

## AFFIDAVIT OF MICHELE LAVIGNE

I, Michele LaVigne, on oath and affirmation, state as follows:

1. I am presently employed as Distinguished Clinical Professor of Law and Director of the Public Defender Project at the Law School of the University of Wisconsin-Madison. From 1978 to 1988 I was employed as an Assistant State Public Defender with the Wisconsin State Public Defenders Office.
2. I received a J.D. from George Washington University Law School in 1978 and a B.A. from Syracuse University in 1974.
3. In my current role, my research emphases and interests include deafness and more widespread language acquisition issues and their impact on individuals in the criminal justice system. For the last ten years I have been conducting research in the area of language impairments and their effect on the quality of justice available to affected individuals. This research focuses on the communicative, behavioral, and legal implications of language impairments among those populations frequently involved in the criminal justice system. I have collaborated with Gregory Van Rybroek, J.D., Ph.D. on multiple articles that specifically address the prevalence of language impairments in juvenile and adult offenders, and the effect of those impairments on the attorney-client relationship. (Michele LaVigne and Gregory Van Rybroek, *Breakdown in the Language Zone: Language Impairments Among Juvenile and Adult Offenders and Why It Matters*, 15 UC Davis Journal of Juvenile Law & Policy 37 (Winter 2011); "He got in my face so I shot him": How Defendants' Language Impairments Impair Attorney-Client Relationships," 17 CUNY Law Review 69 (Winter 2013))
4. Most recently, I have collaborated with Sally Miles, Ph.D., CCC-SLP, to study the effect of language impairments in the context of police interrogations. Dr. Miles is a Speech Language Pathologist practicing in Madison, Wisconsin. She earned her Ph.D. from the University of Wisconsin-Madison and has worked with children for more than thirty years in clinics, schools, and private practice. Dr. Miles, as a Speech Language Pathologist, has particular expertise in language development and disorders. Her clinical and research expertise in the field of speech-language pathology have allowed us to collect and analyze language data and enabled her to provide clinical observations and expert opinions during the course of our research.
5. Dr. Miles and my research is presented in an article we have co-authored focusing on the effect of language impairments during police interrogations, which is forthcoming. The article is titled *Under the Hood: Brendan Dassey, Language Impairments, and Judicial Ignorance* and will be published in 82 Albany Law Review (Spring/Summer 2019). This article specifically evaluates Brendan Dassey's severe language impairments and their impact on his interviews, interrogations, and confession. We wrote this article as an independent act of research, without consulting with Brendan or his counsel. Early in our research, we informed Attorney Drizin about this project as a matter of professional courtesy, but we did not seek any information about Brendan or the case, nor did

Attorney Drizin provide any. Neither Dr. Miles nor I have ever had any contact with Brendan himself.


6. The term “language impairment” generally refers to deficiencies in language competency. Language impairments encompass weaknesses in three realms of spoken language: expressive, receptive (comprehension), and pragmatic. Expressive and receptive deficits affect vocabulary, syntax, semantics, and processing. These skills are directly related to the ability to decipher meaning and to adequately recall and relate information. Pragmatic deficits relate to the behavioral effects of communication. These deficits cause lack of social cognition, failure to comprehend perspectives of others, and inability to process interactions or adapt appropriately during interactions. Language impairments can be caused by an underlying communication disorder such as hearing loss, auditory processing disorder, an underlying cognitive deficit, or external conditions such as extreme poverty, trauma, abuse or neglect. Language impairments rarely exist in isolation; they can co-occur with associated disorders like ADHD, learning disabilities, or pervasive developmental disorder.
7. In conducting our research, Dr. Miles and I reviewed Brendan’s Individualized Education Plans (IEPs), including a speech-language assessment conducted by Brendan’s school Speech Language Pathologist on September 20 and September 27, 2005. We then reviewed video or audio recordings of every police interview of Brendan for information about communication styles, non-verbal communication, body language, tone of voice, and eye contact of both Brendan and the investigators who interviewed him. We selected three of those interviews to have transcribed (November 5, 2005; the second interview on February 27, 2006; and the interview on March 1, 2006) through a computerized language analysis software program (Systematic Analysis of Language Transcripts). This program produced a coded analysis of the verbal and non-verbal conduct of the speakers during these conversations, indicating pauses over two seconds and marking grammatical elements, overlapping speech, word omissions, and errors in a coded format. We also reviewed the pretrial motions, trial and hearing transcripts, post-conviction motions, and all court rulings and opinions related to Brendan’s language impairment, learning disability, and interrogation. We obtained all of these documents through the public record and did not receive any of them from Brendan’s counsel or anyone associated with Brendan.
8. The 2005 speech-language assessment was conducted by a Speech Language Pathologist for Mishicot Schools using the Clinical Evaluation of Language Fundamentals, Fourth Edition (CELF-4). The CELF-4 test accounts in greater detail for the layered nature of language skills than do measures like verbal IQ scores, which do not comprehensively measure language skills but instead measure static skills. The CELF-4 test measured auditory comprehension and recall, ability to follow directions, and comprehension of social rules among other essential communicative functions.
9. The report of Brendan’s speech-language scores from 2005 is a devastating document. It makes clear that Brendan’s overall impairment level was in the most severe range and that he had substantial deficits in all three realms of spoken

language: expressive, receptive, and pragmatic. At 16, he was functioning like a much younger child; indeed, the results placed his functional age range from 5 years, 8 months to 11 years, 9 months. His total language score placed him in the bottom percentile, meaning that 99% of youth his age could understand and use language better than Brendan could – most of them much better. Though Brendan had basic language skills, they were severely underdeveloped, which led him to fatigue easily and become cognitively overloaded.

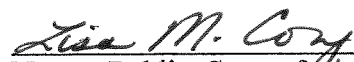
10. These test results and accompanying records, along with the 2005 IEP, clearly demonstrate that Brendan had profound disabilities, including speech-language impairment and language-based specific learning disability, that centered on his communicative, language, and interconnected cognitive functioning and that those disabilities had been present probably since birth. These test scores demonstrate that Brendan's interactions would be compromised on the most basic levels, including knowing how to participate in conversation and reading the facial cues, tone of voice, and body language of others.
11. After conducting this review, we developed serious concerns that the verbal styles and behavior of Investigator Wiegert and Agent Fassbender during their interviews of Brendan, when combined with Brendan's poor ability to cope linguistically and his age, seriously impaired Brendan's ability to navigate these interviews in a voluntary, knowing, or intelligent way. Wiegert and Fassbender inundated Brendan with verbiage, asked multiple questions within a single question, spoke in paragraphs, changed topics abruptly, asked hundreds of leading questions, and planted content thousands of times.
12. In the second February 27, 2006 interview and the March 1, 2006 interview, Wiegert and Fassbender spoke more than twice as much as Brendan, uttering a total of 18,325 words in the two interviews while Brendan used only 6,998. During these interviews, the police asked Brendan a total of 1,525 questions at an average rate of 6.68 questions per minute, or one question every nine to ten seconds. They frequently asked multiple questions without allowing Brendan to answer the questions in turn—using three or more questions in one turn 39 times during these interviews. Wiegert and Fassbender had 157 paragraph-length turns, and 19 times these paragraphs were followed with questions for Brendan.
13. A close review of Brendan's verbal and non-verbal conduct during the March 1 interview also demonstrates that Brendan was extremely compliant during it. He acquiesced by answering questions when he was given the chance, either with brief pieces of content (many of which originated with Wiegert and Fassbender) or with a confirmatory "yes" (247 "yes" responses). He also nodded a lot -- 236 times -- even when police verbiage would have been impossible for him to understand. In response to their questions, Brendan Dassey also changed aspects of his story more than 58 times.
14. We concluded that because of Brendan's severe language impairments, these tactics overwhelmed Brendan with too much verbiage so that he struggled to grasp his interrogators' meaning, became cognitively overloaded, and misread verbal and non-verbal signals. Wiegert and Fassbender's interview styles and

tactics, in conjunction with Brendan's language and cognitive impairments, created a high-pressure environment in which it would have been extraordinarily difficult for Brendan to resist suggestion and pressure.

15. I have not been retained by any attorney representing Brendan Dassey. Rather, Brendan's counsel approached me after I had already completed my research and written and submitted a draft article for publication. Brendan's counsel asked me to provide this affidavit summarizing my research related to Brendan Dassey's case. A current copy of my Curriculum Vitae is attached to this affidavit.

  
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Professor Michele LaVigne, J.D.

Subscribed and sworn to before me this  
21<sup>st</sup> day of February 2019.

  
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Notary Public, State of Wisconsin  
My Commission is  
permanent/expires 4/5/19