

No. 17-1172

IN THE
Supreme Court of the United States

—————
BRENDAN DASSEY,

Petitioner,

v.

MICHAEL A. DITTMANN,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

**BRIEF OF
INDEPENDENT LAW ENFORCEMENT
INSTRUCTORS AND CONSULTANTS AS
AMICI CURIAE IN SUPPORT OF PETITIONER**

THOMAS P. SULLIVAN
TERRI L. MASCHERIN
Counsel of Record
GABRIEL A. FUENTES
ANDREW W. VAIL
SKYLER J. SILVERTRUST
JENNER & BLOCK LLP
353 North Clark Street
Chicago, Illinois 60654
(312) 222-9350
tmascherin@jenner.com

March 26, 2018

Counsel for *Amici Curiae*

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

INTEREST OF THE *AMICI CURIAE*1

SUMMARY OF THE ARGUMENT.....5

ARGUMENT.....6

I. This Case Presents Textbook Examples Of
Unlawful And Unreliable Interrogation
Practices.....6

 A. Investigators Failed To Account Properly
 For Dassey’s Age And Intellectual
 Limitations9

 B. Investigators Contaminated The
 Interrogation With Fact-Feeding.....17

 C. Investigators Gave False Assurances Of
 Leniency.....21

II. Granting Certiorari Will Guide Law
Enforcement In Conducting Reliable
Interrogations24

CONCLUSION25

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Fare v. Michael C.</i> , 442 U.S. 707 (1979).....	9
<i>Gallegos v. Colorado</i> , 370 U.S. 49 (1962).....	12
RULES	
Sup. Ct. R. 37.....	1
OTHER AUTHORITIES	
Joseph P. Buckley, <i>The Reid Technique of Interviewing and Interrogation, in Investigative Interviewing: Rights, Research, Regulation</i> 190 (Tom Williamson et al., eds., 2005)	17
Steven A. Drizin & Richard A. Leo, <i>The Problem of False Confessions in the Post-DNA World</i> , 82 N.C. L. Rev. 891 (2004)	7
Barry C. Feld, <i>Police Interrogation of Juveniles: An Empirical Study of Policy and Practice</i> , 97 J. Crim. L. & Criminology 219 (2006)	9

Ronald P. Fisher & R.E. Geiselman, <i>Memory-Enhancing Techniques for Investigative Interviewing</i> (1992)	13
Fred E. Inbau, John E. Reid, Joseph P. Buckley, & Brian C. Jayne, <i>Criminal Interrogation and Confessions</i> (5th ed. 2013)	7, 8, 13, 21
International Ass'n of Chiefs of Police & Office of Juvenile Justice and Delinquency Prevention, <i>Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation</i> (2012)	8, 12, 22
Jessica R. Meyer & N. Dickon Reppucci, <i>Police Practices and Perceptions Regarding Juvenile Interrogation and Interrogative Suggestibility</i> , 25 <i>Behav. Sci. L.</i> 757 (2007)	9
John E. Reid & Associates, Inc., <i>Making a Murderer: the Reid Technique and Juvenile Interrogations</i> , available at http://goo.gl/FLWTja (last visited Mar. 23, 2018)	8
Wicklander-Zulawski & Associates, Inc., <i>Netflix's Making a Murderer: An Interrogator's Perspective</i> , available at http://goo.gl/xeJUd9 (last visited Mar. 23, 2018).....	5

David E. Zulawski & Douglas E.
Wicklender, *Practical Aspects of
Interview and Interrogation* (2d ed.
2002).....6, 7, 8, 11, 13, 18

INTEREST OF THE *AMICI CURIAE*¹

Amici are independent law enforcement instructors, consultants, and specialists in interrogation practices. *Amici*'s interest in this case is in promoting consistent application of lawful, fair, and effective interrogation methods that assist law enforcement in obtaining actionable crime-solving information while minimizing the risk of false or unreliable confessions.

Amici believe that interrogation methods like those employed in this case are significant drivers with respect to the high rate of unreliable confessions among juveniles and individuals with intellectual or developmental deficiencies. Although this Court has recognized that such individuals are uniquely susceptible to coercive interrogation pressures, investigators and the courts evaluating their practices often fail to apply the special care to interrogations involving those individuals that this Court's precedent requires. *Amici* write to provide the Court with a law enforcement perspective on the subtly coercive police practices in this case and to underscore the need for guidance concerning the proper application of this Court's established standards governing interrogation of juveniles and persons with intellectual impairments.

¹ In accordance with Supreme Court Rule 37, *amici curiae* state that no counsel for a party authored this brief, in whole or part, and no counsel or party made a monetary contribution to fund the preparation or submission of this brief. No persons other than the *amici curiae*, their members, and their counsel made any monetary contribution to its preparation and submission. Counsel of record for the parties have received timely notice of the intent to file this brief and have consented to its filing.

Amici include the following:

Wicklender-Zulawski & Associates, Inc. (“WZ”) is a leading law enforcement consulting and training organization specializing in interrogation methods. WZ’s core mission is to educate and assist law enforcement professionals in interview and interrogation techniques consistent with legal and ethical standards. WZ conducts hundreds of seminars each year and has trained over 200,000 investigators, including law enforcement personnel from 34 of the top-50 largest police departments in the United States. The textbook authored by WZ’s founders, “Practical Aspects of Interview and Interrogation” (CRC Press 2001), is used by law enforcement agencies, private sector organizations, and universities across the country.

James L. Trainum is a private criminal case review consultant. Mr. Trainum formerly served for seventeen years as a homicide detective with the Metropolitan Police Department in Washington, D.C. Mr. Trainum has personally conducted hundreds of police interrogations. He is the author of a book entitled “How the Police Generate False Confessions: An Inside Look at the Interrogation Room” (Rowman & Littlefield 2016). He is a frequent speaker on the topic of interrogation methods. Mr. Trainum also consults with and provides instruction to law enforcement agencies on appropriate and lawful interview practices and procedures.

Daniel Sosnowski is a former police officer and a specialist in interview and interrogation methods. Over the course of his career, Mr. Sosnowski has conducted approximately 1,000 juvenile interviews and

interrogations. As an instructor, Mr. Sosnowski has taught more than 600 training seminars on interview and interrogation methods to law enforcement agencies and police academies across the United States. Mr. Sosnowski has served for over eighteen years as a Senior Instructor with the Public Agency Training Council, one of the largest law enforcement training associations in the United States. He previously served on the staff of the interview and interrogation training firm of John E. Reid & Associates, Inc. Mr. Sosnowski is a recognized polygraph examination expert and has conducted over 15,000 such examinations.

Stan B. Walters has approximately thirty-five years of experience training law enforcement personnel in interview and interrogation methods. Mr. Walters serves as an instructor with the Defense Intelligence Agency National Center for Credibility Assessment and the Public Agency Training Council. He has taught interrogation methods to state and local police in 45 states and has provided instruction to various federal agencies, including the United States Department of Defense, National Security Agency, and Drug Enforcement Administration. In addition, Mr. Walters has served as a subject matter expert in interviewing and interrogation for Johns Hopkins University. As part of his interrogation and interview training, Mr. Walters has conducted and produced over 1,300 videotaped interviews of inmates in criminal institutions across various states. He is the author of two books and numerous articles in the field of interrogation.

Jay Salpeter is a well-known private investigator and former New York City Police Department homicide

detective and hostage negotiator. Mr. Salpeter has worked on numerous high-profile investigations involving false or coerced confessions, including the investigation that led to the exoneration of Martin Tankleff, who was wrongfully convicted of murdering his parents at age seventeen, and the “West Memphis Three” case.

Steven Kleinman is a veteran military intelligence officer who is recognized as one of the foremost interrogation and human intelligence experts in the United States. Mr. Kleinman formerly served as director of the United States Air Force strategic interrogation program and in senior positions on interrogation and debriefing teams in Panama, the first Gulf War, Operation Iraqi Freedom, and Operation Enduring Freedom. Mr. Kleinman has also served as the senior intelligence officer at the Personnel Recovery Academy and as a certified instructor in advanced resistance to interrogation programs. In 2005, Mr. Kleinman was recruited to serve as a senior advisor to the Intelligence Science Board’s study on strategic interrogation, resulting in the issuance of a groundbreaking report published by the National Defense Intelligence College entitled “Educing Information,” which set forth guidelines and recommendations about effective and reliable interrogation methods. Mr. Kleinman retired from the Air Force in 2015 at the rank of Colonel.

SUMMARY OF THE ARGUMENT

The law enforcement community has long recognized that the age, sophistication, and intellectual capability of the person being questioned are all critical factors that must be examined when conducting an interrogation and when assessing the reliability and voluntariness of a juvenile confession. Brendan Dassey, an intellectually-impaired sixteen-year-old boy with a borderline IQ, is serving a life sentence because the investigators in this case employed interrogation techniques that are well known to lead to involuntary, unreliable statements when used with juveniles and those with cognitive deficiencies.

Due in part to the notoriety this case has garnered as a result of the popular docuseries “Making a Murderer,” interrogation specialists have used video footage of Dassey’s interrogation in training courses to highlight unreliable practices to be avoided and to show “what not to do” in interrogations involving juveniles and individuals with intellectual impairments. See Wicklander-Zulawski & Associates, Inc., *Netflix’s Making a Murderer: An Interrogator’s Perspective*, available at <http://goo.gl/xeJUd9> (last visited Mar. 23, 2018).

Dassey’s investigators engaged in conduct that infected the interrogation in pernicious ways. Contrary to proper interview procedures, the investigators did nothing to account for Dassey’s age or cognitive impairments. They applied subtle coercive pressures, made false assurances and suggestions of leniency, and shepherded Dassey to “correct” answers by divulging critical investigative details and using leading questions,

false evidence ploys, and similar tactics. These are the precise practices that contribute to the uniquely high rate of false and unreliable confessions among juveniles and intellectually challenged individuals.

From a law enforcement perspective, this case is representative of the deeply concerning way in which juvenile interrogations too often are conducted throughout this country. It features textbook examples of coercive practices that cannot be squared with the need for special care in such interrogations. The Court should grant review to reaffirm its holdings that age and intellectual capacity are critical considerations in custodial interrogations, to demonstrate the correct application of its precedents, and to provide guidance that will assist law enforcement and courts in avoiding the use of improper interrogation tactics and reducing the incidence of coerced and unreliable confessions.

The petition for a writ of certiorari should be granted.

ARGUMENT

I. This Case Presents Textbook Examples Of Unlawful And Unreliable Interrogation Practices.

The law enforcement community has long been aware of the risks presented when interrogating minors and individuals with cognitive deficiencies. These vulnerable suspects are marked by dispositional tendencies toward compliance and suggestibility and, as a result, are particularly susceptible to interrogative pressure. David E. Zulawski & Douglas E. Wicklander, *Practical Aspects of Interview and Interrogation* 80-90

(2d ed. 2002) (hereinafter “Zulawski, *Practical Aspects*”). Indeed, young and intellectually challenged interviewees are disproportionately likely to give false or unreliable confessions because they are inherently “less equipped to cope with stressful police interrogation and less likely to possess the psychological resources to resist the pressures of accusatorial police questioning.” Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 944 (2004); *see also* Fred E. Inbau, John E. Reid, Joseph P. Buckley, & Brian C. Jayne, *Criminal Interrogation and Confessions* 418-20 (5th ed. 2013) (hereinafter “Inbau, et al., *Criminal Interrogation*”).

These concerns are magnified in the confrontational and unfamiliar setting of the interview room. Zulawski, *Practical Aspects* 81. Even the “inherent coercion in the atmosphere of a police station may be a substantial factor with respect to the issue of voluntariness of the confession of a youthful suspect.” Inbau, et al., *Criminal Interrogation* 418 (internal quotation marks omitted).

When faced with coercive and accusative interrogation methods, juvenile subjects commonly seek to avoid conflict by focusing on appeasing their adult questioner. Zulawski, *Practical Aspects* 81. For example, juvenile interviewees will frequently attempt to satisfy the perceived desires of the interviewer by guessing at “correct,” but untruthful, responses based upon contextual clues in suggestive or leading questions or by drawing inferences from the interviewer’s mood or body language. *Id.* at 81-82, 90. Persons with cognitive deficiencies pose additional concerns for interrogators because it is difficult to assess the extent to which those

individuals adequately comprehend their situation or the questions they are being asked. At the same time, those individuals are often highly impressionable and quick to accept blame, including blame for the conduct of others. *Id.* at 87-88.

From the perspective of law enforcement, accounting for coercive pressures in juvenile interrogations is of critical importance to ensuring the reliability and effectiveness of the interrogation. *Id.* at 81-87; Int'l Ass'n of Chiefs of Police & Office of Juvenile Justice and Delinquency Prevention, *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation* 7-10 (2012) (hereinafter "IACP, *Reducing Risks*"). Because of their unique susceptibility to psychological interrogation pressures, a "high percentage of verified false confessions" come from juveniles or individuals with diminished mental capacity. Inbau, et al., *Criminal Interrogation* 418-20. For this reason, interrogation specialists counsel that "extreme care should be exercised" with such individuals. *Ibid.* Investigators must "modify their approach" to account for a suspect's age, cognitive ability, and other personal risk factors that may result in the suspect providing officers with false or unreliable information. John E. Reid & Associates, Inc., *Making a Murderer: the Reid Technique and Juvenile Interrogations*, available at <http://goo.gl/FLWTja> (last visited Mar. 23, 2018).

Despite recognition that precautions must be taken to minimize unreliability risks when questioning juveniles and intellectually limited individuals, research suggests that law enforcement officers frequently treat those interviewees no differently than adult suspects.

Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. Crim. L. & Criminology 219 (2006); Jessica R. Meyer & N. Dickon Reppucci, *Police Practices and Perceptions Regarding Juvenile Interrogation and Interrogative Suggestibility*, 25 Behav. Sci. L. 757 (2007). Contributing to this problem is the fact that this Court has not decided a juvenile voluntariness case in almost forty years, *see Fare v. Michael C.*, 442 U.S. 707 (1979), and, as the petition notes, Pet. 30-35, lower courts, which are on the front lines of “policing” interrogation conduct that yields unreliable and coerced confessions, have frequently misapplied this Court’s precedent.

This case involves classic examples of common missteps that lead to false or unreliable confessions in juvenile interrogations. As explored in greater detail below, problems with the interrogation in this case included: (1) failure to tailor the interrogation to Dassey’s age, developmental maturity, and mental limitations; (2) contamination of the confession through fact-feeding and leading questions that divulged key investigative information; and (3) use of subtle coercion in the form of false assurances and suggestions of leniency. The Court should grant review in this case to provide guidance with respect to the validity of these interrogation practices and to model the correct application of its juvenile voluntariness precedent.

A. Investigators Failed To Account Properly For Dassey’s Age And Intellectual Limitations.

The law enforcement community recognizes that special precautions must be taken to avoid false or

unreliable confessions when questioning juveniles and subjects who are otherwise given to compliance and suggestibility. The interrogation methods employed in this case did not properly account for Dassey's youth, developmental impairments, or cognitive deficiencies.

Dassey, who was sixteen years old at the time of his arrest, had no prior experience with law enforcement and presented with obvious intellectual impairments. App. 201a. In school, Dassey received special education services and was described as a "slow learner" with "really, really bad" grades. App. 201a-202a (internal quotation marks omitted). Dassey's IQ was assessed as being in the "low average to borderline range." App. 201a. He was "highly suggestible, docile, withdrawn, with extreme social anxiety and social avoidant characteristics, and more suggestible than 95% of the population." App. 75a. Dassey also had difficulty expressing himself and understanding ordinary "social aspects of communication." App. 201a (internal quotation marks omitted); Dist. Ct. Dkt. 19-12 at 90-91.

Investigators Mark Wiegert and Thomas Fassbender conducted multiple interviews of Dassey over the course of several days. App. 201a-215a. Throughout those interviews, Wiegert and Fassbender set a confusing and ambiguous tone with respect to their true role in the investigation, presenting themselves as father figures, rather than police officers. In one interview, Fassbender told Dassey, for example:

Mark and I, yeah we're cops, we're investigators and stuff like that, but I'm not right now. I'm a father that has a kid your age too. I wanna be here for you. There's nothing I'd like more than

to come over and give you a hug cuz I know you're hurtin'. ... Talk about it, we're not just going to let you high and dry, we're gonna talk to your mom after this and we'll deal with this, the best we can for your good OK? I promise I will not let you high and dry, I'll stand behind you.

App. 518a. The officers emphasized that they were “here to help [Dassey],” *ibid.*, that they were his “friend[s] right now,” App. 369a, and that they were “in [his] corner” and “on [his] side,” App. 360a. Several times throughout the questioning, Wiegert also placed his hand on Dassey’s knee in what the district court described as a “compassionate and encouraging manner.” App. 148a.

Developing a rapport and expressing empathy are common and generally acceptable techniques in adult investigative interviews, but applying these methods to interrogations involving individuals of Dassey’s age and with Dassey’s cognitive and social deficits is problematic. Zulawski, *Practical Aspects* 81-90. Here, the investigators blurred the line as to the motive of the interview and the serious consequences attendant to any statements Dassey made in response to their questions. Moreover, in establishing a decidedly paternalistic dynamic, the investigators imparted an expectation of dutiful compliance. This type of approach is likely to have a coercive effect on vulnerable and impressionable subjects like Dassey. In this situation, the interviewee will learn to provide responses according to what is “expected and what is positively reinforced from his interviewer adult.” *Id.* at 82.

For this reason, law enforcement experts have emphasized that it is “essential to involve a ‘friendly adult’ in the juvenile interrogation process[.]” IACP, *Reducing Risks* 7-8. A friendly adult presence facilitates a proper interrogation by providing “the aid of more mature judgment” and protecting against coercion resulting from the interviewee’s “unequal footing with his [adult] interrogators.” *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962). Lack of adult support during the interrogation is likely to have enhanced Dassey’s compliant behavior.

Dassey’s investigators employed other methods long recognized by law enforcement as well-known drivers of unreliability in juvenile interrogations, including false evidence tactics aimed at deceiving Dassey into believing that the officers had evidence of his guilt when, in fact, they did not. For example, the investigators repeatedly stressed to Dassey that “[w]e already know what happened,” App. 369a, and that “[y]ou know we know,” App. 392a. These statements were not isolated but, rather, as the district court noted, “persisted throughout the interrogation.” App. 267a; *see, e.g.*, App. 362a (“We pretty much know everything....”), 370a (“We already know what happened now tell us exactly. Don’t lie.”), 375a (“Remember we already know....”), 377a (“We already know.”), 383a (“What else did he do ta her? We already know, be honest.”), 384a (“We already know Brendan. We already know.”), 388a (“It’s OK Brendan. We already know.”), 392a (“Brendan, I already know.”), 394a (“What happens next? Remember, we already know, but we need to hear it from you, it’s OK.”), 402a

(“We already know, don’t lie to us now, OK, come on.”), 525a (“We know. We already know....”).

Fictitious evidence techniques have their proponents and detractors among law enforcement, but there is consensus even among supporters that such methods “should be avoided when interrogating a youthful suspect with low social maturity or a suspect with diminished mental capacity.” Inbau, et al., *Criminal Interrogation* 352. Such individuals are especially unlikely to “have the fortitude or confidence to challenge [fictitious] evidence and, ... may become confused as to their own possible involvement[.]” *Ibid.* The use of deceptive false evidence methods thus may cause an innocent juvenile to give unreliable statements that adopt the fictitious “evidence” supplied by adult interrogators. *See ibid.*; Zulawski, *Practical Aspects* 79-80, 255.

The investigators here exacerbated the coercive effect of their fictitious assertions by coupling them with authoritative reminders to “be honest,” *e.g.*, App. 383a, and coaxing suggestions that minimized the consequences of providing information that matched what the officers supposedly already knew, *see* App. 397a (“what happened, it’s OK”), App. 394a (“[i]t’s not your fault”). This can cause innocent juvenile interviewees to “misinterpret the [interviewer’s] intentions and fabricate information to please him.” Ronald P. Fisher & R.E. Geiselman, *Memory-Enhancing Techniques for Investigative Interviewing* 50 (1992). Thus, when asked to confirm facts that he did not know, Dassey repeatedly responded by guessing at what he thought the investigators wanted to hear. For

example, in one exchange concerning whether the victim's hair had been cut off during the commission of the crime, Dassey struggled in responding to the investigators' questions, providing various conflicting statements and, finally, telling the frustrated officers that he was merely "guessing" at the right answer:

Fassbender: The first time we talked to you or the second time you talked about cutting off her hair.² Where did the hair go? Did you cut off her hair?

Brendan: Yeah.

Fassbender: Where did that happen[?]

Brendan: In the, in the, bedroom.

Fassbender: What ya cut the hair off with?

Brendan: The knife.

Fassbender: The knife you found in the garage?

Wiegert: It doesn't make sense.

Fassbender: It's impossible. You took her out to the garage and that's where you got the knife. Explain how that can be. (pause) Did you cut her hair off?

Brendan: No.

² As discussed below, Dassey previously mentioned cutting the victim's hair during a highly suggestive line of questioning in which the investigators told Dassey that "[s]omething" was done to the victim's head and pressed Dassey to say what that was. App. 408a-409a.

Fassbender: Then why did you tell us you did?
Brendan?

Brendan: I don't know.

* * *

Fassbender: Do you remember telling us prior?
The last time that you saw that stuff in the burn
barrel?

Brendan: Yeah.

Wiegert: So why did you do that?

Brendan: I had too much stuff on my mind.

Wiegert: So now you remember a little more
clearly? OK. How much of her hair did you cut
off?

Brendan: A little bit.

Wiegert: You told me a couple of minutes ago you
didn't cut any off. What's the truth? Did you cut
some of her hair off?

Brendan: No.

* * *

Fassbender: ... did anyone cut her hair off that
night?

Brendan: No. (shakes head no)

Fassbender: Where did you get that from?
(pause) I mean it seems kind of strange that you
just all of a sudden told us you had cut her hair off.
Where did you get that from, if it's not true?

Brendan: I don't know, I was just guessing.

Fassbender: Why, Did you think that was somethin' we wanted to hear?

App. 137a-139a (emphasis omitted); Dist. Ct. Dkt. 19-34 at 36-37, 65-66, 98. At that point, the investigators should have recognized that Dassey “d[id not] know” the answers to their questions, but was simply attempting to meet expectations by guessing “correct” responses.

Dassey’s answers likewise made clear that he did not understand the significance of his statements or the gravity of his situation. At one point, after having just told the investigators of his involvement in a brutal crime, Dassey asked whether the interview would be over in time for him to return to school that afternoon to turn in a project that was due in his sixth hour class. App. 438a-439a. Later, near the end of the interview, Dassey similarly asked the investigators “[w]hat time will this be done” and whether he would “be at school before school ends[.]” App. 497a. When the officers responded “[p]robably not” and asked Dassey what he thought was going to happen next, Dassey stated that he did not know. App. 497a-498a. When told that he would be arrested because “obviously ... we’re police officers,” which the officers had earlier claimed they were “not right now,” App. 518a, the confused Dassey responded by asking “[i]s it only for one day[?]” App. 498a-499a.

The investigators’ tactics resulted in Dassey providing guesses, not reliable information. These interrogation methods did not account for Dassey’s age and cognitive limitations. Instead, the use of these tactics ignored hallmark warning signs of coercion and procured a confession based upon responses Dassey gave because that was what he thought the investigators

wanted to hear and because he had no grasp of the serious consequences of his answers. As experienced interrogators and instructors of law enforcement personnel, *Amici* view the tactics employed here as unacceptable. Granting certiorari would aid instructors and interrogation professionals in ensuring that appropriate interview methods are applied to all juveniles and intellectually limited suspects.

B. Investigators Contaminated The Interrogation With Fact-Feeding.

The tactics used by Dassey's interrogators further contributed to the unreliability of the confession when the detectives divulged key investigative information to Dassey in the form of leading questions and fact-feeding.

It is essential in investigations for law enforcement to withhold certain known facts or evidence from the public and potential suspects. Doing so enables interrogators to validate the veracity of a confession. When details of a crime known only to the police are shared by a suspect during interrogation, the interrogator can then evaluate whether the confession is corroborated by the evidence. *See* Joseph P. Buckley, *The Reid Technique of Interviewing and Interrogation*, in *Investigative Interviewing: Rights, Research, Regulation* 190, 204–05 (Tom Williamson et al., eds., 2005).

Confession contamination occurs when interrogators disclose, either intentionally or inadvertently, non-public investigative facts to the interviewee through suggestive or leading questions. This is especially problematic in interrogations involving highly

suggestible or manipulable subjects like juveniles or individuals with cognitive deficiencies. *See* Zulawski, *Practical Aspects* 73-103. When a compliant individual agrees with the interrogator's facts in his responses, this creates a false impression of corroboration and lends plausibility to the confession. *Id.* at 80-81. In reality, the interviewee has merely adopted the interrogator's details as his own.

The investigators here repeatedly relied upon fact-feeding to elicit key "admissions." Perhaps most troublesome was the investigators' questioning regarding the shooting of the victim. The investigators had withheld from the media evidence that the victim had been shot in the head. Thus, to corroborate Dassey's confession, the investigators pressed him for details about the shooting: "[W]hat else did you do? Come on. Something with the head." App. 408a. Dassey struggled to provide officers with the "right" answer. First, he responded that his uncle "cut off [the victim's] hair," *ibid.*, a fact which, as discussed above, he later stated was a "guess[]," Dist. Ct. Dkt. 19-34 at 98. When the investigators continued to press Dassey for more, he tried different answers, stating that his uncle had punched the victim in the head and made Dassey cut her throat. App. 408a-409a. Despite continued questioning, Dassey still gave no indication of any knowledge that the victim was shot in the head. Finally, one of the investigators grew impatient and stated the critical fact: "All right, I'm just gonna come out and ask you. Who shot her in the head?" App. 411a. Dassey replied, "[h]e did" (meaning Dassey's uncle). *Ibid.* When the investigators responded "[t]hen why didn't you tell us

that?” Dassey explained that he “couldn’t think of it.”
Ibid.

Once fed this critical detail, Dassey continued to guess as to the number of times the victim had been shot, adjusting his answers based upon the feedback he received from the interrogators. Initially, Dassey told the detectives that the victim had been shot “[t]wice.” App. 413a. Dissatisfied, the detectives pressed for a different answer: “Total? Not just in the head. (pause) Do you shoot her elsewhere? Honestly?” *Ibid.* Dassey changed his answer to “[t]hree” times, App. 415a, but the detectives again hinted that they were looking for a higher number:

Fassbender: ... How many times? (pause)
Remember we got a number of shell casings that we found in that garage. I’m not gonna tell ya how many but you need to tell me how many times, about, that she was shot.

Wiegert: We know you shot her too. Is that right? (Brendan shakes head “no”) Then who did?

Brendan: I don’t know.

Wiegert: Who shot her?

Brendan: I didn’t even touch the gun.

Wiegert: OK. How many times did Steven shoot her?

Brendan: About ten.

* * *

Fassbender: All right.

Wiegert: That makes sense. Now we believe you.

App. 421a-422a. This type of fishing for “correct” answers continued throughout the interrogation, with the investigators guiding Dassey toward their desired responses, praising him and telling him that they believed him when he parroted information that had been suggested or hinted at through their leading questions, and correcting him and admonishing him to tell the truth when he failed to land on the right answer.

While acknowledging that the investigators’ “leading and suggestive questions” led Dassey “at times to seem to guess,” App. 26a, the *en banc* majority of the Seventh Circuit found that other “incriminating details in Dassey’s confession” were reliable because they “were not suggested by the questioners” but, instead, were “volunteered ... in response to open-ended questions,” App. 28a. That is mistaken. As Chief Judge Wood noted in dissent, every one of the “incriminating” facts on which the majority relied was either coerced or otherwise unreliable. App. 48a-55a. For example, Dassey correctly told the officers that the license plates on the victim’s car had been removed. However, that statement came after investigators strongly implied this fact through their questioning of Dassey a few days earlier, App. 538a (“Did he tell you if he did anything with the license plates?”), and then fed him the information in a leading question during the main interrogation, App. 426a (“With, how’s, the license plates were taken off the car, who did that?”).

The numerous similar examples exhaustively addressed in Judge Wood’s opinion confirm that Dassey’s interrogation did not include “factors

point[ing] in both directions,” as the majority put it, App. 28a, but, instead, was wholly the product of suggestive questions and fact-feeding. Granting certiorari here would provide the Court with an opportunity to make clear that tactics like these produce unreliable confessions when used with juveniles and intellectually limited suspects.

C. Investigators Gave False Assurances Of Leniency.

Finally, Dassey’s investigators applied improper interrogative pressures through their repeated protective assurances and false promises of leniency. For example, at the same time the investigators were telling Dassey that they “already knew” everything about his involvement, they stressed to Dassey that “you don’t have to worry about things” because, “from what I’m seeing, ... I’m thinkin’ you’re all right.” App. 361a. The officers told Dassey that “[i]f, in fact, you did something[], which we believe, ... [i]t’s OK,” and that, “no matter what you did, we can work through that.” App. 362a. These assurances echoed comments that the investigators were “not [cops] right now,” were “here to help,” would not “let [Dassey] high and dry,” would “deal with this,” would “stand behind [him],” and would “go to bat for [him].” App. 518a, 524a.

Proper interrogation techniques are careful to avoid the use of themes centered on “helping” the subject because these references are commonly interpreted by the interviewee as implied promises of leniency. Inbau, et al., *Criminal Interrogation* 331. In interrogations involving juveniles and individuals with intellectual and

social deficits, these techniques encourage the interviewee to “[s]ay what the police want to hear” in order to put an end to the interrogation. IACP, *Reducing Risks* 9-10. In particular, “many juvenile false confessors have explained that they confessed under the mistaken belief that they would be able to end the interrogation and immediately go home.” *Id.* at 9. Dassey’s multiple inquiries regarding when he would be permitted to return to school make clear that this was the case here.

Dassey’s interrogators also set an expectation of “honesty” and cooperation, telling Dassey that “[h]onesty here ... is the thing that’s gonna help you,” “as long as you be honest with us, it’s OK,” and that “[h]onesty is the only thing that will set you free.” App. 362a. At the same time, the officers’ suggestive questioning and approach when Dassey agreed with their suggestions made it clear that “honesty” meant providing the facts that the officers wanted to hear.

While an adult of ordinary intelligence might recognize the officers’ statements about “honesty” to be a variant of the popular idiom “the truth will set you free,” and not take the statements literally, Dassey “was a mentally limited teenager who did not understand abstractions.” App. 56a. Indeed, Dassey’s school reports indicated that he had particular difficulties understanding idioms. Dist. Ct. Dkt. 19-20 at 79. Such statements, even if well meaning, were likely to have contributed to Dassey’s impression that he would be permitted to leave once he told the investigators what they wanted to hear.

* * *

In short, the coercive interrogation methods employed by the investigators in this case failed in every respect to account for Dassey's age and intellectual/developmental profile, including, most importantly, his heightened susceptibility to suggestion and compliance. The result points strongly toward a coerced, involuntary, and unreliable confession.

There is perhaps no more direct confirmation as to the unreliability of Dassey's confession than the exchange between Dassey and his mother, Barb Janda, caught on tape immediately before Dassey was taken into custody. Head in hands, Dassey told his mother: "[t]hey got to my head." App. 503a. Dassey expressed worry that the investigators might be upset if they discovered that Dassey "never did nothin'" or if his uncle gave a different version of the story. *Ibid.* Dassey's mother then asked whether he had, in fact, done anything wrong:

Barb Janda: Did you? Huh?

Brendan: Not really.

Barb Janda: What do you mean not really?

Brendan: They got to my head.

Ibid.

The confession of a juvenile witness with severe cognitive and social deficiencies procured by coercive questioning that "got to [the witness'] head" is not a reliable confession.

II. Granting Certiorari Will Guide Law Enforcement In Conducting Reliable Interrogations.

Conducting juvenile interrogations in a manner that accords with this Court's precedent and accepted law enforcement standards and that properly accounts for coercive interview pressures is essential to securing truthful, reliable, and actionable information that can assist law enforcement in protecting the public and solving crimes. Granting review in this case would support investigators in that task. It would allow this Court to reaffirm its holdings requiring special attention to coercion in juvenile interrogations and it would offer an opportunity for the Court to provide guidance and instruction to law enforcement and lower courts on the application and evaluation of appropriate interrogation practices.

Likewise, reversing the denial of habeas relief in this case would not hinder the ability of law enforcement to investigate and resolve crimes. Just the opposite: truth and reliability are the primary objectives of police investigation. Using interview methods that avoid, rather than exaggerate, juvenile coercion is critical to that goal. Granting certiorari would assist investigators in identifying and eradicating coercive interrogation practices that are known to contribute to unreliable confessions by juveniles and intellectually limited suspects.

CONCLUSION

The petition for a writ of certiorari should be granted.

March 26, 2018

Respectfully submitted,

THOMAS P. SULLIVAN
TERRI L. MASCHERIN
Counsel of Record
GABRIEL A. FUENTES
ANDREW W. VAIL
SKYLER J. SILVERTRUST
JENNER & BLOCK LLP
353 North Clark Street
Chicago, Illinois 60654
(312) 222-9350
tmascherin@jenner.com

Counsel for Amici Curiae