believe that Mr. Kratz pointed out
23 and had you read portions of, um, you indicated
24 that you had changed the word "pound" to
25 "dollar"; correct?

1 A Correct.

2 Q Essentially, changing the English monetary
3 system, den -- denoting money, to what -- the
4 American -- the Americanized monetary dollar;
5 correct?

6 A Correct.

7 Q Was that -- in reviewing the test, itself, did
8 that affect results of yield or shift? Changing
9 that one word?

10 A No, because no questions were based on pound versus
11 dollar.

12 Q On cross-examination, you indicated that shift
13 and yield is not necessarily indicative of
14 whether someone answers true or false; is that
15 correct?

16 A That's correct.

17 Q On -- Mr. Kratz asked you a few follow-up
18 questions, and questioned you on the significance
19 of Brendan's shifting to a true answer based on
20 mild pressures; correct?

21 A That's correct.

22 Q What significance does that have, based -- in
23 regards to your opinion on, uh, susceptibility to
24 suggestion?

25 A None.

1 Q Is the test -- the Gudjonsson Suggestibility
2 Scale test -- designed to determine if the
3 answers are true or false?

4 A No.

5 Q What is the -- the design of the test?

6 A It's designed to assess whether a person is
7 suggestible. Interrogative suggestibility, to use
8 the entire word.

9 Q So, if someone would shift from a true answer to
10 a false answer, would -- well, what indicate --
11 how -- what, uh, impact would that have on your
12 opinion?

13 A It would simply show that they shift their answers in
14 response to pressure or criticism of their prior
15 response, and would show that they are susceptible to
16 change if they repeatedly did that.

17 Q Is that the point of the test?

18 A Yes, sir.

19 Q One point that, uh -- during questioning on
20 cross, Mr. Kratz asked, or commented, that
21 Brendan had shifted or changed his answer when
22 you, quote, his psychologist, asked him; correct?

23 A He shifted his answer when I didn't -- I didn't ask
24 him -- I -- I told him that I wanted him to do better
25 and --

1 Q Doctor, actually, my question is, simply, he
2 shifted -- the question was asked on cross
3 whether -- Mr. Kratz asked you, did he shift or
4 did he change -- excuse me, not shift. Did he
5 change his answer to you, his psychologist?
6 A He changed it to me, psychologist, as respon -- in
7 response to what I said to him. True.
8 Q This is when you were you there meeting with
9 Brendan; correct?
10 A Correct.
11 Q And you observed the March 1, 2006, video?
12 A True.
13 Q At times, do you recall, if you do recall,
14 examples of when the officers referred to him as
15 "buddy?"
16 A Yes.
17 Q Touched his knee?
18 A Yes.
19 Q Essentially, befriending themselves with Brendan?
20 A On some occasions.
21 Q And do you note -- did you note, again, similar
22 changes in answers to these officers who were
23 befriending him?
24 A True.
25 ATTORNEY FREMGEN: Nothing else, Judge.

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THE COURT: Any recross?

RE-CROSS-EXAMINATION

BY ATTORNEY KRATZ:

Q Just one -- one question, Dr. Gordon.

Mr. Fremgen asked you about yield and shift, and gave you an example of Brendan being questioned by officers, um, and then changing his answer. If that was an example of what, uh, Mr. Fremgen called yield and shift. Do you remember that question?

A I do.

Q Isn't that also an example of an interrogative process where a suspect denies involvement in a crime, is confronted with evidence against him, and then admits to the crime? It's just as consistent with that, isn't it?

A It's consistent with getting a confession.

ATTORNEY KRATZ: All right. That's all I've got of Dr. Gordon. Thank you, very much, again.

THE COURT: All right. You may step down.

ATTORNEY FREMGEN: Judge, I would move Exhibits, with the same conditions as we've placed before, 226, 227, 229 and 230 and 231.

THE COURT: Any objection to that?

1 ATTORNEY KRATZ: I may have a objection to
2 later use, but to complete the record, I have no
3 objection, Judge. Thank you.

4 THE COURT: All right. Mr. Fremgen, any
5 additional witnesses?

6 ATTORNEY FREMGEN: No, Judge.

7 THE COURT: Uh, I think we now have some
8 matters to -- to take up. I'm going to excuse the
9 jury for a few moments.

10 (Jury out at 1:54 p.m.)

11 THE COURT: All right. You may be
12 seated. Mr. Kratz, it's my understanding that
13 the prosecution proposes introducing some
14 rebuttal testimony this afternoon; is that
15 correct?

16 ATTORNEY KRATZ: Yes.

17 THE COURT: And I -- we have discussed this
18 briefly in chambers before coming here, all counsel,
19 uh, together with the Court, uh, and I said to you
20 that before rebuttal testimony would be permitted, I
21 would have to hear from you an offer of proof as to
22 who was going to testify and, uh, specifically, on
23 what particular issues was he or she going to
24 testify.

25 The general rule is that rebuttal may

1 meet only new material, or new testimony, new
2 facts, put in by the defendant. Uh, essentially,
3 it's -- the Court has a fair amount of discretion
4 in permitting or rejecting rebuttal testimony.
5 Uh, with that said, Mr. Kratz, are you prepared
6 to make an offer of proof?

7 ATTORNEY KRATZ: I can either do that
8 orally or I can do that by question and answer,
9 Judge. I think if I do it orally, that would,
10 uh -- that would suffice. But, uh, if you want a
11 more detailed version, we can do that. How about
12 I try it orally first, and then --

13 THE COURT: Please.

14 ATTORNEY KRATZ: -- then we'll see. We do
15 intend to call, uh, James Armentrout, clinical, uh,
16 psychologist. Uh, that CV was provided to
17 Mr. Fremgen this morning. It was sent over the
18 evening hours to the D.A's Office here, and I
19 provided it, as the Court, uh, wished.

20 Dr. Armentrout has brought with him, uh,
21 his original CV, and I believe he will be, um,
22 recognized as a -- an expert, given his clinical
23 psychology background, as well as the number of
24 times he's been accepted in, uh, this and other
25 states as an expert.

1 The new testimony, Judge, that's been
2 presented by Dr. Gordon, are on the issues of
3 suggestibility. Uh, and, specifically, uh,
4 whether or not, uh, psychologists, whether
5 forensic or clinical, uh, psychologists, um,
6 render opinions in an expert capacity in that
7 area. Uh, specifically, the issue of whether,
8 uh, suggestibility is a specialty or
9 sub-specialty, uh, is of issue in this case, and
10 I believe Dr. Armentrout can testify about that.

11 More importantly, however,
12 Dr. Armentrout is familiar, because of the
13 discovery provided by Mr. Fremgen, with the
14 tests, reports and opinions, uh, which have been
15 completed by Dr., uh, Gordon. Uh, Dr. Armentrout
16 is prepared to comment as to, uh, those reports,
17 as to each of the specific tests, how they were
18 administered, uh, and, again, perhaps, most
19 importantly, the opinions that, uh, may be drawn,
20 uh, therefrom.

21 Uh, Dr. Armentrout, specifically, and
22 finally, uh, will give, um, uh, an opinion, uh,
23 regarding the, uh, ultimate opinion rendered by,
24 uh, Dr., uh, Gordon, uh, and may, in fact,
25 disagree that the test results, um, at least from

1 his review of those same materials that
2 Dr. Gordon has provided, uh, may lead to that
3 result.

4 I anticipate the rebuttal testimony, uh,
5 to be a half an hour or less. Uh, will, in a
6 very strict sense, be rebuttal. That is only
7 what Dr. Gordon, uh, has testified about, and we
8 are prepared to proceed in that fashion.

9 THE COURT: Before I -- I get to
10 Mr. Fremgen, I'm just reviewing my notes, haphazard
11 as they are, but, uh, it was my recollection that
12 Dr. Gordon claimed that, uh, false confessions and
13 suggestibility was neither a specialty nor a
14 sub-specialty. Did I miss that?

15 ATTORNEY KRATZ: That it -- it remains,
16 uh -- it remains an issue, Judge. Uh, whether, uh,
17 this -- whether Dr. Gordon, um, believes he, or any
18 other psychologist, is, um, qualified or capable to
19 render an opinion as to suggestibility, uh, is very
20 much at issue. Dr. Armentrout has an opinion about
21 that and I intend to ask him about that.

22 Uh, he will describe, specifically, what
23 suggestibility is, and is familiar not only with
24 the practice of, uh, clinical and forensic, uh,
25 psychology, um, but also, uh, trial or courtroom,

1 uh, testimony. Uh, and that the, uh, opinions,
2 um, reached by Dr., uh, Gordon, uh, he, I
3 believe, will opine, uh, is, uh, nothing more,
4 uh, than a combination or culmination of
5 descriptive terms, and do not, in fact, uh, rise
6 to the level of, uh, an expert opinion that can,
7 in fact, be reached by a psychologist, whether
8 forensic or clinical.

9 THE COURT: That's a good answer, but it
10 wasn't to the question that I asked of you. Namely,
11 that, uh, it was my understanding, based on
12 Dr. Gordon's testimony, that he did -- was
13 unclaiming either sub-specialty or specialty status
14 for, uh, the suggestibility. I -- and I'm asking,
15 did I -- did I misunderstand?

16 ATTORNEY KRATZ: No. It's -- it's -- it's
17 as to whether or not an expert opinion that is
18 within the field of forensic or clinical psychology,
19 uh, whether this is a recognized, uh, area of expert
20 opinion. He will say, no. And this jury, uh, who
21 has, uh, been led to believe that, uh, it is, uh, by
22 Dr., uh, Gordon, and I understand that might be a
23 question of fact, but I guess that's the point,
24 Judge, it's as to whether or not, uh, this jury
25 should be, uh, left with the unchallenged, uh,

1 position that, uh, in fact, this is somehow
2 sanctioned by the psychological community. The fact
3 of the matter is, it is not, and I should be able
4 to, uh, go into that line of questioning.

5 THE COURT: Mr. Fremgen.

6 ATTORNEY FREMGEN: Well, I -- I think that
7 line of question should have been addressed to
8 Dr. Gordon, first, before he brings in rebuttal.
9 And I al -- also agree with the Court. My
10 recollection is, specifically, the doctor said that
11 the suggestibility is not a sub-specialty. In fact,
12 I think he said forensic and clinical are
13 sub-specialties of general psychology.

14 I don't understand how that's even an
15 issue. Um, it seems, also, to be somewhat more
16 directed towards the ad -- admissibility issue
17 that we've already addressed previously.

18 Um, I -- at this point, I guess I don't
19 have any problems if Dr. Armentrout testifies
20 about tests, his opinions about these tests. Uh,
21 but as to rebutting his -- the conclusions, and,
22 suppose, we'd have to hear more, I recall when I
23 offered my proof -- the offer of proof to the
24 Court, we offered, also, as much detail, as you
25 possibly could, into Dr. Gordon's, um,

1 understanding of the issue of suggestibility and
2 the research in that field.

3 Dr. Armentrout's, um, Curriculum Vitae
4 essentially indicates he has a Ph.D in child
5 psychology. Many of his, uh -- in fact, almost
6 all but possibly three or four of his papers or
7 publications deal with, primarily, families,
8 parents and children. And his current, uh,
9 position with the Department of Community -- or
10 Human Services in Calumet County, and vocational
11 rehabilitation, SSI -- or excuse me -- social
12 security determination, um, none of it shows any
13 significant or any -- or, actually, none of it
14 shows any, uh, involvement in any sort of
15 forensic type of, uh, uh, expertise.

16 So, I -- I -- I question whether he even
17 has the ability to -- to answer, directly, other
18 than to simply say whatever the State asks him to
19 say.

20 THE COURT: Response?

21 ATTORNEY KRATZ: Uh, Dr. Gordon's
22 published, uh, papers are on Rorschach tests and
23 abortion. That because -- and I think it points
24 out, Judge, because this is the first time, at least
25 that we've seen, that this area, uh, is being

1 ventured into, I wouldn't expect there to be a lot
2 of publications or a lot of testimony on this issue.

3 I think it's recognized, at least in
4 this area, certainly before this Court, and the
5 first time that, uh, myself or Mr. Fremgen have
6 addressed this, that this area has been allowed
7 in trial testimony.

8 Uh, as far as **Walstad** goes, this doctor,
9 uh, I believe to be, uh, able to render relevant,
10 rebuttal testimony as to the last.

11 THE COURT: Mr. Fremgen, anything else?

12 ATTORNEY FREMGEN: No, Judge.

13 THE COURT: Uh, the Court is going to
14 permit Dr. Armentrout to testify as a rebuttal
15 witness. I'm going to limit the testimony to the
16 tests, the interpretation of those tests, and,
17 assuming that a foundation is -- sufficient
18 foundation is laid, and, again, I haven't seen his
19 CV, nor have I seen a written proffer of what it is
20 he's going to say, but assuming a sufficient
21 foundation has been laid, he can give testimony as
22 to the opinions of Dr. Gordon.

23 Uh, I'm not interested in hearing
24 whether he believes, uh, suggestibility or the
25 GSS is a specialty or sub-specialty of -- of, uh,

1 psychology or forensic psychology. Now, with
2 that said, uh --

3 ATTORNEY KRATZ: The GSS is a test. I
4 assume he can talk about that?

5 THE COURT: Assuming he -- assuming he can
6 lay a foundation, yeah. The Gudjonsson
7 Suggestibility Scales.

8 ATTORNEY KRATZ: Yeah.

9 THE COURT: As long as there's a
10 foundation, he can talk about it, yeah. Because
11 that's -- that is one of the tests, apparently,
12 that you wish him to comment on.

13 ATTORNEY KRATZ: I do.

14 THE COURT: All right. Are you prepared
15 to -- what --

16 ATTORNEY KRATZ: If I could have 30
17 seconds to -- to -- to frame -- or at least to
18 talk to Dr. Armentrout about that --

19 THE COURT: That's fair. But, before you
20 do, uh, prior -- one item -- minor item of
21 unfinished business, uh, Mr. Fremgen, over the lunch
22 hour, was going to review his file to determine
23 whether or not there were any -- any other pieces of
24 information that you were entitled to under the
25 discovery order, under nine seventy-one

1 twenty-three, and if there weren't, uh, we would let
2 the matter pass. Has he done that?

3 ATTORNEY KRATZ: He has. Uh, Mr. Fremgen
4 has explained why I didn't get the, uh, information
5 that Dr. Gordon, um --

6 ATTORNEY FREMGEN: It was my fault, Judge,
7 not Dr. Gordon.

8 ATTORNEY KRATZ: Correct. Correct. If I
9 can finish.

10 ATTORNEY FREMGEN: Actually, it was
11 Ray's fault.

12 THE COURT: Let -- let's -- let Mr. Kratz
13 finish, please.

14 ATTORNEY KRATZ: He explained why it was
15 that the discovery order was not complied with. I
16 find that to be, uh, a reasonable explanation and I
17 have no further, um, uh, comment to make to the
18 Court. I'm satisfied with Mr. Fremgen's
19 representation.

20 THE COURT: All right. The matter --

21 ATTORNEY KRATZ: And I don't blame Ray,
22 like Mr. Fremgen.

23 THE COURT: Matter is dropped, then. How
24 much time do you need, Mr. Kratz?

25 ATTORNEY KRATZ: Just a minute, Judge.

1 THE COURT: Okay.

2 (Recess had)

3 THE COURT: You may proceed, Mr. Kratz.

4 ATTORNEY KRATZ: Don't we need the jury?

5 THE COURT: Oh, that's true. We could use
6 them.

7 (Reconvened at 2:10 p.m. Jury in)

8 THE COURT: Be seated. Before we proceed,
9 uh, Mr. Fremgen, I take it you've rested at this
10 point?

11 ATTORNEY FREMGEN: Yes.

12 THE COURT: On the record?

13 ATTORNEY FREMGEN: Yes.

14 THE COURT: Okay. You may now proceed.

15 ATTORNEY KRATZ: Thank you, Judge. The
16 State will call James Armentrout to the stand.

17 THE CLERK: Please raise your right hand.

18 **JAMES ARMENTROUT,**
19 called as a witness herein, having been first duly
20 sworn, was examined and testified as follows:

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

23 THE WITNESS: James Armentrout,
24 A-r-m-e-n-t-r-o-u-t.

25 **DIRECT EXAMINATION**

1 BY ATTORNEY KRATZ:

2 Q Tell us, please, how you're employed?

3 A I am a licensed psychologist.

4 Q And, Dr. Armentrout, uh, start, if you will,
5 explaining for the jury what educational
6 background you have?

7 A Well, I received an Undergraduate Degree in
8 Mathematics and a Master's Degree in Psychology from
9 the University of Kansas in the 1960's. And, um, a
10 Doctorate in Clinical Psychology from the University
11 of Minnesota in 1968.

12 Q Do you enjoy any areas of specialization? In
13 other words, at the current time, how is it that
14 you are involved in the practice of psychology?

15 A Um, would you like me to review employment and --

16 Q Sure, why don't you do that?

17 A Now, from 1968 until 1972, I held faculty rank as
18 assistant professor in the Department of Neurology
19 and Psychiatry at St. Louis University. In that
20 position, I had a joint appointment as assistant
21 professor in Psychology.

22 In 1972, um, I moved to McMaster
23 University in Ontario in a position of associate
24 professor in the Department of Psychiatry of the
25 medical school there.

1 In that position, I was chief
2 psychologist of one of the four clinical teaching
3 settings of the medical school, and, um, had a
4 variety of activities.

5 In 1976, I came to Wisconsin in the
6 position of chief psychologist at Winnebago
7 Mental Health Institute. I continued in that
8 position for seven years, and then left the
9 administrative position but continued to work as
10 a staff psychologist at Winnebago until 1998, a
11 total of 22 years.

12 Um, I have always been either certified
13 registered or licensed for the independent
14 practice of psychology since, I believe, 1969,
15 and I've been licensed in Wisconsin since early
16 in 1977, shortly after I came to this state.

17 Q You're currently involved in the private practice
18 of psychology?

19 A Yes, I -- I have done that on a part-time basis all
20 the way through, but since leaving state employment
21 in 1998, I have been doing that primarily.

22 Q You mentioned briefly, but could you talk more,
23 specifically, about what any professional
24 affiliations you may enjoy?

25 A Well, I have belonged to the American Psychological

1 Association since the 1960's. Uh, have been a member
2 of the, um, National Register of Health Service
3 Providers in Psychology since that organization was
4 founded, which would have been sometime in the, I
5 believe, early, um -- early 1970's. But those are
6 the only organizations I belong to.

7 Q Have you ever been an author or co-author of any
8 papers or publications?

9 A Well, I did that during the, um, eight years in which
10 I held university faculty appointment. It was an
11 expectation in that line of work that one would, um,
12 produce scholarly, um, papers, and I -- I produced
13 20-some, all in referee journals, um, during that
14 period of time.

15 But once I came to Wisconsin, um, I did
16 very little of that work because it was not
17 something that was encouraged in state employment
18 at Winnebago Mental Health Institute. Simply is
19 not the mission of the state facilities as it had
20 been universities.

21 Q Prior to today, have you ever been asked to
22 testify in a court proceeding? Specifically, in
23 a jury trial? And have you, in the state of
24 Wisconsin, been accepted, and recognized, as an
25 expert witness in the field of psychology?

1 A Yes, very many times. Pardon me. I believe I began
2 testifying in court hearings, um, back in the early
3 1970's, and have, um, been involved in quite a
4 variety of different, um -- different proceedings,
5 different types of proceedings. I have never failed
6 to be recognized as qualified to provide an expert
7 opinion in the field of psychology.

8 Q Dr. Armentrout, let me ask you about this case,
9 specifically. Uh, did you receive, uh, some time
10 within the last several weeks, a call from, uh,
11 me, uh, asking to provide consultation services,
12 uh, regarding some information that we had been
13 provided?

14 A Yes, I did.

15 Q And could you tell the jury, please, how you, uh,
16 responded, and how you've become involved in this
17 case?

18 A Um, I received the call from you asking if I would be
19 willing to review the information, um, in this case.
20 Um, and I agreed that I would do so. That was
21 approximately two weeks ago. There was a very short
22 time period.

23 And after I agreed to do that, um, I did
24 call your office and indicated to one of the
25 staff that I hoped I had not agreed to testify,

1 because I did not know if I would have an
2 opinion, um, that would be needed at the -- at
3 the hearing, and, um, I said -- but I said I
4 would be happy to talk.

5 You and I spoke on a Tuesday afternoon,
6 I believe, about a week -- perhaps two weeks ago
7 now, and at that time, um, as you pointed out,
8 our relationship was simply one of consultation,
9 to talk over the information that had been
10 submitted for this hearing, and that it was an
11 open question whether we would proceed beyond
12 that.

13 Um, I did receive some information from
14 you at that time, and I received, um, copies of
15 what I believe were Dr. Gordon's files, when
16 those became available. That was approximately a
17 week or so ago.

18 Um, we then spoke again on this past
19 Sunday morning to review my opinion of that
20 information, and I think, as a result of that,
21 I'm here today.

22 Q Dr. Armentrout were you able, then, after
23 receiving, uh, Dr. Gordon's file, that is, the
24 test results, uh, collateral, or at least a very
25 small portion of the collateral information, and

1 most, specifically, Dr. Gordon's, uh, written
2 report, um, able to review that information and
3 able to form some, uh, opinions about?

4 A Uh, yes, I did.

5 Q Let me first, uh, ask about some of the testing
6 that Dr. Gordon, uh, performed, and I'm going to
7 be, specifically, asking you about the
8 administration, and, uh, perhaps, at the
9 conclusion of, uh, these series of questions,
10 asking, uh, you to comment on whatever opinions
11 might be drawn therefrom.

12 Let's first start with, uh, something
13 that is called Wechsler, uh, Abbreviated
14 Intelligence Scale. First of all, in the course
15 of your, uh, experience as a licensed
16 psychologist in the state of Wisconsin, are you
17 familiar with this test?

18 A Well, I am familiar in that I have seen it used on
19 occasions. Um, as you mentioned, it is a short form
20 of the Standard Wechsler Adult Intelligence Scale,
21 uh, which is most popularly now in its third edition,
22 although a fourth edition has been published, but it
23 is not widely used quite yet.

24 But the third edition of that test is
25 out. That consists of 11 sub-tests. Um, the

1 abbreviated scale of intelligence that you
2 mentioned, um, is composed of four sub-tests.
3 Two primarily verbal, two primarily nonverbal in
4 character. And, um, the results of that test are
5 used in an attempt to predict what one might have
6 been, or what score one might have obtained, had
7 the whole scale been, um, administered.

8 So that we do have the possibility of
9 predicting verbal, nonverbal and full scale IQ
10 scores based on only four, rather than the full
11 11, sub-tests.

12 Q But even of the four sub-tests in the abbreviated
13 version that was available, uh, are you familiar
14 in the review of, uh, Dr. Gordon's file how many
15 sub-tests were actually administered in this
16 case?

17 A Yes. I think I pointed out to you that two of the
18 four sub-tests were administered. One verbal and one
19 nonverbal. At the same time, I was aware from other
20 information that the question of Mr. Dassey's general
21 intelligence level is of importance in this matter,
22 because some other claims made about him, um, are
23 said to vary with levels of intelligence.

24 It seemed to me important to get as good
25 a measure of intelligence as one can under the

1 circumstances. Now, there may have been
2 circumstances under which no more than 10 or 15
3 minutes was available for the administration of
4 that test. And, therefore, only half of it was
5 done.

6 But, um, again, it's -- makes what was
7 already an abbreviated estimate an even more
8 sketchy estimate. If we attempt to, um, estimate
9 the average height of ten people, we'll do better
10 if we measure eight of them than if we measure
11 one or two. The more information, the better
12 estimate.

13 And I think because, uh, the results
14 reported on that test, as well as the other one
15 done by Dr. Gordon, do differ somewhat from what
16 I understood were results reported by
17 Mr. Dassey's school, in which he had been scoring
18 five to ten points lower on intelligence tests in
19 school, uh, I felt that, um, perhaps a better
20 measure of intelligence or more comprehensive
21 measure would have been helpful.

22 Q Dr. Gordon's result of 81, uh, as a full scale,
23 uh, intelligence score, are you familiar with
24 where that, uh, ranks, if you will, or at least
25 from the Wechsler scale, uh, how that's

1 categorized?

2 A Within the manuals for the Wechsler Intelligence
3 Scales, that score would be near the end of what's
4 labeled the low average range of intelligence. But
5 it is true that within the -- what we call DSM-4, the
6 Diagnostic and Statistical Manual, Edition 4, of the
7 American Psychiatric Association, there is a
8 diagnosis of borderline intellectual functioning,
9 which can be used when IQ scores vary from
10 approximately 71 to 84.

11 So, um, again, that score is right on
12 the borderline of sorts, between the -- the
13 borderline intelligence level and the low average
14 level.

15 Q Just so that the jury doesn't have any, uh,
16 confusion, you don't, um, quarrel or quibble
17 with, uh, Dr. Gordon's, um, assignment or
18 assessment of that particular score as being, uh,
19 towards the low average range?

20 A Well, I believe the score speaks for itself and
21 needs, um, you know, little interpretation. Um --

22 Q All right.

23 A Again, I don't quibble, no.

24 Q By the way, before we -- we go any further, uh,
25 sitting up by your witness stand is Exhibit No.

1 232. Tell the jury what that is, please?

2 A Um, well, this is the copy of the Curriculum Vitae I
3 provided to you.

4 Q And what is a Curriculum Vitae, please?

5 A Um, it is the academic equivalent of a resumé. It
6 should summarize a person's background, their
7 educational training, their, um, occupational, um,
8 jobs, sorts of things they've done. There is no
9 standard format.

10 Some people will include detailed
11 information about specific activities they have
12 done. Other people are, um, less talkative about
13 that, I guess. But it should show where a person
14 has been working, the types of work they have
15 done, and any notable accomplishments, whether
16 those be professional publications, awards or
17 things of that sort.

18 Q And this is, in fact, a true and accurate, at
19 least as far as, uh, the information for your
20 qualifications to provide an expert opinion; is
21 that -- is that correct?

22 A Well, it is accurate with one exception. I -- I
23 noted that it does not, um, include reference to the
24 fact that, within the past several years, I have
25 twice served as a, um, temporary, part-time employee

1 at the Kettle Moraine Correctional Institution.

2 Um, I served there to help them while
3 they were attempting to recruit staff. There is
4 something of a manpower shortage within the
5 correctional system. So I spent two to three
6 days per week, um, over the last two-and-a-half
7 years, up until last October. And I believe
8 that, um, does not appear on the -- on the
9 document.

10 Q The next, uh, test or, uh, instrument that
11 Dr. Gordon commented about was something called
12 the 16-PF. Let me first ask you if you are
13 familiar with that instrument?

14 A I have some familiarity with it. It is not a test
15 that I have, um, used routinely, nor, in fact, at all
16 within probably quite a number of years. Um, the
17 intent of the test is to assess personality
18 dimensions of, um, nonclinical, or so-called normal
19 personality.

20 We do have tests which assess elements
21 of mental illness, maladjustment, interpersonal
22 difficulties, mood states, and things of that
23 sort. But these are more clinical tests used for
24 people who are in crises or, um, having
25 significant problems.

1 The 16-PF was intended to mention -- or
2 pardon me -- to measure dimensions relevant to
3 more normal personality.

4 Q Now, were you also asked -- and were you provided
5 with the, um, summary of the test results for
6 each of these instruments?

7 A I did say -- see a computer-generated, um, printout
8 of those results. Um, yes, I did.

9 Q And on page three of the summary of the 16-PF
10 report, uh, Dr. Armentrout, did you make specific
11 note, uh, of Mr. Dassey's ability to manipulate
12 verbal concepts? In other words, uh, that
13 particular finding in that report?

14 A Yes, I did. But, um, that statement, to me,
15 underlines a major shortcoming of virtually all of
16 the mail-order computerized test scoring services.
17 They simply are not specific enough for the
18 individual and the circumstances in which the test
19 was used.

20 As I pointed out to you, if we go
21 through that report, we can find a great deal of
22 inconsistent and, at times, diametrically opposed
23 information saying that a person tends to do
24 this, but he tends to do something else. He is
25 similar to some people who have this, and less

1 similar in other ways. I felt those statements
2 were so general that they offered little
3 assistance in understanding what an individual
4 did on one particular day.

5 As an example, there is a statement,
6 despite having said the young gentleman involved
7 is a shy, withdrawn person who avoids crowds and
8 is uncomfortable around people, we could pull out
9 statements that say, and I quote here from page
10 three, "He appears to be about average on warmth,
11 discretion and group orientation. He shows about
12 as much concern for others as the average
13 person." And a little bit later, "He is about as
14 much a team player as his peers."

15 I find this, um, pattern of offering one
16 side, and then offering a diametrically opposed
17 side, leaves one unable to make any conclusion.

18 Um, I have, for myself, a small test I
19 use that I do recommend people apply, and that
20 is, when you read descriptive statements about
21 people, I ask myself, so what? He is shy. He is
22 withdrawn. Well, so what? What does that tell
23 us?

24 I look for a statement that says,
25 therefore, he did this. He did not do that. He

1 might do -- But to simply describe a person and
2 say, he tends to be this, or he tends to be that,
3 is not very helpful in my opinion.

4 Q Doctor, I've handed you what's been received as
5 Exhibit No. 231. Have you seen that document
6 before?

7 A Yes, I have. This appears to be the report of
8 Dr. Gordon's evaluation. It's addressed to
9 Mr. Fremgen.

10 Q Specifically, um, I -- I should say, first, have
11 you reviewed, and have you had an ability to, um,
12 digest, for lack of a better term, the
13 conclusions and opinions that Dr. Gordon draws
14 within that report?

15 A Yes, I have.

16 Q Do you find anywhere, within Dr. Gordon's report,
17 mention of these, um, conflicting, uh, results or
18 these conflicting summary statements that, uh, at
19 least as we're discussing at this moment, are
20 found in the 16-PF report?

21 A The difficulty I have is that most of the information
22 offered is phrased as probabilistic vague descriptive
23 terms. This person tends to do this. Is prone to do
24 that. Sometimes does something else. And when I
25 ask, well, so what? What can I then conclude or

1 predict on the basis of those? I find very little.

2 Um, I did not find in that report that
3 any specific allegations or formulations or
4 connections were drawn between these descriptive
5 terms applied to Mr. Dassey, and the behavior
6 patterns, the specific things which have been
7 alleged in this, um, case.

8 Q All right. We'll get, uh, more specific as to,
9 uh -- as to those opinions. But let me move to
10 the next instrument. That being the State Trait,
11 uh -- just get that a second -- Anger Expression
12 Inventory. First of all, are you familiar with
13 this instrument?

14 A It is not something that I have ever used. Um, I am
15 aware of it. It was devised by a psychologist named
16 Charles Spielberger, who I believe is at the
17 University of Florida, and is a name recognized by
18 most psychologists, although certainly not in a
19 clinical or forensic context. Um, but I am aware of
20 that.

21 Um, I am more familiar with a similar
22 document called the Straight -- pardon me. The
23 State Trait Anxiety Inventory, in which the,
24 um -- the items are directed more specifically
25 toward the experience of anxiety, either as a

1 continuing trait or as a short-term state. But,
2 uh, I'm not surprised there is an anger
3 inventory. I had not seen it before this matter.

4 Q Exhibit 231, uh, Dr. Gordon's, uh, summary
5 report, are you familiar that within that report
6 Dr. Gordon attributes the, um, behavior or the,
7 um, characteristic of anxiety as something that
8 can be judged or, uh, gleaned out of the Anger
9 Expression Inventory instrument?

10 A I did see that. Um, apparently, at some point, you
11 know, Dr. Gordon did reach the conclusion that, um,
12 the young man has significant problems with anxiety.
13 I did not see that reflected in any of the tests
14 you've mentioned so far, nor any of the others.

15 Specifically, I don't believe an Anger
16 Expression Inventory is intended to assess
17 anxiety, particularly since we have many more
18 effective, more widely accepted tests, which also
19 would assess anxiety, such as the MMPI.

20 Q And let's go to that, uh, next. You understand
21 that Dr. Gordon administered something called the
22 MMPI-A? That being the adolescent version, uh,
23 of that instrument. First of all, are you aware
24 of that test instrument?

25 A Yes, I'm quite aware of the MMPI-A. During my

1 training many years ago, I was literally steeped in
2 the MMPI. Um, brainwashed, um, as a young
3 psychologist. But, um, I'm quite aware of it. I
4 have been to specific training with, uh, Robert
5 Archer, the gentleman that devised that offshoot of
6 the traditional MMPI. So I am quite familiar with
7 it.

8 Q Dr. Gordon talked about various, um, scales or
9 conclusions being developed as the, uh,
10 instrument as examined -- 478 answers are
11 examined -- Can you tell the jury, generally, how
12 that process works?

13 A How was -- the instrument was originally developed?

14 Q How the instrument is scored or how these scales
15 have been developed, uh, based upon those answers
16 or test answer results?

17 A Well, the MMPI, itself, was developed back in the
18 1940's at the University of Minnesota Hospital,
19 specifically, by, um, a psychiatrist and psychologist
20 who wanted to develop a paper and pencil
21 self-administered inventory, which might give a
22 mental health worker some direction as to the nature
23 of mental or emotional problems a person was, um,
24 experiencing.

25 So, through a method, that I won't take

1 the time to describe, but they were able to
2 identify short statements which seemed to
3 separate groups of people who did have serious
4 depression problems from those who did not.
5 People who had serious health concerns or serious
6 problems with impulsivity, suspiciousness,
7 mistrust, anxiety, worry, just a variety of
8 things.

9 And out of that came the MMPI. At that
10 time 566, now 567, items, each of which is
11 answered true or false and can be scored either
12 by hand or by machine to produce what we call a
13 test profile, which simply links together on a
14 graph the extreme -- the extreme nature of the
15 scores on those different sets of items.

16 Now, the original MMPI was intended to
17 be used in a clinical setting where a person goes
18 to talk to a doctor or therapist in a
19 confidential manner. There were questions
20 included in that, um, test which would not be
21 appropriate for friendly conversation. Questions
22 about religious beliefs, or whether one's stools
23 are black and tarry, or whether, um, one has done
24 things too bad to talk about. There are a number
25 of items there that were felt inappropriate

1 outside of a psychiatric or psychological
2 setting.

3 Um, there were tests devised, such as
4 the California Psychological Inventory to drop
5 out those objectionable items. When the MMPI was
6 revised, um, to the second edition by, uh,
7 Dr. Butcher, who, someone, again, I'm well
8 familiar with, because he was on my dissertation
9 committee and preliminary exam committee, but I,
10 again, um, know quite a bit about the way that
11 was done.

12 However, the MMPI, itself, included
13 virtually no items pertaining to areas of
14 adjustment very relevant for teenagers. The
15 extent of conflicts within one's family, um,
16 general well-being, um, items pertaining to
17 specific difficulties within the school setting.
18 And so the MMPI-A, A being for adolescent, was
19 devised to try to add some assessment of those
20 other areas of adolescent experience to some of
21 the clinical areas of the MMPI which had been
22 used forever.

23 Um, during my training in the 1960's,
24 um, the MMPI was completed by anyone entering the
25 University of Minnesota hospitals, age 12 or

1 over, even though we knew many of those items
2 were not appropriate. I mean, an item such as,
3 my sex life is satisfactory, is not something I
4 would typically ask a 12-year-old. But when they
5 completed that test, they could either answer
6 true or false or leave it blank because we didn't
7 look at it.

8 But the MMPI-A was really an attempt to
9 modify the methodology of the MMPI to a form that
10 would be, um, with more broadly applicable for
11 adolescents.

12 Q And are you aware that this was administered to
13 Brendan Dassey and was, thereafter, scored? That
14 is, that a profile was developed?

15 A Yes, I am.

16 Q How many, if I can use the word "primary," scales
17 are there in an MMPI adolescent version?

18 A Well, it depends if one is talking about the validity
19 scales, the typical clinical scales, the content
20 scales. And, then, of course, the scales,
21 themselves, have been broken down, through factor
22 analysis, into sub-scales, and there is also usually
23 a split between what are called subtle scales as
24 opposed to obvious scales. So it goes on and on.

25 In the original MMPI, which had 566

1 items, there were more developed scales to be
2 scored from that test than there were items in
3 the test. In other words, that test had been
4 used for virtually any purpose involving people
5 that you could think of. Somebody, somewhere,
6 had devised a scale to try to measure it.

7 So, typically, a person only uses a part
8 of it. The clinical scales are the most
9 frequently used.

10 Q All right. The last test, uh, Dr. Armentrout,
11 that I'd like to speak with you about, is
12 something called the Gudjonsson Suggestibility
13 Scale.

14 First of all, have you received
15 Dr. Gordon's materials regarding this particular
16 scale, uh, and have you, uh, at least in review
17 of its administration in this case, drawn any
18 conclusions or opinions about its use?

19 A The information that I received in the packet, um,
20 that I picked up from your office, included four
21 pages labeled the GSS-1. I noted the first page had
22 some writing on it. Name, birth date, age, things of
23 that sort. The following three pages were,
24 essentially, unmarked by any handwriting at all.
25 Nothing recorded. Um, nothing at all. The only

1 writing was on the cover page.

2 I was surprised, having seen the report
3 in this matter, that, um, quite a bit is made of
4 Mr. Dassey's performance on that. And, yet, we
5 had no information about it. The other tests had
6 been filled out. We do have handwritten
7 responses recorded right on the test instruments.
8 But we have nothing on the GSS-1. And, so, I
9 raised the question of, it's impossible to really
10 know what happened when that test was
11 administered. Um, that was all I knew.

12 Q Let me ask about the test itself, though. Since
13 that time, have you done some further examination
14 and have you, um, formed an opinion as to the
15 validity or applicability of this particular
16 test, uh, especially as it pertains to rendering
17 an opinion as to suggestibility?

18 A Well, it -- it is my opinion that the --

19 ATTORNEY FREMGEN: Judge, I object to the
20 opinion at this time. I don't think the appropriate
21 foundation has been laid. The one question that was
22 asked prior to this question by the prosecutor was,
23 are you familiar with this test, and the answer
24 wasn't given. Just the discussed reading and
25 looking at the front page and reading all the, uh,

1 copies. There hasn't been any foundation that he's
2 familiar with this test or any background on this
3 test. Before he can offer an opinion on the test, I
4 think there should be something along those lines.

5 THE COURT: Objection is sustained.

6 Q (By Attorney Kratz) Can you give any further
7 background as to what you've learned about this
8 test since you first received copies from our
9 office?

10 A Certainly. Um, I had not heard of this instrument
11 prior to my first conversation with you. I had never
12 heard of it. So, after learning of it, I did look on
13 the internet, um, I did read some information there.
14 I did read, for example, that Dr. Gudjonsson was born
15 in Iceland, received some of his training there, went
16 from there to the Institute of Psychiatry in London.

17 Apparently, he has been a practitioner
18 in England. I don't know if he has ever done any
19 direct clinic work in the United States. But I
20 did attempt to find information and found some on
21 the internet, specifically, about Dr. Gudjonsson
22 and the suggestibility scale.

23 Now, my familiarity with this instrument
24 is based upon the four pages that I received.
25 And I am familiar with what was placed before me

1 and that is what I describe. But as for the
2 instrument, itself, I had never heard of it, so,
3 prior to two -- two weeks ago, I would say.

4 Q The instrument, itself, and the pages that you
5 did receive, are you able, as a licensed
6 psychologist, to comment on the, um -- the
7 administration of the test? That is, the, uh,
8 cultural bias, if any, that is suggested on the
9 face, itself, of this instrument?

10 A Yes, I believe I can.

11 Q And can you offer that opinion for us, please?

12 A In looking at the test, first, I -- I had some
13 concerns about what seems to be the way the test was
14 administered. In Dr. Gordon's report, um, as he
15 described this test, um, and that is on page five, he
16 mentioned that, um, after 45 minutes of time has
17 elapsed, they are then requested to answer a series
18 of leading questions.

19 When I looked at the first page of this
20 document, when it says immediate recall start
21 time, it's a minute and 15 seconds after. But
22 the questioning start time is 35 minutes after.
23 My question was, did he begin his questioning 35
24 rather than 45 minutes after? If so, on what
25 basis? Why is he modifying the test? I had

1 questions at that point. When I --

2 Q Let me do this form by question and answer,
3 Doctor, if I can, because I think that will,
4 um -- will help with the, uh, uh, the
5 presentation. Are you familiar with the term
6 "cross-validation?"

7 A Yes, I am.

8 Q Can you describe what that is for the jury,
9 please?

10 A It, typically, means taking the results of one
11 experiment or one application and applying it to a
12 new sample or a new situation to find out whether the
13 relationships or results obtained the first time will
14 also be obtained the second time. Um, it is not at
15 all unusual for a test to initially have very
16 hopeful, positive results, but on cross-validation,
17 meaning, application in another setting with a
18 different group of people or even with a similar
19 group of people, um, it is not, um, found to be as
20 accurate or helpful as it was initially.

21 It's necessary to repeatedly demonstrate
22 a relationship that you claim has validity.

23 Reliability, meaning the -- the ability to find
24 the same thing each time, is a prerequisite for
25 validity, meaning that you're measuring what you

1 think you're measuring, because I have serious
2 questions whether this scale measures
3 suggestibility at all.

4 Q All right. We'll get into the -- the reasons for
5 those questions. But, um, are you familiar with
6 whether this test is meant to be what is called a
7 standardized test?

8 A As I said, I had no knowledge of it before two weeks
9 ago. Um, I have no -- no knowledge of that. I did
10 look at some of the current textbooks in forensic
11 psychology, such as one by Thomas Grisso, another
12 well-known psychologist, and I did find that he
13 mentioned in passing in one small paragraph that this
14 test exists, but he said nothing more about it. So --

15 Q All right. Um, I interrupted you when you were
16 talking about some of the cultural concerns, or
17 at least, uh, uh, cultural flavor to this
18 particular, uh, instrument. Uh, could you
19 expound on that, please? And I apologize for
20 interrupting.

21 A When I looked at this paragraph, um, I noticed its
22 similarity to a paragraph used in another widely used
23 psychological test, called the Wechsler Memory Scale.
24 That, for example, is the test that the Social
25 Security Administration uses to evaluate, um,

1 people's claims of serious memory defects, which
2 interfere with employment. That is the test that is
3 used.

4 It has one section called logical
5 memory, in which a person is asked to remember a
6 paragraph. The paragraph begins, "Anna Thompson,
7 of South Boston, employed as a cleaning woman,
8 reported at the police station she had been held
9 up on State Street."

10 This paragraph seems an offshoot of
11 that. Um, and yet, I could not understand what
12 the meaning of this paragraph would be for an
13 adolescent who grew up in a relatively small town
14 in -- in Wisconsin. To say that somebody was on
15 holiday in Spain, um, and was advised to contact
16 the British Embassy, seems to have little
17 meaning.

18 Now, once that paragraph is read and a
19 period of time elapses, apparently the individual
20 is asked a series of questions. And it's
21 important to know whether the person remembers
22 the story or not.

23 But we do not know whether Mr. Dassey
24 remembered anything of that story 30 seconds
25 after it was read to him because there's no

1 recorded memory score on the sheet that I
2 received. He might not have even known what the
3 story was about. And to say that hearing a
4 paragraph read for a minute and 15 seconds about
5 a crime involving a woman from England on holiday
6 in Spain with her husband, that seems so far
7 afield from an individual who is alleged to have
8 participated in a truly heinous crime, I don't
9 see the connection there at all, and I don't see
10 why anyone would attempt to try very hard to
11 remember all of that story.

12 But as I mentioned to Mr. Kratz, if we
13 assume the individual recalls nothing of that
14 story, 35 minutes later he's given a choice, this
15 or that. Now, I could ask someone, guess three
16 or five. If they guess, three, and I tell them,
17 that's not very good, you can do better, try
18 again, they're going to guess five. I mean, most
19 people would not repeat answers they have just
20 been told are wrong.

21 And, so, we don't know why a person
22 would change answers when asked a set of
23 questions twice. Maybe they're trying to do well
24 and get the right answer, and maybe they have not
25 the foggiest notion about what that story was

1 that was read for a minute and 15 seconds more
2 than a half hour ago.

3 So, I think to take a person's response
4 to those questions, um, and attach a meaning to
5 it in terms of suggestibility, seem far afield to
6 me. It seemed unjustified.

7 THE COURT: Mr. Kratz, we seem to be going
8 into sort of a narrative mode here.

9 ATTORNEY KRATZ: I'm going --

10 THE COURT: Can we -- can we become a
11 question and answer mode instead?

12 ATTORNEY KRATZ: Certainly can, Judge.

13 THE COURT: All right.

14 ATTORNEY KRATZ: In fact, I'm going to
15 wrap up this question with, uh -- or excuse me,
16 this examination with this doctor.

17 Q (By Attorney Kratz) Um, reviewing Dr. Gordon's
18 written report, considering the testing that he
19 did, the intelligence test, the personality test,
20 the inventories and the Gudjonsson Suggestibility
21 Scale, together with the consideration of the
22 other collateral information listed in that
23 report, are you familiar with Dr. Gordon's stated
24 opinion that this man, Brendan Dassey, was
25 significantly vulnerable to suggestibility?

1 A Yes. I noted at the end of his report he mentioned
2 he is very susceptible to suggestibility.

3 Q Based upon your review of the same materials, uh,
4 would you draw the same expert opinion?

5 A I would not draw that opinion. But even given that
6 statement, I would revert to the question of, so
7 what? What does it tell us? And my answer is, not
8 very much.

9 ATTORNEY KRATZ: That's all I have of
10 Dr. Armentrout, Judge. Thank you, very much.

11 THE COURT: Cross?

12 **CROSS-EXAMINATION**

13 BY ATTORNEY FREMGEN:

14 Q Doctor, you indicated, uh, I believe it might
15 be -- is it Exhibit two thirty -- is it 231 or
16 232 before you? The -- your Curriculum Vitae?

17 A Yes. Um-hmm.

18 Q Which number is it?

19 A Two thirty-two.

20 Q Two thirty-two? Now, you're not affiliated
21 with -- you have no forensic affiliations;
22 correct? Listed on that document?

23 A You mean memberships in organizations? No, I do not.

24 Q Correct. Nothing like the American Board of
25 Forensic Psychology?

1 A No. I've been to many of their, um, continuing
2 education things, but I see no reason to seek their
3 certification.

4 Q No scholarly work since 1978; is that correct?

5 A That's right. My positions have not been such where
6 that was part of the job duties.

7 Q Despite your position since 1978, you haven't
8 provided any articles or publications for peer
9 review or otherwise non-peer review?

10 A Well, again, whatever would be on the CV, that's it.

11 Q So if I -- if I ask you to read it, or -- or
12 would you believe me if I said I don't see any
13 publications dated after 1978?

14 A Oh, certainly.

15 Q Okay. So you'd agree with that last statement
16 that you haven't had any publications, articles,
17 research, peer review or otherwise, since 1978?

18 A Yes.

19 Q Now, you indicated you were brought into this
20 case after receiving the call from Mr. Kratz;
21 correct?

22 A Yes.

23 Q And you're currently employed with Calumet County
24 Department of Human Services in some regard?

25 A No, I'm not. Um, I had a contract with them to

1 provide psychological evaluations. But, um, we let
2 that contract lapse, I believe, in January of 2006.
3 I had done that for several years until then.

4 Q So, a -- again, we'll look back at your
5 Curriculum Vitae, Exhibit 232 before you. If you
6 could take a look at that?

7 A Certainly.

8 Q So I ask you to look at page two?

9 A Um-hmm.

10 Q Where it indicates, employment, consultant
11 psychologist Calumet County Department of Human
12 Services, Chilton, Wisconsin. You see that?

13 A Yes, I do.

14 Q And it says 1997 to blank.

15 A That's right. I probably forgot to put '06 on the
16 CV.

17 Q So just an error?

18 A I'm sorry. What?

19 Q You made an error?

20 A Yes, I made an error.

21 Q So up until 2006, you had a consulting position
22 with Calumet County?

23 A Yes, I did.

24 Q And at that same county Mr. Kratz works in;
25 correct?

1 A Yes.

2 Q You primarily practice in Oshkosh?

3 A No, I would say, by far, the greater part of the work
4 I do now is in Brown County. Specifically, in Green
5 Bay. Although, in recent months, I've been involved
6 in Door County, Kewaunee County, Shawano County,
7 Oconto County, Washington County, uh, so not in any
8 one locale.

9 Q According to your Curriculum Vitae, your office
10 is in Oshkosh, though?

11 A Yes. My office has always been in Oshkosh for
12 20-some years.

13 Q And that's Winnebago County; right?

14 A Yes, it is.

15 Q Are you on any lists in regards to Winnebago
16 County to offer independent medi -- mental health
17 examinations in clinical or forensic psychology?

18 A Yes, I will. I'm -- I'm not sure if they maintain,
19 um, lists, but -- for example, within the fact --
20 past year, I have seen juveniles from Winnebago
21 County who were detained, um, in Appleton in secure
22 detention.

23 I have given opinions to the juvenile
24 courts. Um, I have done a number of, um,
25 forensic evaluations in Winnebago County.

1 I believe it's been about -- little more
2 than a year ago, there was, um, a homicide case
3 there, in which I provided an opinion of a man
4 who had, um, inflicted fatal injuries with a
5 baseball bat.

6 Um, I was involved in Winnebago County
7 in a case, I believe, perhaps, two years ago, of
8 a high school student who had, um, shot another
9 man with a shotgun.

10 Um, I -- I've been involved in a number
11 of cases in Winnebago County.

12 Q What collateral information did you receive and
13 did you review in making your opinion today?

14 A Today?

15 Q Right.

16 A In this case?

17 Q At any time, prior to today, did you review any
18 collateral information provided to you by
19 Mr. Kratz or someone from his office?

20 A Yes, I did.

21 Q And what collateral information did you review?

22 A I received a copy of the, um, motion to permit
23 testimony on suggestibility in this matter. I
24 received copies of the brief in support of that
25 motion, as well as a copy of the brief opposed to

1 that motion.

2 I received a letter from a gentleman
3 named Mr. Buckley. Um, I had a chance to review,
4 um, that letter.

5 And I received a copy of an article
6 entitled, *Suggestibility and Confessions* by a
7 Dr. Trowbridge.

8 And, then, again, the -- the records
9 that we have discussed earlier.

10 Q And the other records would be Dr. Gordon's
11 report; correct?

12 A Yes. I received copies of his test materials, his
13 report, his handwritten notes. Again, whatever had
14 been in his file and was to be provided, um, that's
15 what I received.

16 Q Okay. And nothing else?

17 A I don't recall receiving anything else, no. I did,
18 on my own, look up some information. For example, in
19 test -- um, psychological test -- textbooks, looking
20 at, um, the State Trait tests, and looking for
21 information on the Gudjonsson and the 16-PF. Um, I
22 did photocopy for myself some information out of
23 those textbooks.

24 Q You indicated you were also aware of school
25 records reflecting intelligence scores?

1 A It was my understanding that at some point, yes, that
2 a -- a school counselor had provided some information
3 like that.

4 Q So the intelligence score, in Dr. Gordon's, um,
5 documents, were provided to you in regards to the
6 Wechsler Abbreviated Scale of Intelligence, as
7 well as the Kaufman --

8 A Brief Intelligence Test, yes.

9 Q Correct.

10 A Um-hmm.

11 Q Your testimony, if I understand it correctly, was
12 that the actual school records reflect a lower
13 intelligence score; correct?

14 A Well, my source there was a letter by Mr. Buckley of
15 the John Reid, um, Company who had done a summary,
16 and that was provided to me along with the other
17 records. In there, I noted his comment that a school
18 counselor had either given testimony or a deposition
19 in which it was noted that Mr. Dassey had been tested
20 at three-year intervals three times and had IQ scores
21 in the 70's.

22 Q So Dr. Gordon's evaluation reflected, actually, a
23 higher IQ than the school did?

24 A A little higher, yes. Whether it's a significant or
25 stable difference, I don't know.

1 Q Don't recall asking you that. Did I ask you if
2 it was significantly higher? Or -- I think it
3 was just -- it was higher; correct?

4 A Numerically it's higher, yes.

5 Q Thank you. You indicated that the 16-PF -- you
6 had some concerns with it because it's a
7 mail-order test?

8 A It's not a mail-order test. It's a test which is
9 administered, apparently, by Dr. Gordon or somebody
10 under his direction, but the results are then sent
11 off to a scoring service, which scores the answer
12 sheet and returns, um, a computer-generated test
13 report.

14 Q On direct, when asked to comment about the 16-PF,
15 you commented that one concern with these types
16 of tests, these mail-order tests, are simply not
17 specific enough?

18 A Yes, that's true.

19 Q So when I referred to it a mail-order test a
20 minute ago and you corrected me, I was just
21 repeating what you called it; correct?

22 A Okay. I don't recall if I used the term
23 "mail-order." If I did, I misspoke, because the
24 situation is as I just explained -- explained it.

25 Q And is the 16-PF a test that only Dr. Gordon has

1 access to?

2 A Oh, certainly not. I think any qualified licensed or
3 other psychologist in practice would have access to
4 it.

5 Q So other members of your profession; correct?

6 A Certainly, the publisher of the test would have
7 requirements for a person to qualify as a user. But
8 I think, um, you know, again, any practicing
9 psychologist would meet those standards.

10 Q And would you -- if you have an opinion, would
11 you agree with me that there's probably likely a
12 few more forensic or clinical psychologists, who
13 are qualified, probably have access to and use
14 that type of test?

15 A Oh, I'm sure other ones do.

16 Q You're -- you seem to be critical of the use of
17 the 16-PF by Dr. Gordon in formulating his
18 opinion. Yet, you would agree with me that other
19 psychologists probably use those tests as well;
20 correct?

21 A Um, yes, that's correct.

22 Q So all those other psychologists using the 16-PF,
23 they just must be wrong using that --

24 ATTORNEY KRATZ: Objection, argumentative.

25 THE WITNESS: I don't believe I said

1 that.

2 ATTORNEY FREMGEN: I'll withdraw it.

3 Q (By Attorney Fremgen) You indicated that you're
4 not familiar with the State Trait Anger
5 Expression Inventory?

6 A No, it's not something that I routinely either use
7 myself or encounter in the clinical work I do.

8 Q But you've offered an opinion critical of
9 Dr. Gordon's opinion based upon his use of that
10 test; correct?

11 A No, I tried not to offer any opinion critical of
12 Dr. Gordon. I'm not acquainted with him and I mean
13 no disrespect or discourtesy to him. It is his
14 opinion that my opinion may disagree with. But I
15 would certainly, um, tender full respect and courtesy
16 to Dr. Gordon. I mean no disrespect.

17 Q If I implied that you were criticizing
18 Dr. Gordon, I apologize. I think I was referring
19 to the report. And so to make it clear, I'll
20 just refer to it as Exhibit 231. I think it --
21 Correct? Is it 231?

22 A That's fine.

23 Q Okay. The, uh, MMPI, you actually have some
24 professional or scholarly, um, experience with
25 the MMPI?

1 A I have considerable experience with the MMPI,
2 although more in my first 20 years than, perhaps, in
3 the last five or ten. I do not use it, um,
4 frequently anymore.

5 Q Does the MMPI have some utility in the field of
6 forensic or clinical psychology?

7 A Oh, I believe it does. There are a number of books
8 that have been written on the forensic applications
9 of the MMPI.

10 Q That, too, is a -- a test that is provided -- I
11 won't -- I won't call it a mail-order test, but
12 something provided by a manufacturer, in which
13 you have to send back the, uh, uh, answer sheet
14 and receive, then, their interpretation of the
15 results; correct?

16 A No, that's not entirely correct. The test can be
17 scored by a series of templates by an individual.
18 Um, laying the template over the answer sheet,
19 counting up the numerical scores and the various, um,
20 scales of that test.

21 That can be done. It can be done as a
22 clerical task by a trained secretary, just as the
23 profile of those scores can be drawn.

24 If a person feels competent or qualified
25 or comfortable interpreting the test, the person

1 may go ahead and do that, based upon experience,
2 training, reference books, whatever.

3 There are interpretation services
4 available on a mail basis. In other words, one
5 can either fax or send off the answer sheet to
6 the service of Dr. Butcher and Dr. Williams, or,
7 for example, to another one by a psychologist
8 named Alex Caldwell, who has a very widely
9 respected MMPI interpretation program.

10 But there must be at least eight or ten
11 of those available by mail order. And, um,
12 again, one can mail off the, um, answer sheet and
13 receive back a printed report.

14 Q So it's not unusual to use one of those, as you
15 pointed out, well-respected interpretation, uh,
16 individuals or psychologists who can interpret
17 the results?

18 A Again, some people do it, some people don't. It
19 depends upon one's perceived need for that. If
20 people want to do it, they do it. It's not a
21 standard practice one way or the other.

22 Q Are you familiar with the, uh, studies done by
23 person by the name of Ayling, A-y-l-i-n-g, 1984,
24 pertaining to false confessions?

25 A No, I'm not.

1 Q Any studies by an individual by the name Ofshe,
2 O-f-s-h-e, from 1989, in regards to
3 suggestibility and false confessions?
4 A No, I'm not.
5 Q Have you reviewed any of the Gudjonsson, uh,
6 reports dating back from '83 through 2001
7 pertaining to this issue of suggestibility?
8 A I have not made any effort to review that literature,
9 no.
10 Q Any of the Loftus studies from 1979, 1990? Into
11 the 90's?
12 A No.
13 Q The Kasson or McNall test -- uh, studies in 1991?
14 Are you familiar with those?
15 A No, I'm not.
16 Q So you're not familiar with any of these tests,
17 or, excuse me, studies that deal with the issue
18 of suggestibility or false confessions?
19 A That's what I said. I'm not. Yes.
20 Q Well, you have performed some internet research
21 into the topic?
22 A I did briefly, yes. Um-hmm.
23 Q And I think you said you ran across the term
24 "suggestibility" in one of those articles or some
25 study you -- you referenced on the internet?

1 A Yes, I did find some references to it, as well as to
2 Dr. Gudjonsson.

3 Q Did you have a handbook to interpret how to
4 administer the Gudjonsson Suggestibility Scale?

5 A No, I did not. I've never administered it.

6 Q You've never administered it. And you don't know
7 how to administer the test? Would that be fair
8 to state?

9 A Um, yes, that would be fair.

10 Q Did you actually interview Brendan Dassey?

11 A No, I've had no contact with Mr. Dassey at all.

12 Q Would you agree that, as a psychologist, whether
13 it be clinical or forensic, in order to draw a
14 conclusion about an individual, it's usually best
15 to meet the individual?

16 A I'm -- well, I'm not sure of the meaning of "best."
17 In this case, I was not asked to provide an opinion
18 about Mr. Dassey, specifically, and I was not offered
19 any, um, access to him. So it simply was not the way
20 in which I became involved.

21 I will agree that in most of the work I
22 do, I would provide an evaluation, and my opinion
23 might stand in contrast to someone else's
24 opinion, and those two opinions can then be
25 compared and evaluated by someone. But in this

1 case, um, I was not asked to do that. I was
2 asked to offer opinions regarding the information
3 submitted to the Court.

4 Q Would you agree that then it would be a normal or
5 a standard practice in your field to evaluate an
6 individual before offering a -- an opinion about
7 that person?

8 ATTORNEY KRATZ: Objection. Asked and
9 answered, Your Honor.

10 ATTORNEY FREMGEN: Actually, I don't
11 believe I asked that exact question.

12 THE COURT: Overruled. You may answer.

13 THE WITNESS: No, it would not be a
14 standard of practice for me to do something that
15 I had not been, specifically, asked to do. That
16 is not a standard of practice.

17 Q That -- that wasn't the question I asked you. I
18 understand that you weren't asked to do that and
19 I'll grant you that. But is it a standard
20 practice in your field, if the person is
21 offering -- if the psychologist is offering an --
22 an opinion as to a particular person, that they
23 would actually provide an individual or personal
24 interview or evaluation of that?

25 A On that, I would agree with you. It is expected that

1 if I were to offer an opinion, specifically, about
2 Mr. Dassey, it would be unethical for me to do that
3 without at least attempting to personally evaluate or
4 examine him in developing that opinion.

5 And I would be justified in not meeting
6 with him only if he refused to participate.

7 But, um, that is not the case here. I
8 have not been asked to provide any specific
9 opinion or evaluation of Mr. Dassey. The focus
10 of my attention has been on Dr. Gordon's report
11 and the information that Dr. Gordon submitted to
12 the Court.

13 Q You -- you've agreed or indicated that you have
14 no familiarity with the research in regards to
15 suggestibility other than having ran across the
16 term during the inter -- internet research prior
17 to testifying today?

18 A Yes, I believe I've said that.

19 Q And despite that, your conclusion is Dr. Gordon's
20 conclusions are incorrect?

21 A Uh, my opinion responding that information is
22 different than the conclusion he reached, it is not
23 for me to say whether he is correct or incorrect.
24 Um, but the conclusions I would reach on the basis of
25 that information might be different than the

1 conclusion that he reached. I'm not saying he's
2 wrong.

3 Q And, hypothetically, if he has reviewed the
4 standard or typical research in the area of
5 suggestibility, he would have more information to
6 base his opinion on than you?

7 A I don't agree with that at all.

8 Q You don't agree that you have no familiarity with
9 any of the research in the area of suggestibility
10 at --

11 ATTORNEY KRATZ: Objection, Judge, that
12 wasn't the question.

13 THE COURT: No, he's asking the
14 question. Overruled.

15 THE WITNESS: Would you repeat the
16 question, sir?

17 Q Sure. I'll do the best I can.

18 A Uh-huh.

19 Q You have no familiarity in the research of
20 suggestibility. Yet, you've been able to provide
21 an opinion as to what Dr. Gordon's conclusions --
22 or your opinion of Dr. Gordon's conclusions;
23 correct?

24 A Um, yes, I think that's true. But the focus of my
25 opinion was on the basis -- and the -- the problems

1 that I recognized in the Gudjonsson methodology,
2 would not justify me in reaching the conclusion he
3 reached.

4 Q The Gudjonsson methodology or the Gudjonsson
5 example that was provided to you?

6 A Well --

7 Q Test example. I'm sorry.

8 A The scale, as I see it, which was supposed to
9 originate in his file, for the reasons that I pointed
10 out, I would not have, um, confidence, myself, in
11 concluding that that methodology relates to
12 suggestibility.

13 Just because someone titles a test a
14 suggestibility test, does not make it a
15 suggestibility test.

16 Q Oh, I agree with you entirely.

17 A It might well be a memory test, or a concentration
18 test, or something else. So, I'm just saying I would
19 not have reached the conclusion he reached.

20 Q I -- I understand you entirely, Doctor. And --
21 and will you agree with me, then, with this, if
22 you haven't reviewed Gudjonsson, for instance,
23 and you don't know the research and the
24 methodology behind the test, how can you say that
25 the methodology and the test isn't correct?

1 A We're not talking about correctness. I -- I will
2 stand on the comments I made earlier about the
3 methodology used. About not assessing the memory and
4 not understanding why a person's changing answers to
5 a response after being told he's wrong, why that
6 relates to suggestibility. It -- it simply is not a
7 connection I, myself, would make, personally or
8 professionally.

9 Q And, granted, coming from a person that has no
10 familiarity with the research into that area;
11 correct?

12 A Yes, that's true.

13 ATTORNEY FREMGEN: Thank you. Nothing
14 else, Judge.

15 THE COURT: Any redirect?

16 ATTORNEY KRATZ: I don't think so, Judge.
17 Thank you.

18 THE COURT: All right. You may step
19 down, Doctor.

20 ATTORNEY KRATZ: Ask the Court receive his
21 CV.

22 THE COURT: Oh. Okay. Any objection to
23 the CV?

24 ATTORNEY FREMGEN: Same conditions as
25 before, Judge.

1 THE COURT: Sure.

2 ATTORNEY FREMGEN: No.

3 THE COURT: Two thirty-two, then, is
4 offered and received.

5 ATTORNEY KRATZ: Did the Court anticipate
6 an afternoon break? If it did --

7 THE COURT: Right now.

8 ATTORNEY KRATZ: If it did, uh, we'd ask
9 for an opportunity to meet with the Court briefly
10 in chambers. And this, uh, is a good time for an
11 afternoon break. Thank you.

12 THE COURT: All right. We'll, uh --
13 we'll recess until 20 to 4.

14 (Recess had at 3:20 p.m.)

15 (Reconvened at 3:46 p.m. Jury in)

16 THE COURT: Mr. Kratz, do you have any
17 further witnesses this afternoon?

18 ATTORNEY KRATZ: We have no further
19 rebuttal, Judge.

20 THE COURT: No further witnesses at all?

21 ATTORNEY KRATZ: No.

22 THE COURT: All right. So, the State is
23 then resting?

24 ATTORNEY KRATZ: The State is, uh, resting
25 its rebuttal, yes, Judge.

1 THE COURT: All right. Uh, any surrebuttal
2 being offered by the defense?

3 ATTORNEY FREMGEN: No, Judge.

4 THE COURT: All right. Uh, that concludes,
5 then, the presentation of testimony in the case.
6 Uh, ladies and gentlemen, we're going to adjourn
7 this afternoon. We are going to -- we, counsel and
8 the Court, uh, uh, will prepare a set of jury
9 instructions for you, and tomorrow you will hear the
10 jury instructions and you will hear closing argument
11 from counsel.

12 Uh, I ask that you be back here by
13 10:00 tomorrow morning. All right? And, again,
14 don't talk about the case among yourselves or
15 anything having to do with the case.

16 (Jury out at 3:45 p.m.)

17 THE COURT: Any further matters this
18 afternoon, gentlemen?

19 ATTORNEY KRATZ: No, Judge. I assume we'll
20 have an informal, uh, jury instruction conference in
21 chambers at about, uh, 8:00. Sometime thereafter, I
22 assume we will have the formal jury conference, uh,
23 on the record, and move to closings thereafter?

24 THE COURT: We'll -- we'll meet at 8:00 in
25 chambers to review and see if the -- the jury

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instructions are -- are ones that all can agree upon. And, if they can't, we'll, uh -- we'll go on the record and the Court will make whatever decisions are necessary. Uh, and if there are any motions, we'll hear them at that time.

ATTORNEY KRATZ: That's fine. Thank you, Judge.

THE COURT: All right. We're adjourned.

(Court stands adjourned at 3:47 p.m.)

1 STATE OF WISCONSIN)
)SS.
2 COUNTY OF MANITOWOC)
3

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 11th day of December, 2007.
16

17
18 Jennifer K. Hau
Jennifer K. Hau, RPR
19 Official Court Reporter
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