
STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 2006CF88

BRENDAN R. DASSEY,

Defendant

AFFIDAVIT OF DR. RICHARD A. LEO

STATE OF CALIFORNIA)

)

SS.

COUNTY OF SAN FRANCISCO)

Dr. Richard A. Leo, being duly sworn under oath, states:

I. Qualifications

1. I am presently employed as an Associate Professor of Law at the University of San Francisco, School of Law. From 1997-2006, I was employed as an Associate Professor of Criminology and an Associate Professor of Psychology at the University of California, Irvine. From 1994-1997, I was employed as an Assistant Professor of Sociology and an Adjunct Professor of Law at the University of Colorado, Boulder.
2. My educational background is as follows: I received a Ph.D. in Jurisprudence and Social Policy (specializing in Criminology and Social Psychology) from the University of California, Berkeley in 1994; a J.D. from the University of California, Berkeley in 1994; an M.A. in Sociology from the University of Chicago in 1989; and a B.A. in Sociology from the University of California, Berkeley in 1985.
3. I am an expert in the area of police interrogation practices, the psychology of police interrogation and suspect decision-making, psychological coercion, false confessions, and wrongful convictions. For almost two decades, I have been conducting empirical research and writing numerous articles and books on the subjects of police interrogation, psychological coercion, false confession, and wrongful conviction. In this time, I have analyzed more than 2,000 real world interrogations. I am the author of several books, including *Police Interrogation and*

American Justice (Harvard University Press, 2008), and more than 50 articles and book chapters, many in leading legal and social science journals. I have won several awards for my publications, and my scholarship has often been featured in the news media and cited by appellate courts. To date, I have consulted with criminal and civil attorneys on more than one-thousand (1,000) cases involving disputed interrogations and/or confessions, and I have been qualified as an expert witness one hundred seventy-six (176) times in state, federal and military courts in twenty-six (26) states, including the State of Wisconsin, at pre-trial suppressions motions, jury and bench trials, and post-conviction proceedings. I have testified for the defense, for the prosecution, and in civil cases. I have given numerous lectures to judges, defense attorneys, prosecutors, and other criminal justice professionals. I have also taught interrogation training courses and/or given lectures to police departments in the United States, China, and the Republic of Cyprus.

4. I have been retained by the Bluhm Legal Clinic at Northwestern University School of Law on behalf of Brendan Dassey in this case. I am charging \$250/hour for my time. A current copy of my Curriculum Vitae is attached to this Affidavit.

II. Materials Reviewed

5. I have reviewed the following materials:
 - Two audio CDs and accompanying transcript of Brendan Dassey's interrogation on February 27, 2006
 - Three DVDs and accompanying transcript of Brendan Dassey's interrogation on March 1, 2006
 - Two video DVDs and accompanying transcript of Brendan Dassey's interrogation on May 13, 2006
 - Defendant's Memorandum on Brendan Dassey Statements in State of Wisconsin v. Steven Avery, Case No. 2005-CF-381
 - Marinette County Sheriff's Department Supplemental Report (dated 11/11/05)
 - Wisconsin DOJ Division of Criminal Investigation Report (dated 11/13/05)
 - Calumet County Sheriff's Department Reports (dated 2/27/06 and 2/28/06)

- Report of Lawrence T. White dated May 11, 2007
- Report of Joseph Buckley dated April 4, 2007
- Trial transcript
- Wisconsin Department of Justice Investigative Report #05-1776/33
- News stories and broadcasts:
 - Tom Kertscher, *Avery Held on Gun Charge; Case Not Linked to Missing Woman; DNA Tests Ordered on Family*, Milwaukee Journal Sentinel ("MJS"), November 10, 2005.
 - Doug Erickson, *Police: Female Bones, Blood Found at Yard; Key to Halbach's SUV Found in Avery's Bedroom, Police Say; The Teresa Halbach Disappearance*, Wisconsin State Journal, November 11, 2005.
 - Tom Kertscher, *Avery to Be Charged on DNA*, MJS, November 12, 2005.
 - Doug Erickson, *Avery To Be Charged with Halbach Murder; Prosecutor Dismisses Notion of Frame-Up*, Wisconsin State Journal, November 12, 2005.
 - Tom Kertscher, *Investigators Don't Expect to Find Body of Halbach*, MJS, November 15, 2005.
 - Kevin Braley, *Homicide Charge Filed*, Manitowoc Herald Times Reporter, November 16, 2005.
 - Tom Kertscher, *Evidence of Slaying Found Early in Search*, MJS, December 6, 2005.
 - Kevin Braley, *Avery Bound Over for Trial*, Manitowoc Herald Times Reporter, December 7, 2005.
 - WBAY news broadcast, November 10, 2005, at 10:00 p.m.
 - WBAY news broadcast, November 11, 2005 at 10:00 p.m.
 - WBAY news broadcast, December 6, 2005, at 5:00 pm.

III. The Social Scientific Study of Police Interrogation and Confessions

6. There is a well-established field of research in the academic disciplines of psychology, criminology, and sociology on the subject of police interrogation practices, coercive influence techniques, and confessions. This research dates back to 1908; has been the subject of extensive publication (hundreds of articles, books, and book chapters) in peer reviewed journals; is based on generally accepted principles, methods, and findings; is capable of validity testing; and has been generally accepted as valid in the relevant scientific community.
7. The subject of police interrogation and false confessions is beyond common knowledge and something about which the public has misconceptions. Most people do not know that police detectives receive highly specialized training in psychological interrogation techniques, what these techniques are, or how the techniques are designed to work (i.e., move a suspect from denial to admission). In addition, most people also do not know what psychological coercion is, why some techniques are regarded as psychologically coercive, and what their likely effects are. Moreover, most people do not know which interrogation techniques create a risk of eliciting false confessions when applied to innocent suspects or how and why the psychological process of police interrogation can, and sometimes does, lead the innocent to falsely confess. In fact, most people are skeptical that innocent suspects will give or agree to false confessions to serious crimes in response to purely psychological interrogation techniques in the absence of a suspect's physical torture or mental illness. (See Richard A. Leo, *Police Interrogation and American Justice*, Harvard University Press, 2008.) This is because people view confessing falsely to a crime as an irrational and self-destructive act. Most people have no direct knowledge of, or experience with, psychological police interrogation, and do not believe that they themselves could be made to falsely confess unless tortured. This skepticism and relative ignorance causes most people to assume that virtually all confessions are true and to presume that any defendant who has confessed is therefore likely guilty. Confession evidence (even false confession evidence) is therefore highly prejudicial, and once a confession is introduced into evidence against a suspect at trial, it almost inevitably leads to a suspect's conviction. Underscoring the prejudicial nature of confession evidence is that studies show that individuals who falsely confessed and chose to take their case to trial were convicted by juries 73-81% of the time before having their innocence proven.

IV. The Social Psychology of Police Interrogation

8. Once patrol officers receive the rank of detective, they typically receive intensive training in the practice and law of interrogation and thereafter learn to apply,

refine, and hone their interrogation skills through extensive case experience, supervision, and/or additional training. Police interrogation is a cumulative, structured, and time-sequenced process in which detectives draw on an arsenal of psychological techniques in order to overcome a suspect's denials to elicit incriminating statements, admissions, and/or confessions. This is the sole purpose of custodial interrogation. To achieve this purpose, interrogators use techniques — all of which are generally legal — that seek to influence, persuade, manipulate, and deceive suspects into believing that their situation is hopeless and that their best interest lies in confessing. Sometimes, however, interrogators cross the line and employ techniques and methods of interrogation that are coercive and thus regarded as legally impermissible.

9. Contemporary American interrogation methods are structured to persuade a rational person who knows he is guilty to rethink his initial decision to deny culpability and instead choose to confess. Police interrogators know that it is not in any suspect's rational self-interest to confess. They expect to encounter resistance and denials to their allegations, and they know that they must apply a certain amount of interpersonal pressure and persuasion to convince a reluctant suspect to confess. As a result, interrogators have, over the years, developed a set of subtle and sophisticated interrogation techniques whose purpose is to alter a suspect's perceptions such that he eventually comes to see the act of confessing as being in his self-interest. Interrogators accomplish this by persuading a suspect to view his immediate situation differently, by focusing his attention on a limited set of choices and alternatives, and by convincing him of the likely consequences that attach to each of these choices. If successful, this process unfolds in two steps: first, the interrogator causes the suspect to view his situation as hopeless; and second, the interrogator persuades the suspect that only by confessing will the suspect be able to improve his otherwise hopeless situation.
10. The first step, or stage, of successful interrogation consists of causing a suspect to view his situation as hopeless. If the interrogator is successful at this stage, he will undermine the suspect's self-confidence and cause the suspect to reason that there is no way for him to escape the interrogation without incriminating himself. To accomplish this, interrogators accuse the suspect of having committed the crime; they attack and try to undermine a suspect's assertion of an alibi or verbalization of innocence (pointing out or inventing logical and factual inconsistencies, implausibilities, and/or impossibilities); they exude unwavering confidence in their assertions of the suspect's guilt; they refuse to accept the possibility of the suspect's denials; and, most importantly, they confront the suspect with incontrovertible evidence of his guilt, whether real or non-existent. Because interrogation is a cumulative and time-sequenced process, interrogators often draw on these techniques repeatedly and/or in succession, building on

their earlier accusations and representations at each step in the interrogation process.

11. Through the use of these techniques, the interrogator communicates to the suspect that he has been caught, that there is no way he will escape the interrogation without incriminating himself, and that his future is determined — that regardless of the suspect's denials or protestations of innocence, he is going to be arrested, prosecuted, convicted, and eventually incarcerated. The interrogator seeks to convince the suspect that this is a fact that has been established beyond any doubt, and thus that any objective person must necessarily reason to this conclusion. By persuading the suspect that he has been caught, that the existing evidence or case facts objectively prove his guilt, and that it is only a matter of time before he will be prosecuted and convicted, the interrogator seeks to alter the suspect's perceptions such that he comes to view his situation as hopeless and comes to perceive that resisting the interrogator's demands is futile.
12. Once the interrogator has caused the suspect to understand that he has been caught and that there is no way out of this predicament, he seeks to convince the suspect that the only way to improve his otherwise hopeless situation is by confessing to the offense(s) of which he is accused. The second step of successful interrogation thus consists of offering the suspect inducements to confess — reasons or scenarios that suggest the suspect will receive some personal, moral, communal, procedural, material, or other benefit if he confesses to some version of the offense. Researchers have classified the types of inducements investigators use during the second step of interrogation into three categories: *low-end* inducements, *systemic* inducements, and *high-end* inducements.
13. *Low-end* inducements refer to interpersonal or moral appeals the interrogator uses to convince a suspect that he will feel better if he confesses. For example, an interrogator may tell a suspect that the truth will set him free if he confesses, or that confessing will relieve his anxiety or guilt, or that confessing is the moral or Christian thing to do, or that confessing will improve his standing in the eyes of the victim or the eyes of the community.
14. *Systemic* inducements refer to appeals that the interrogator uses to focus the suspect's attention on the processes and outcomes of the criminal justice system in order to get the suspect to come to the conclusion that his case is likely to be processed more favorably by all actors in the criminal justice system if he confesses. For example, an interrogator may tell a suspect that he is the suspect's ally and will try to help him out — both in his discussions with the prosecutor as well as in his role as a professional witness at trial — but can only do so if the suspect first admits guilt. The interrogator may also ask the suspect how he

expects the prosecutor to look favorably on the suspect's case if he does not cooperate with authorities. In a further variation, the interrogator may ask the suspect what a judge and jury are really going to think, and how they are likely to react, if he does not demonstrate remorse and admit his guilt to authorities. Interrogators often couple the use of systemic incentives with the assertion that this is the suspect's one and only chance — now or never — to tell his side of the story; if he passes up this opportunity, all the relevant actors in the system (police, prosecutor, judge, and jury) will no longer be open to the possibility of viewing his actions in their most favorable light. Interrogators rely on *systemic* inducements to persuade the suspect that the justice system naturally confers rewards for those who admit guilt, demonstrate remorse, and cooperate with authorities; whereas it inevitably metes out punishment for those who do not.

15. *High-end* inducements refer to appeals that directly communicate that the suspect will receive less punishment, a lower prison sentence, and/or some form of police, prosecutorial, judicial, or juror leniency if he complies with the interrogator's demand that he confess. If, however, he does not comply with the interrogator's demand that he confess, the suspect will receive a higher sentence or greater punishment. *High-end* inducements may either be implicit or explicit: the important question is whether the interrogation technique communicates the message, or is understood to communicate the message, that the suspect will receive a lower criminal charge and/or lesser punishment if he confesses as opposed to a higher criminal charge and/or greater amount of punishment if he does not. For example, interrogators sometimes try to persuade suspects that their behavior was merely an accident, or a reasonable response to the victim's provocation, or an act of self defense. By portraying the suspect's behavior as an accident or reasonable response to provocation, the interrogator communicates that the suspect did not intend to harm the victim, that the act was therefore not a crime or a significantly lower lever of crime, and that the suspect will therefore receive little or no punishment if he agrees to the interrogator's version of what happened. By portraying the suspect's behavior as self-defense, the interrogator communicates that no crime at all even occurred and that the suspect will receive no punishment at all if he agrees to this version of what happened (since self-defense is not a crime, but a legally excused response to physical aggression).
16. Sometimes interrogators use more explicit *high-end* incentives, such as telling a suspect that there are several degrees of the alleged offense, each of which carry different amounts of punishment, and asking the suspect which version he would like to confess to. Or the interrogator may explicitly tell the suspect that he will receive a long prison sentence, or perhaps even the death penalty, if he does not confess, and/or may point out what happens to men of his age, or men accused of crime, in prison if he does not confess to the interrogator's minimized account. Sometimes interrogators who rely on *high-end* inducements will present

the suspect with a simple two choice situation (good vs. bad): if the suspect agrees to the good choice (a minimized version of the offense, such as involuntary manslaughter or self-defense), he will receive a lower amount of punishment or no punishment at all; but if he does not confess, criminal justice offices will impute to him the bad choice (a maximized version of the offense, such as pre-meditated first degree murder), and he will receive a higher level of punishment or perhaps the harshest possible punishment. (This technique is sometimes referred to in the academic literature as the maximization/minimization technique). The point of *high-end* inducements is to communicate to a suspect that it is in his rational self-interest to confess to the minimized or non-incriminating version of the offense that the interrogator suggests. It is in the suspect's rational self-interest to do so because he will receive a lower charge, a lesser amount of punishment, and/or no time in prison. If he fails to confess, however, he will receive a higher charge, a greater amount of punishment, and more time in prison, perhaps even the death penalty (although it is rare that interrogators these days ever threaten a suspect with receiving the death penalty if he does not confess).

17. To evaluate whether a particular interrogation is coercive, experts must determine the facts of the case and then analyze these facts in light of the extensive social science research literature on the social psychology of interrogation and confession. The expert must evaluate whether any of the interrogator's techniques, methods, or strategies were coercive by applying the generally accepted findings of the social science research literature on the subject of interrogation, coercive influence techniques, and false confessions to the specific facts of the case. In particular, the expert must determine whether the interrogator used any techniques that communicated, either implicitly or explicitly, that the suspect would receive a lower sentence, a lesser amount or type of punishment, or perhaps no punishment at all if he complied with the interrogator's demands and/or receive a higher amount or type of punishment — or perhaps the harshest punishment possible — if he did not comply with the interrogator's demands. Social science research has repeatedly demonstrated that some *systemic* inducements (depending on the content of the inducement, how explicitly or vaguely it is stated, and the message that it communicates) and all *high-end* inducements are coercive because they rely on implicit and/or explicit promises of leniency and threats of harm to induce compliance. Such promises of leniency and threats of harm are not only regarded as coercive in the social science literature because of the messages they convey and their demonstrated impact on the decision-making of individuals, but they are also regarded as legally impermissible by courts. The expert may also evaluate whether the interrogation techniques, either individually or cumulatively, had the effect of causing a suspect to perceive he had no choice but to comply with

the demands of the interrogator and thus whether the interrogation, in effect, overbore his will.

V. Police-Induced False Confessions

18. In addition to evaluating whether an interrogation was coercive and overbore the will or decision-making ability of a custodial suspect, interrogation and confession experts are sometimes also asked to evaluate the factors that can lead to false confessions from the innocent, and to assess the likelihood that a false confession was elicited in a particular case. As mentioned above, social science researchers have demonstrated that, contrary to public misperceptions, false confessions from the innocent occur regularly; that psychological methods of interrogation can and do cause the innocent to sometimes confess falsely; that certain methods of interrogation — particularly methods known or demonstrated to exert a coercive effect — are correlated with the likelihood of a false confession; and that there are established principles with which to evaluate the likely reliability of confessions. In addition, social scientists have identified three different types of false confessions: *voluntary* false confessions (made in response to minimal or no police pressure); *compliant* false confessions (given to terminate the stressful, punishing and/or coercive experience of interrogation by a suspect who privately knows that he is innocent); and *persuaded* false confessions (given by a suspect who comes to doubt the reliability of his memory and comes to believe that he or she may have committed the offense. *Compliant* and *persuaded* false confessions may be either coerced or non-coerced.
19. Although psychological coercion is the primary cause of interrogation-induced false confessions, some types of individuals — particularly the mentally handicapped and/or cognitively impaired, juveniles and the mentally ill — are more vulnerable to the pressures of interrogation and therefore less likely to possess or be able to muster the psychological resources or perspective necessary to withstand accusatorial questioning. In particular, the mentally handicapped and impaired possess personality characteristics that increase their risk of interrogation-induced false confession. Because of their cognitive deficits and limited social skills, the mentally handicapped and cognitively impaired are slow thinking, easily confused, concrete (as opposed to abstract) thinkers, often lack the ability to appreciate the seriousness of a situation, may not understand the long-term consequences of their actions, and tend to have short attention spans, poor memory and poor impulse control. The mentally handicapped and cognitively impaired also tend to be highly submissive (especially eager to please authority figures), compliant, suggestible, and responsive to stress and pressure. As a result, the mentally handicapped are disproportionately represented in the reported false confessions cases. Notwithstanding this fact, the vast majority of reported false confessions are from cognitively and intellectually normal

individuals. Juveniles are also disproportionately represented in the reported false confession cases. They are particularly vulnerable to the pressures of psychological interrogation for many of the same reasons as the mentally handicapped. Adolescence is associated with psychological traits such as greater suggestibility, impulsiveness, emotional arousability, and a tendency to focus on the present rather than the future. These psychological tendencies of youth significantly increase the risk of false confessions. The risks are compounded by the fact that although police officers may realize that juvenile suspects are easily influenced, interrogators often apply the same interrogations tactics on juveniles that they use on adults.

20. Regrettably, most police interrogators receive no training about the problem and consequences of police-induced false confessions in the American criminal justice system. Most police receive no training in the basics of false confessions (i.e., that normal people can be made to falsely confess in response to contemporary psychological police interrogation methods). Most police are not taught which of their techniques are likely to cause false confessions and why, how to recognize false confessions, or how to prevent false confessions from occurring in the first place. Most detectives receive no special training in how to interrogate children, juveniles, or the mentally retarded. As a result, most police interrogators appear to share the public misconception that false confessions only occur in response to torture or if the suspect is mentally ill, and most police interrogators refuse to acknowledge the possibility that they may have elicited a wholly or partially false incriminating statement, admission or confession in one of their cases.

***VI. Evaluating the Reliability of Incriminating
Statements, Admissions and Confessions:
The Principles of Post-Admission Narrative Analysis and
Incriminating Statements, Admissions and Confessions***

21. Social science researchers apply well-known, well-established and widely accepted principles of analysis to evaluate the likely reliability or unreliability of an incriminating statement, admission or full confession from a suspect. To evaluate the likely reliability of such statements, researchers analyze the *fit* between the subject's *post-admission narrative* (the account or story the suspect tells following the "I did it" admission statement) and the crime facts and/or corroborating evidence derived from the confession (e.g., location of the missing murder weapon, loot from a robbery, the victim's missing clothing, etc).
22. The purpose of evaluating the fit between a suspect's post-admission narrative and the underlying crime facts and derivative crime evidence is to test the suspect's actual knowledge of the crime. If the suspect's post-admission narrative corroborates details only the police know (i.e., have not been made

public), leads to new or previously undiscovered evidence of guilt, explains apparent crime fact anomalies, and/or is corroborated by independent facts and evidence, then the suspect's post-admission narrative objectively demonstrates that he possesses the actual knowledge that would be known only by the true perpetrator. This unique knowledge is strong evidence of guilt. (This, of course, assumes that the suspect's knowledge of the crime has not been contaminated by the media, community gossip or by the police themselves.) If the suspect cannot provide police with the actual details of the crime, fails to accurately describe the crime scene facts, cannot lead the police to new or derivative crime evidence, and/or provides an account that is full of gross errors and disconfirmed by the independent case evidence, then the suspect's post-admission narrative demonstrates that he fails to possess the actual knowledge that would be known only by the true perpetrator. This lack of knowledge is therefore strongly consistent with a judgment of innocence.

23. The fit between the suspect's post-admission narrative and both the crime scene facts and the derivative crime evidence therefore provides an *objective* basis for evaluating the likely reliability of the suspect's incriminating statements.
24. The well-established and widely accepted social science research principle of using the *fit standard* to evaluate the validity of a confession statement is also a bedrock principle of criminal investigation within law enforcement. Properly trained police detectives realize that an "I did it" statement is not necessarily evidence of guilt and may, instead, turn out to be evidence of innocence. For example, in high-profile murder cases, police regularly screen out volunteered confessions by seeing whether or not the person can tell the police details known only to the perpetrator or lead the police to derivative crime evidence that either corroborates, or fails to demonstrate, the person's guilty knowledge. If an element of a crime is particularly heinous or novel, police often keep this fact from the press so that it can be used to demonstrate a confessor's guilty knowledge. Police sometimes deliberately include an error in media releases or allow incorrect statements to go uncorrected so that a true perpetrator will be able to demonstrate his personal knowledge of the crime. In other types of cases, police detectives regularly rely upon the fit standard to identify a true admission that might be mixed in with a collection of volunteered statements.
25. Using the fit standard to evaluate the validity of a suspect's incriminating statements, admissions, or confessions is a bedrock principle of law enforcement because police detectives realize that seeking corroboration during the post-admission phase of interrogation is essential to proper investigative work. It is a fundamental principle of police investigation that true explanations can be supported and false explanations cannot be supported (assuming no

contamination has occurred). False explanations will not fit the facts of the crime, lead to derivative evidence, or be corroborated by independent evidence.

26. Moreover, post-admission narrative analysis and the fit standard are central to proper criminal investigation because properly trained detectives realize that the purpose of detective work is not to clear a crime or get a conviction, but to carefully collect evidence in a way that will lead to the arrest, prosecution, and conviction of the guilty. Simultaneously, the post-admission narrative analysis and the fit standard insure that no innocent individual is wrongfully arrested, prosecuted, or convicted.
27. A suspect's post-admission narrative therefore provides a gold mine of potential evidence to the unbiased, properly trained detective who is seeking to ferret out the truth. For if the suspect is guilty, the collection of a detailed post-admission narrative will allow the detective to establish the suspect's guilt beyond question, both by demonstrating the suspect's actual knowledge and by corroborating the suspect's statements with derivative evidence. Properly trained detectives realize that the strongest form of corroboration comes through the development of new evidence using a suspect's post-admission narrative. While it is not possible to verify every post-admission narrative with the crime facts, a skillful interrogator will seek as much verifiable information about the crime as he can elicit. The more verifiable information elicited from a suspect during the post-admission period and the better it fits with the crime facts, the more clearly the suspect demonstrates his responsibility for the crime.
28. If the suspect is innocent, the detective can use the suspect's post-admission narrative to establish his lack of knowledge and thus demonstrate his likely or certain innocence. Whereas a guilty suspect can corroborate his admission because of his actual knowledge of the crime, the innocent suspect cannot. The more information the interrogator seeks, the more frequently and clearly an innocent suspect will demonstrate his ignorance of the crime. His answers will turn out either to be wrong, to defy evaluation, or to be of no value for discriminating between guilt and innocence. Assuming that neither the investigator nor the media have contaminated the suspect by transferring information about the crime facts, or that the extent of contamination is known, the likelihood that his answers will be correct should be no better than chance. The only time an innocent person will contribute correct information is when he makes an unlucky guess. The likelihood of an unlucky guess diminishes as the number of possible answers to an investigator's questions grows large. If, however, his answers about missing evidence are proven wrong, he cannot supply verifiable information that should be known to the perpetrator, and he inaccurately describes verifiable crime facts, then the post-admission narrative provides evidence of innocence.

VII. The Problem of Contamination

29. The post-admission narrative process is about more than merely eliciting information from the suspect. Investigators are trained to shape the suspect's narrative to make the confession as persuasive as possible and to enhance the chances of conviction. In this way, confessions are scripted or constructed by interrogators. A persuasive crime narrative requires an explanation of why the crime happened – the motives and explanations of the suspect for committing the crime. It also should contain a statement of the suspect's emotions, not only his or her emotions at the time of committing the crime, but also the shame, regret, or remorse the suspect now feels for having committed the crime. Interrogators are also trained to get the suspect to cleanse the interrogation process, usually by providing statements to the effect that the confession was voluntary. Interrogators will ask the suspect, usually after the suspect's resistance has been broken down and he has been made to believe that it is in his best interests to confess, whether the suspect was treated well, given food and drink, bathroom breaks, and other comforts, and whether any promises or threats were made to the suspect. Finally, and perhaps most importantly, the confession must contain both general and specific crime knowledge – the details of the crime that only the true perpetrator should know.
30. The problem of contamination in false confession cases arises when the interrogator pressures a suspect during the post-admission narrative phase to accept a particular account of the crime story – one that usually squares with the interrogator's theory of how the crime occurred – and then suggests, deliberately or inadvertently, crime facts to the suspect. The presence of these facts in the suspect's confession gives the suspect's narrative credibility and the appearance of corroboration. If the interrogation process is not electronically recorded, the interrogator is free to assert that these crime facts were volunteered by the suspect and the trial devolves into a swearing contest between the suspect and the interrogators over who was the source of the details in the confession. If the entire process is recorded, however, then it may be possible to trace the contamination.
31. Contamination by interrogators is only one of several possible sources of contamination. Suspects can learn crime facts from the media, from conversations with others in the community, from the rumor mill, or may simply possess knowledge of the crime facts because they live at or near the crime scene or were present at the crime scene shortly after the crime occurred.

32. In applying the *fit* test to assess the reliability of the confession, therefore, it essential to separate out the contaminated facts from the facts that unquestionably were provided by the defendant.

VIII. The Interrogations and Statements of Brendan Dassey

33. The interrogation of Brendan Dassey on February 27, 2006 involved some of the interrogation techniques and strategies laid out above. For example, Special Agent Tom Fassbender and Investigator Mark Wiegert initially accused Brendan Dassey of helping Steven Avery start the fire; they challenged his initial denials; they accused him of lying; they confronted him with alleged evidence of his guilt; they pretended to be all-knowing with respect to Brendan's alleged involvement; they repeated their accusations and challenges to his denials, escalating the pressure on him to comply; and they used a range of inducements to elicit Brendan's initial incriminating statements. These inducements included, for example, appeals to conscience and morality, blaming Steven Avery for the death and mutilation, minimizing the moral seriousness of Brendan's involvement and blameworthiness ("It's not your fault. Remember that," p. 451; "You've done nothing wrong," p. 453), falsely claiming to be Brendan's friend ("I'm a father that has a kid your age too. I wanna be here for you. There's nothing I'd like to do more than come over and give you a hug 'cause I know you're hurtin'," p. 443), and offering to affirmatively help Brendan ("we're here to help you," p. 443, "Mark and I are not going to leave you high and dry," p. 451). In addition, Fassbender and Wiegert raised the prospect – and thus clearly communicated -- that Brendan could be arrested and charged with the crime if he did not provide them with an acceptable account – through the use of systemic inducements:

"We've got people back at the sheriff's office, district attorney's office, and their [sic] lookin' at this now saying there's no way Brendan Dassey was out there and didn't see something. They're talking about trying to link Brendan Dassey with this event. They're not saying that Brendan did it, they're saying that Brendan had something to do with it or the cover up of it which would mean Brendan Dassey could potentially be facing charges for that." (February 27 interrogation, p. 442)

And again:

"We've got a lot of information and some people don't care, some people back there say no we'll just charge him. We said no, let us talk to him, give him the opportunity to come forward with the information that he has, and get it off of his chest. Now make it look, you can make it look however you want." (February 27 interrogation, p. 443)

And again:

"Mark and I both can go back to the district attorney and say, ah, Dassey ... came forward and finally told us. Can you imagine how this was weighing on him? They'll understand that." (February 27 interrogation, p. 448)

34. Fassbender and Wiegert thus used both standard, non-coercive interrogation techniques as well as inducements that were psychologically coercive insofar as they communicated the threat of possible arrest, charges and punishment if Brendan did not provide the desired account and implied that he could avoid this and get help if he did provide the desired account.
35. In their subsequent interrogations, Fassbender and Wiegert continued to occasionally use inducements that communicated that Brendan would receive more favorable treatment from the detectives or the criminal justice system if he provided the account they desired and less favorable treatment if he did not. For example, Fassbender told Brendan, "We just need to hear the whole story from you. As soon as we get that and we're comfortable with that, I think you're gonna be a lot more comfortable with that. It's going to be a lot easier on you down the road, ah, if this goes to trial and stuff like that." Also, Fassbender told Brendan, "I'm your friend right now, but I gotta believe in you and if I don't believe in you, I can't go to bat for you" (March 1 interrogation, p. 547)
36. Throughout the March 1 interrogation, Fassbender and Wiegert conveyed absolute confidence in their assertions of Brendan's guilt, repeatedly telling him that they already "knew what happened." This was a false evidence ploy; they did not, in fact, know what had happened. They had a theory of how the crime had occurred but did not have any evidence linking Brendan to the crime. Nevertheless, they accused Brendan repeatedly of lying, refused to accept the possibility that he was innocent and confronted him with their so-called "superior knowledge" of how the crime had occurred. (April 20 Tr. at 101, April 21 Tr. at 6-7, 22, 37)
37. In addition to the false evidence ploy of "superior knowledge," Wiegert admitted to employing all of the following techniques when he testified at Brendan's trial: deception (April 20 Tr. at 14-15, 65-66), trying to befriend Brendan (16), purposely invading Brendan's personal space and touching him on the knee to "take him out of his comfort zone" (71), making numerous promises to him (73-74), using "minimization" by attempting to persuade Brendan that what he did was okay (83-84) and that it was not his fault or that Steven made him do it (April 21 Tr. at 37), leading or suggestive questioning (April 20 Tr., at 95), and repeatedly accusing Brendan of lying (98). These techniques can, and sometimes

do, lead innocent suspects to falsely implicate themselves in crimes they did not commit.

38. These techniques might be especially impactful on an individual who is unusually susceptible to the pressures of interrogation. We know from the research literature that juveniles and the mentally handicapped are disproportionately vulnerable to false confession for a host of psycho-social reasons that leave them more compliant and suggestible than others. According to the materials I reviewed, Brendan Dassey, who was 16 years old at the time of this interrogation, possesses low intelligence, passive demeanor, below average cognitive abilities and limited mental functioning, all traits that leave him highly susceptible to making or agreeing to false admissions or confessions in an accusatory police interrogation. This cluster of personality traits also makes Dassey highly susceptible to believing police interrogators' suggestions that leniency will follow from confession and harm will follow from denial.
39. Once Fassbender and Wiegert elicited Brendan's admission that he had seen the body (February 27 interrogation, p. 458), they used highly suggestive post-admission interrogation techniques in which they relied on leading questions, prompted Brendan with desired answers, corrected him, and pressured him to agree to and provide an account that matched their theory of how the crime occurred. For example, in the February 27 interrogation, Fassbender and Wiegert suggested to Brendan that he saw Teresa Halbach's bones and body parts in the fire and later suggested specific body parts not included in his account, and he agreed. In the March 1 interrogation, Fassbender and Wiegert, quite remarkably, asked Brendan to tell them what Steven did to Teresa Halbach, telling him that it was "something with the head." (March 1 interrogation, p. 584) Brendan appeared to venture several guesses, first stating that Avery cut off her hair, then that Avery punched her, and then that Avery made Brendan cut her throat. But none of these answers were what the detectives were looking for, and when Brendan told the detectives he could not remember anything else, they told him Teresa was shot in the head ("All right, I'm just gonna come out and ask you. Who shot her in the head?" (March 1 interrogation, p. 587) In the May 13 interrogation, Fassbender and Wiegert convinced Brendan to change the location of the murder from what he had previously said in his March 1 statement (that it occurred in Avery's bedroom) to that she was killed in the garage (after forensic testing established that Brendan's March 1 statement was false). Dr. White's report contains many more examples of the detectives' use of suggestion, leading questions, and pressure on Brendan to provide the answers they wanted in their post-admission interrogations.
40. The May 13 interrogation is perhaps the best evidence not only of Brendan's suggestibility, but also of the fact that the investigators knew Brendan was not

telling them the truth but rather what he thought they wanted to hear. (May 13 interrogation, p. 32, 58-59, 88)

41. Related to the issue of whether Fassbender's and Wiegert's pre-admission and post-admission interrogation techniques were psychologically improper or improperly suggestive, there is the issue of reliability. As mentioned above, researchers and experts evaluate the likely reliability of interrogation-induced statements by analyzing their fit with the physical evidence and whether the suspect can provide non-public details not likely guessed by chance and/or lead police to new, missing or derivative evidence absent contamination. In this case, Brendan Dassey provided no unique non-public details of the Halbach murder. All of the details in Brendan's statements were provided to him by Fassbender and Wiegert or publicly known (i.e. they were contaminated), or easily guessed by chance. In other words, the details in Brendan's interrogation-induced statements do not corroborate the veracity of his admissions.
42. The State retained Joseph Buckley, the president of John E. Reid & Associates, one of the most well-known interrogation training firms in the United States, to analyze the voluntariness and reliability of Brendan's March 1 confession. In his report dated April 4, 2007, Joseph Buckley stated that the promises made by Wiegert and Fassbender do not "constitute impermissible promises of leniency ... but rather sincere interest in working with Brendan to tell the truth about what happened concerning the murder of Teresa Halbach." He also stated that neither the "mere word" nor the fact that the "suspect was perhaps influenced by wishful thinking" that he would receive lenient treatment should determine whether a confession was voluntary. (Buckley Report, p. 10)
43. There are two problems with Mr. Buckley's conclusions in this regard. First, Mr. Buckley routinely claims that suspects engage in "wishful thinking" when they correctly infer implicit promises of leniency from certain techniques (i.e., minimization) that Reid & Associates trains police to use. Claiming that the suspect is engaging in "wishful thinking" in response to interrogation techniques that are designed to communicate leniency in exchange for confession is essentially blaming the victim. Second, as mentioned above, Fassbender and Wiegert used inducements that clearly communicated early in the interrogation that Brendan would receive more lenient treatment from the detectives and the criminal justice system if he cooperated and confessed, and clearly threatened an adverse outcome if he did not. For example:
 - "We're here to help you." (February 27 interrogation, p. 443)
 - "We've got people back at the sheriff's office, district attorney's office, and their [sic] lookin' at this now saying there's no way Brendan Dassey was

out there and didn't see something. They're talking about trying to link Brendan Dassey with this event. They're not saying that Brendan did it, they're saying that Brendan had something to do with it or the cover up of it which would mean Brendan Dassey could potentially be facing charges for that." (February 27 interrogation, p. 442)

- "We've got a lot of information and some people don't care, some people back there say no we'll just charge him. We said no, let us talk to him, give him the opportunity to come forward with the information that he has, and get it off of his chest. Now make it look, you can make it look however you want." (February 27 interrogation, p. 443)
- "Mark and I both can go back to the district attorney and say, ah, Dassey ... came forward and finally told us. Can you imagine how this was weighing on him? They'll understand that." (February 27 interrogation, p. 448)
- "We just need to hear the whole story from you. As soon as we get that and we're comfortable with that, I think you're gonna be a lot more comfortable with that. It's going to be a lot easier on you down the road, ah, if this goes to trial and stuff like that." (March 1 interrogation, p. 547)
- "I'm your friend right now, but I gotta believe in you and if I don't believe in you, I can't go to bat for you." (March 1 interrogation, p. 547)

44. Mr. Buckley also asserts that Brendan offered details in his March 1 admission that corroborate the veracity of that statement. In particular, Mr. Buckley asserts that there are at least seventeen (17) "corroborating details offered by Brendan Dassey" in his statement. (Buckley Report, pp. 5-6) To the contrary, all of the examples of alleged corroboration cited by Buckley are either the product of prompting, suggestion and contamination by the detectives, contamination by the media (this was one of the most highly publicized cases in the history of Wisconsin, and numerous details of the police investigation were released to the print and the broadcast media), guesses that were statistically probable, incorrect guesses that revealed Brendan's ignorance of the true facts rather than any "inside" or "guilty" knowledge, or truthful statements that are consistent with Brendan's version of events in which he is not culpable for any crime.
45. To demonstrate this point, it is worth going through each of Mr. Buckley's alleged "corroborating details" and showing that these details were either suggested by the detectives, available to Brendan through widespread media coverage, the product of likely guesses, or simply consistent with Brendan's

version of events and non-incriminating (i.e., Brendan had pre-existing knowledge of the facts for reasons not related to the crime):

1) Mr. Buckley asserts that "Brendan Dassey stated that Steven Avery shot Teresa Halbach about 10 times in the garage – the investigation revealed that 11 shell casings were found in the garage, as well as a bullet fragment that had the victim's DNA on it." (Buckley Report, p. 5)

- The media had reported in December 2005 that police found eleven .22-caliber shell casings on the floor of the garage and that police had found dried blood on the floor of Avery's garage. (WBAY news broadcast, December 6, 2005, at 5:00 pm; Kevin Braley, *Homicide Charge Filed*, Manitowoc Herald Times Reporter, November 16, 2005; Doug Erickson, *Avery To Be Charged with Halbach Murder; Prosecutor Dismisses Notion of Frame-Up*, Wisconsin State Journal, November 12, 2005) This fact, consequently, was already publicly known.
- Police prompting occurred with respect to the fact that Steven Avery shot Teresa Halbach. Wiegert and Fassbender prompted Brendan to say that Avery had shot Halbach, that he shot her in the head, that he had shot her inside his garage, and that she had been on the floor of the garage when he shot her. After Brendan said Avery had stabbed Halbach, Wiegert asked, "We know he did something else to her. What else did he do to her?" Brendan replied, "He choked her." A few minutes later, Wiegert asked, "What else did he do to her? We know something else was done. Tell us, and what else did you do? Come on. Something with the head." Brendan replied that Avery had also cut off her hair. Fassbender then asked, "What else was done to her head?" Brendan replied that Avery had punched Halbach. Fassbender then asked, "He made you do somethin' to her, didn't he? What did he make you do to her?" Brendan replied, "Cut her on her throat." Brendan said, "That's all I can remember," and Wiegert responded, "All right, I'm just going to come out and ask you. Who shot her in the head?" (March 1 interrogation, pp. 584-87) Only then did Brendan say Avery had shot Halbach. In other words, Fassbender and Wiegert blatantly fed this fact to Brendan because he could not, at their direction, guess it on his own -- despite multiple tries. This is a classic example of police contamination during interrogation.

- Police prompting also occurred with respect to the number of times Halbach was shot. At first Brendan said Avery had shot Halbach twice. (March 1 interrogation, p. 589) Then he said Avery had shot her three times. (March 1 interrogation, p. 591) It was only after Wiegert said, "Remember we got a number of shell casings that we found in the garage. I'm not gonna tell you how many, but you need to tell me how many times, about, that she was shot" that Brendan stated Avery had shot Halbach 10 times. (March 1 interrogation, p. 597)
- Police prompting also occurred with respect to the location in which Avery shot Halbach. After Brendan said Avery had shot Halbach outside the garage, Fassbender said, "We know some things happened in that garage, and in that car, we know that. You need to tell us about this so we know you're tellin' us the truth." (March 1 interrogation, p. 595) After Brendan said Avery had placed Halbach in the RAV4, Fassbender said, "Tell us where she was shot." Brendan said, "In the head." Fassbender replied, "I mean where, in the garage?" Brendan then responded, "In the garage." Wiegert followed up by asking, "Was she on the garage floor or was she in the truck?" Brendan said, "In the truck," and Wiegert replied, "Ah huh, come on, now where was she shot? Be honest here." Brendan said, "In the garage" and then clarified, "She was on the garage floor." (March 1 interrogation, pp. 596-97)

2) Mr. Buckley asserts that "Brendan stated that he helped Steven Avery put Teresa Halbach's body in her car – the investigation revealed that blood matching Teresa Halbach's DNA was found in the cargo area of her SUV." (Buckley Report, p. 5)

- Fassbender and Wiegert prompted Brendan to say that part of the crime had occurred in the RAV4 and in the garage. After Brendan said Avery had shot Halbach outside the garage, Fassbender said, "We know there's some things that you're not tellin' us. We need to get the accuracy about the garage and stuff like that and the car." (March 1 interrogation, p. 593) Brendan eventually revised his statement to include Avery placing Halbach's body in the back of the RAV4, but only after Fassbender said, "Again, we have, we know that some things happened in the garage, and in the car, we know that. You need to tell us about this so we can know you're telling us the truth." (March 1 interrogation, p. 595)

- Additionally, Brendan could have learned this information from media reports in November, 2005. The media reported that Halbach's blood had been found in the "rear interior" of her RAV4. (Kevin Braley, *Homicide Charge Filed*, Manitowoc Herald Times Reporter, November 16, 2005) The media also reported that police suspected Halbach's body may have been inside the RAV4 at some point. (WBAY news broadcast, November 11, 2005 at 10:00 p.m.)
- Furthermore, the physical evidence does not truly corroborate Brendan's statement. The prosecutor advanced the theory at trial that the blood stains in the RAV4 indicated that Avery had placed her there when her head was bloody, presumably because he had shot her. However, Brendan said in his confession that Avery shot Halbach on the garage floor *after* removing her from the RAV4. (March 1 interrogation, p. 599)

3) Mr. Buckley asserts that "Brendan stated that he used bleach to help Steven Avery clean up the garage – the investigation revealed that a pair of Brendan's jeans was found with suspected bleach stains on them." (Buckley Report, p. 5)

- On March 1, 2006, immediately before their interrogation of Brendan, Fassbender and Wiegert picked up Brendan at his school and drove to his home where they seized a pair of Brendan's jeans that had bleach stains on them. Although Brendan volunteered this information about the bleach during his confession, it is consistent with a version of events in which he was not culpable for any crime. He testified at trial that he had helped Avery clean an unknown substance off the garage floor using gasoline, paint thinner and bleach.

4) Mr. Buckley asserts that "Brendan stated that he and Steven used Theresa's [sic] clothes to clean up the blood in the garage and that he threw the clothes on to the fire pit – the investigation revealed that brass rivets from Daisy Fuentes jeans were found in the fire pit." (Buckley Report, p. 5)

- The media had previously reported that police had found remnants of burned clothing on the Avery property; thus, Brendan may have obtained this detail from those reports. (Tom Kertscher, *Avery to Be Charged on DNA*, MJS, November 12, 2006)

- Brendan's interrogators also prompted him to say that the clothing he and Steven used had belonged to Teresa. After Brendan told investigators on February 27 that he and Steven had used old clothing to clean up a stain on Steven's garage floor, Wiegert asked Brendan, "Was there blood on those clothes?" and then told him, "Be honest Brendan. We know. We already know you know. Help us out. Think of yourself here." Fassbender also assured Brendan, "It's gonna be all right, OK." Wiegert asked Brendan again, "Was there blood on those clothes?" and Brendan finally replied, "A little bit." Wiegert then informed him: "They were girl clothes, weren't they?" (February 27 interrogation, pp. 448-50)

5) Mr. Buckley asserts that "Brendan indicated he had obtained the bleach he and Steven Avery had used to clean up the garage from Avery's bathroom. The investigation revealed that an empty bottle of bleach was found in Steven Avery's bathroom." (Buckley Report, p. 5)

- This information during his confession is consistent with Brendan's version of events, in which he is not culpable for any crime. In fact, he testified at trial that he had been in Avery's bathroom 20 to 25 times and had seen the bleach there.

6) Mr. Buckley asserts that "Brendan stated that Steven Avery shot Teresa Halbach in the left side of her head – the investigation revealed that a portion of a skull was found in the fire pit on Steven Avery's property with what appeared to be, according to an anthropologist, a bullet entrance wound on the left side of the victim's head above the ear." (Buckley Report, p. 5)

- As mentioned in response to Mr. Buckley's first assertion above, Investigator Wiegert and Special Agent Fassbender prompted Brendan to say that Avery had shot Halbach and that he had shot her in the head, when it was clear that Brendan did not appear to independently know this information. (March 1 interrogation, pp. 584-87) The blatant feeding of this fact to Brendan by Fassbender and Wiegert is remarkable.
- The detective also disclosed to Brendan that Teresa had been shot in the side of the head when they asked him, "Do you know what side of the head?" (March 1 interrogation, p. 592) Once the detectives told Brendan that Ms. Halbach had been shot in the side of the head, of course, there was a 50% chance that he would guess the correct side.

7) Mr. Buckley asserts that “Brendan said that he and Steven moved Theresa’s [sic] body to the fire by putting it on a black and red ‘creeper’ – the investigation revealed that a black and red “creeper” was found in Steven Avery’s garage.” (Buckley Report, p. 5)

- Brendan had helped Avery repair cars inside his garage on many occasions prior to October 31, 2005, so he would have previously seen the creeper (a wheeled board used for sliding under cars to perform repairs) in use many times.
- The creeper is actually not corroborating physical evidence because the fact that police found it in Avery’s garage demonstrates only that Avery kept it there, not that he and Brendan used it to transport Halbach’s body. Instead, there is evidence that contradicts Brendan’s claim: The creeper tested negative for blood. This test result thus appears to undermine the veracity of Brendan’s confession.

8) Mr. Buckley asserts that “Brendan stated that he and Steven Avery threw Teresa Halbach’s body into a fire pit on Steven Avery’s property – the investigation revealed that human teeth and bone fragments were found in the fire pit behind Steven’s garage.” (Buckley Report, p. 5)

- Brendan was provided with this information on November 10, 2005 by Special Agent Kim Skorlinski during an interview with Skorlinski and Investigator Todd Baldwin of the Marinette County Sheriff’s Department. Skorlinski’s report states, “S/ A Skorlinski returned to [Brendan] Dassey and told him that investigators believed that on Monday October 31, 2005, Steven killed Halbach and burned her body in his fire pit. S/ A Skorlinski told Dassey that investigators found pieces of female bone and teeth.” Wisconsin Department of Justice Report No. 05-1776/33.
- In addition, this fact had been widely reported in the media as early as November 2005. At that time, the media reported that police had found charred human bones and teeth in the burn pit. (Tom Kertscher, *Investigators Don’t Expect to Find Body of Halbach*, MJS, November 15, 2005)

9) Mr. Buckley asserts that “Brendan stated that they had put an old car seat into the fire – the investigation revealed that burned remains of a car seat were found in the fire pit.” (Buckley Report, p. 5)

- This information is consistent with Brendan's version of events, in which he is not culpable for any crime. Brendan testified at trial that he had helped Avery feed the bonfire with tires, a van seat, and brush from the yard.

10) Mr. Buckley asserts that "Brendan indicated that Steven had used a rake and shovel to stir the ashes in the first pit – the investigation revealed that parts of a rake and shovel were found in the first pit." (Buckley Report, p. 6)

- This information is consistent with Brendan's version of events, in which he is not culpable for any crime. He testified at trial that he and Steven Avery had stood by the fire for a while after they had cleaned up the garage. Brendan would likely have seen Avery tend the fire during that period.
- Regardless, police educated Brendan about this fact well before his March 1, 2006 interrogation. Special Agent Skorlinski of the Department of Justice told Brendan as early as November 10, 2005, that they had found "a shovel, rake and a trowel" near Avery's fire pit. (Wisconsin Department of Justice Investigative Report #05-1776/33)

11) Mr. Buckley asserts that "Brendan said Steven Avery tried to hide Teresa Halbach's jeep by covering it up with branches and a car hood – the investigation revealed that her car was found covered up by branches and old car parts." (Buckley Report, p. 6)

- It was widely reported in the media after Avery's preliminary hearing in December 2006 that searchers had found Halbach's RAV4 in the salvage yard obscured by branches and the hood of another vehicle. (Kevin Braley, *Avery Bound over for Trial*, Manitowoc Herald Times Reporter, December 7, 2005) This information was therefore publicly known at the time of Brendan's interrogation.

12) Mr. Buckley asserts that "Brendan said that the gun Steven Avery used to shoot Teresa Halbach was a .22-caliber gun (rifle) – the investigation revealed that the shell casings and bullet fragment found in the garage matched a .22-caliber rifle found above Steve's bed." (Buckley Report, p. 6)

- The media had widely reported both that the rifle seized from Avery's bedroom was a .22-caliber weapon and that the cartridge shells recovered from his garage had been fired by a .22-caliber gun. (Tom Kertscher, *Avery Held on Gun Charge; Case Not Linked to Missing Woman; DNA Tests Ordered on Family*, MJS, November 10, 2005; Doug Erickson, *Avery to Be Charged with Halbach Murder; Prosecutor Dismisses Notion of Frame-Up*, Wisconsin State Journal, Nov, 12, 2005) So, again, this information was publicly known at the time of Brendan's interrogation.
- In addition, Brendan had been in Avery's trailer many times, so he could easily have seen the .22-caliber rifle in his bedroom at another time.

13) Mr. Buckley asserts that "Brendan said that he saw Steven Avery put Teresa Halbach's car key in his bedroom dresser drawer – the investigation disclosed that Teresa Halbach's car key was found on Steven Avery's bedroom floor." (Buckley Report, p. 6)

- In the weeks and months prior to Brendan's March 2006 interrogation, the media had reported that police found the key to Halbach's RAV4 in Avery's bedroom. (WBAY news broadcast, November 10, 2005, at 10:00 p.m.; Doug Erickson, *Police: Female Bones, Blood Found at Yard; Key to Halbach's SUV Found in Avery's Bedroom, Police Say; The Teresa Halbach Disappearance*, Wisconsin State Journal, November 11, 2005) This information, too, was publicly known at the time of Brendan's interrogation.

14) Mr. Buckley asserts that "Brendan stated that when he was over at Steven's house on October 31, 2005, Jodi called – the investigation revealed that Jodi had called Steve two times on October 31, 2005." (Buckley Report, p. 6)

- This information is consistent with Brendan's version of events, in which he is not culpable for any crime. In fact, Brendan testified at trial that Jodi had called once when he was at Steven's house and that Steven had told him that Jodi had called earlier at approximately 5:30 PM.

15) Mr. Buckley asserts that "Brendan stated that at one point Steven lifted up the hood of Teresa's car (he did not know what Steven did under the hood) – subsequent investigation revealed that Steven Avery's DNA was found on Teresa's SUV hood latch." (Buckley Report, p. 6)

- Fassbender and Wiegert prompted Brendan to say that Avery had gone under the hood and again fed him the correct answer. Fassbender said, “[Avery] did somethin’ else. You need to tell us what he did, after that car is parked [in the pit]. It’s extremely important...he did something to that car.” Brendan replied, “I don’t know.” Fassbender then asked, “Did he, did he, did he go and look at the engine, did he raise the hood at all or anything like that?” Only then did Brendan say that Avery had gone under the hood. (March 1 interrogation, p. 603)

16) Mr. Buckley asserts that “Brendan described where Teresa Halbach’s jeep was hidden – the investigation revealed that the jeep was found in that location.” (Buckley Report, p. 6)

- The media reported that searchers had located the RAV4 in the southeast portion of the salvage yard and publicized a photograph of the RAV4 as it had been found that showed it in the salvage yard near an easily recognizable line of trees. (Doug Erickson, *Avery to Be Charged with Halbach Murder; Prosecutor Dismisses Notion of Frame-Up*, Wisconsin State Journal, Nov, 12, 2005; Kevin Braley, *Avery Bound Over for Trial*, Manitowoc Herald Times Reporter, December 7, 2005)

17) Mr. Buckley asserts that “Brendan said that he saw Teresa Halbach’s personal items (her camera and cell phone) in a burn barrel – the investigation revealed that these personal items were found and recovered from a burn barrel on Steven Avery’s property.” (Buckley Report, p. 6)

- Fassbender and Wiegert prompted Brendan to say he had seen the cell phone and camera in the burn barrel, again feeding him the correct answer when he could not otherwise provide it on his own. Fassbender asked Brendan, “Do you remember anything about that burn barrel? You might want to be a little more truthful about [it] now.” Brendan replied, “It was full of stuff.” Fassbender then asked, “Did you put some things in that burn barrel that night?” Dassey said, “No.” Fassbender asked, “What did [Avery] do with her possessions?” After Brendan said, “I don’t know,” Wiegert responded, “OK, don’t start lying now. If you know what happened to a cell phone or a camera or her purse, you need to tell us. OK?” At this point, Brendan said he had seen those exact items in the burn barrel. (March 1 interrogation, pp. 619-20)

- In addition, the fact that police discovered a charred camera and cell phone in a burn barrel on Steven Avery's property had been reported in the media in November, 2005. (Tom Kertscher, *Avery to be Charged on DNA*, MJS, November 12, 2005) So, once again, this information was publicly known at the time of Brendan's interrogation.
46. Instead of providing corroboration for the veracity of his admissions, Brendan's March 1 narrative contains errors, does not fit the crime facts and is inconsistent with objectively verifiable crime facts – thereby providing strong indicia of unreliability. For example:
- Brendan said that Ms. Halbach was stabbed and killed in Avery's bedroom, yet this is highly unlikely due to the lack of hair, blood or DNA evidence in Avery's bedroom or trailer. (March 1 interrogation, pp. 578-86; Apr. 21 Tr. at 10, 14, 17)
 - When the detectives asked what Avery did to Ms. Halbach's head, Brendan, as described above, repeatedly made claims that police were never able to corroborate (cut off her hair, punched her, cut her throat) – thereby revealing a seeming lack of inside knowledge – until they told him the correct answer (shot in the head). (March 1 interrogation, pp. 578-86) Police never found any physical evidence indicating that Ms. Halbach was ever in Avery's trailer. (Apr. 21 Tr. at 10, 14, 17)
 - Brendan claimed he had helped Avery use an auto creeper to move Ms. Halbach's body from the garage floor to the burn pit after she had been shot, yet forensic testing revealed that there was no blood on the creeper. (March 1 interrogation, p. 557; Apr. 18 Tr. at 83-84)
 - Brendan stated that he sexually assaulted Ms. Halbach while she was handcuffed to Steven Avery's bed, but investigators found none of Ms. Halbach's DNA on the silver handcuffs they seized from Avery's trailer. (March 1 interrogation, p. 573; Apr. 16 Tr. at 215)
47. Curiously, Brendan's defense team at trial did not call a police interrogation/false confession expert to educate the jury that police investigators receive specialized training in psychologically powerful methods of interrogation that, counter-intuitively, can and do lead to false confessions according to well-documented and established social scientific research (as well as how and why). Instead, Brendan's defense team relied solely on an individual suggestibility expert. Additionally, the defense strategy at trial appeared to rely on the cross-

examination of Mark Wiegert, one of the lead interrogators of Brendan, to demonstrate that Brendan's confession was false. In my professional opinion, such a defense strategy was doubly flawed. First, suggestibility experts are typically not experts in the study of police interrogation and false confessions. Thus, they can tell a jury about the personality traits that can predispose a suspect to high suggestibility or false compliance, but they can tell them little else that is relevant to understanding the phenomenon of interrogation-induced false confessions. Second, eliciting testimony from a police officer through cross-examination does not explain to jurors how or why the innocent can be manipulated into falsely confessing. Although cross-examination may succeed in forcing a detective to admit that he used certain techniques, the detective will not agree that such techniques can produce false confessions nor will he agree that his techniques were psychologically coercive.

48. The decision by the defense counsel not to call a false confession expert in Brendan's case is questionable for two other reasons: 1) prior to trial, counsel for the defense knew that the State had retained an expert, Joseph Buckley, to testify, if necessary, about the tactics used by Wiegert and Fassbender and about the reliability of Brendan's confession; and 2) upon information and belief, the defense had in its possession the report of Dr. Lawrence White, a psychology professor at Beloit College, who had analyzed Brendan's confession for Avery's lawyers, and found many problems with the tactics used by the police and the reliability of Brendan's confession. In most cases in which I have evaluated lawyers' performance with respect to false confession matters, they fail to spot the issue (i.e., do not recognize the value of a false confession expert). In this particular case, the lawyers clearly spotted the issue, but they chose to do nothing about it.
49. Had a police interrogation/false confession expert been called to testify in Brendan's case, such an expert could have testified generally about police interrogation methods and training, including the Reid technique of interrogation. He could have explained the psychological process of interrogation and how and why it can, and sometimes does, lead to false confessions from the innocent. He could have explained the pre-admission interrogation techniques and strategies that put a suspect at risk for falsely confessing and why they do. He could have explained the dispositional factors (such as youth and low level cognitive functioning) that put a suspect at risk for falsely confessing and why they do. He could have explained how post-admission interrogation techniques that rely on suggestion, leading questions, and pressure on a suspect to adopt the interrogator's belief about how the crime occurred can make an otherwise false confession appear highly detailed and thus facially accurate. Finally, he could have explained how experts evaluate the likely reliability and likely unreliability of interrogation-induced statements by

analyzing the fit between the suspect's post-admission narrative and the true crime facts, whether the suspect's post-admission narrative is corroborated by physical and other credible evidence, and whether the suspect can provide non-public crime facts absent contamination (by police, media, community gossip, etc) or statistically likely guesses.

50. Had a police interrogation/false confession expert been called to testify in Brendan's case, such an expert could have also testified specifically about the standard and potentially coercive pre-admission techniques used during Brendan's interrogation, about the highly suggestive and improper post-admission techniques used during Brendan's interrogations, about the specific risk factors for false compliance and confession given Brendan's dispositional characteristics, and about some of the issues raised when comparing Brendan's post-admission narratives with the known facts of the crime.

IX. Conclusion

51. In conclusion:

- 1) Fassbender and Wiegert used both standard accusatory techniques and interrogation techniques that are psychologically coercive insofar as they implicitly offered lenient or favorable treatment or help in exchange for providing or agreeing with the desired account and implicitly threatened adverse consequences for failing to provide or agree with the desired account. These included both high end and systemic inducements.

- 2) Although Brendan's pre-admission interrogation was relatively brief, the techniques used by Fassbender and Wiegert could have induced a false confession, especially when used on someone with Brendan's dispositional characteristics.

- 3) Brendan's dispositional characteristics, especially low intelligence, passive demeanor, below average cognitive abilities and limited mental functioning, left him more susceptible to falsely confessing.

- 4) Fassbender and Wiegert used highly suggestive post-admission interrogation techniques that involved leading questions, feeding Brendan the correct answers (or implying them), correcting his incorrect answers, and pressuring him to adopt an account that matched their theory of the crime. These highly suggestive post-admission interrogation techniques created the risk of eliciting a highly detailed, and thus facially persuasive, confession from Brendan that may nevertheless (and counterintuitively) be false and/or unreliable.

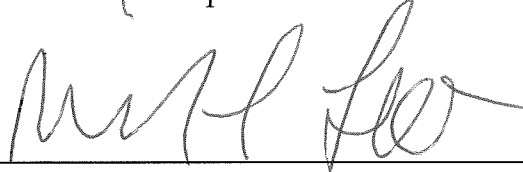
5) Analyzing the lack of fit between Brendan post-admission narratives and the crime facts reveals indicia of unreliability. Brendan did not volunteer non-public crime facts not likely guessed by chance absent contamination. Rather, the details in Brendan's post-admission narratives appear to come from the suggestions of his interrogators, public knowledge and likely guesses by chance. In addition, Brendan provided some details in his post-admission narrative that are consistent with his version of events, in which he is not culpable for any crime (e.g., he had pre-existing knowledge of certain facts because of his pre-existing relationship with his uncle Steven Avery, and thus the disclosure of such facts during his interrogation was not probative of any "inside" or "guilty" knowledge).

6) Mr. Joseph Buckley, in a report dated April 4, 2007, asserts that Brendan offered details in his admissions that corroborate the veracity of these statements. In particular, Mr. Buckley asserts that there are at least seventeen (17) "corroborating details offered by Brendan Dassey" in his statements. As I have demonstrated in great detail above, all of the examples of alleged corroboration cited by Buckley are either the product of prompting, suggestion and contamination by the detectives, contamination by the media (this was one of the most highly publicized cases in the history of Wisconsin, and numerous details of the police investigation were released to the print and the broadcast media), guesses that were statistically probable, incorrect guesses that revealed Brendan's ignorance of the true crime facts rather than any "inside" or "guilty" knowledge, or truthful statements that are consistent with Mr. Dassey's version of events, in which he is not culpable for any crime.

7) In my professional opinion, the decision of Brendan's defense team at trial to fail to call a police interrogation/false confession expert and, instead, to rely only on a suggestibility expert and cross-examination of the interrogators to demonstrate that Brendan's confession was false was flawed. Suggestibility experts are typically not experts in the study of police interrogation and false confessions and thus can tell a jury about what personality traits can predispose a suspect to high suggestibility or false compliance, but can tell them little else that is relevant to understanding the phenomenon of interrogation-induced false confessions.

8) An interrogation/confession expert, if called to testify, could have been helpful to the defense at Brendan's trial by educating the jury generally about pre- and post-admission police interrogation methods, psychological coercion and suggestion, the risk factors for false confessions, how experts evaluate the likely reliability or unreliability of interrogation-induced statements, and the risk factors for false compliance and confession present in Brendan's interrogations and interrogation-induced incriminating statements. No amount of cross-

examination of Wiegert or Fassbender would have put this information before the jury.



Dr. Richard A. Leo, Ph.D., J.D.

Subscribed and sworn to before me this
5th day of March 2009.



Notary Public, State of California

My Commission is

permanent/expires Sep. 20, 2011

