No. 16-3397

IN THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRENDAN DASSEY,	)	Appeal from the United
	)	States District Court for the
Petitioner-Appellee,	)	Eastern District of Wisconsin
	)	
v.	)	
	)	No. 14 CV 1310
	)	
MICHAEL A. DITTMANN,	)	
	)	The Honorable Magistrate
Respondent-Appellant.	)	Judge, William E. Duffin,
	)	Judge Presiding

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER, WICKLANDER-ZULAWSKI & ASSOCIATES, INC., AND PROFESSOR BRANDON L. GARRETT IN SUPPORT OF APPELLEE AND AFFIRMANCE

Marsha L. Levick
JUVENILE LAW CENTER

Counsel for Amici Curiae

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

Pursuant to Federal Rule of Appellate Procedure 29(b), *Amici Curiae* Juvenile Law Center, Wicklander-Zulawski & Associates, Inc., and Professor Brandon L. Garrett respectfully move to file the accompanying brief in support of Appellee and Affirmance.

This motion is filed with the consent of Laura H. Nirider, Counsel for Petitioner-Appellee. Counsel for Respondent-Appellant takes no position on this motion.

INTEREST AND IDENTITY OF AMICI CURIAE

Amici Curiae, Juvenile Law Center, Wicklander-Zulawski & Associates, Inc., and Professor Brandon L. Garrett share a common interest in ensuring that the full range of constitutional protections are afforded to children subject to interrogation to ensure their confessions are voluntary. *Amici* share a concern that validating Brendan Dassey's confession will undermine crucial Fifth Amendment protections well-established by law and rooted in social science, will fly in the face of best practices in law enforcement, and ultimately, will undermine the truth-seeking function that proper interrogations fulfill.

Amici are experts in law, how adolescent development and social science research impact the law, and interrogation techniques:

Juvenile Law Center, founded in 1975, is the oldest public interest law

firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare, criminal, and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Juvenile Law Center works to ensure that the juvenile justice system considers the unique developmental differences between youth and adults. Juvenile Law Center has written extensively on the issue of constitutional protections for children who are subjects of interrogation in both state and federal courts. Juvenile Law Center authored the *amicus* brief in the United States Supreme Court case, *J.D.B. v. North Carolina*, on behalf of 28 individuals and organizations, arguing for special consideration of age in the custodial analysis under *Miranda v. Arizona.*

Wicklander-Zulawski & Associates, Inc. is a premier training organization for law enforcement and private sector organizations in the fields of interviewing and interrogation. Since 1982, Wicklander-Zulawski & Associates, Inc. has provided training and content in these sectors across the globe to a variety of organizations including Federal Agencies, as well as State and local law enforcement. Wicklander-Zulawski & Associates, Inc. also provides training and preparation for the Certified Forensic Interviewer designation recognized by the International Association of Interviewers. All instructors and content providers are Certified Forensic Interviewers, and Wicklander-Zulawski & Associates have served as expert witnesses in the

field of interview and interrogation on countless cases across the Nation. Their textbook "*Practical Aspects of Interview & Interrogation*" is utilized by law enforcement agencies, private sector organizations and some universities as reference material in these fields. Content and training seminars provided by Wicklander-Zulawski & Associates include instruction on lead homicide investigations, criminal interview and interrogation, and victim or witness interviews. The mission of Wicklander-Zulawski & Associates is to assist professionals who are responsible for obtaining the truth and instructs their partners in multiple interview and interrogation techniques that are consistently updated to reflect moral, legal and ethical standards.

Professor Brandon L. Garrett is the Justice Thurgood Marshall Distinguished Professor of Law at the University of Virginia School of Law, where he has taught since 2005. This *Amici* brief represents his individual views and research, and not those of the University of Virginia School of Law or of any institution. Professor Garrett's research and teaching interests include corporate crime, criminal procedure, habeas corpus, scientific evidence, and constitutional law. Over the years, he has studied and written articles on false confessions, eyewitness memory, forensic science, and the causes of wrongful convictions. In 2011, he authored a major study of DNA exonerations, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* (Harvard University Press, 2011). That book was the subject of a

symposium issue in New England Law Review, and received an A.B.A. Silver Gavel Award, Honorable Mention, and a Constitutional Commentary Award. It was translated for editions in China, Japan and Taiwan. In 2013, Foundation Press published Garrett's casebook, *Federal Habeas Corpus: Executive Detention and Post-Conviction Litigation*, co-authored with Lee Kovarsky. In 2014, he authored a major study of corporate prosecutions, *Too Big To Jail: How Prosecutors Compromise with Corporations* (Harvard University Press, 2014).

NEED FOR AMICI PARTICIPATION

Amici are guided by the principle that permission to nonparties to submit briefs as amicus curiae is "a matter of judicial grace," *Nat'l Org. for Women, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000). This Court does not grant "rote permission" to file amicus briefs and instead only allows nonparties to file 1) when a party to the case is not adequately represented; 2) when the nonparty seeking to file has a direct interest in another case and the case in which they seek permission to file amicus curiae may, by operation of *stare decisis* or *res judicata*, materially affect that interest; or 3) when the amicus has a unique perspective that can assist the court of appeals beyond what the parties are able to do. *Id. at 617.*

Understanding these narrow grounds, *Amici* firmly assert that this motion

for leave is well-supported by the unique perspective on custodial interrogations and false confessions that *Amici* provide both individually and together. Juvenile Law Center's prolific writing on juvenile interrogations has illuminated the constitutional implications of research on child development and intellectual disability in cases across a breadth of federal and local jurisdictions. Similarly, Wicklander-Zulawski & Associates, Inc. has unmatched authority on best practices in police interrogation techniques as a trusted source for training by law enforcement, again at both the federal and local levels. Finally, Professor Garrett's extensive research on the causes of wrongful convictions—including false confession—makes him an important expert in the field most relevant to the circumstances of Petitioner-Appellee Brendan Dassey.

Taken together, these perspectives will provide the Court with information and analysis directly applicable to the facts and posture of this case. More importantly, this collective expertise is beyond what the parties here can provide in addressing their own positions and analysis of the relevant facts.

CONCLUSION

This case is of exceptional importance to the national community of advocates seeking to defend the constitutional rights of children, particularly

children. *Amici* participation by knowledgeable and respected members of that community is therefore appropriate. *Amici* respectfully request that this Court grant leave to file the attached *Amici Curiae* brief.

Respectfully submitted,

/s/Marsha L. Levick
Marsha L. Levick

Counsel for Amicus Curiae

DATED: December 13, 2016

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the type-volume limitation of Fed. R. App. Pr. 27(d)(2) because this motion does not exceed 20 pages, exclusive of the corporate disclosure statement and any accompanying documents authorized by Fed. R. App. P. 27(a)(2)(B).

I further certify that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Circuit Rule 32(b) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 13-point Century Schoolbook font.

Respectfully submitted,

/s/Marsha L. Levick
Marsha L. Levick

DATED: December 13, 2016

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2016, I electronically filed the foregoing MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* JUVENILE LAW CENTER, WICKLANDER-ZULAWSKI & ASSOCIATES, INC., AND PROFESSOR BRANDON L. GARRETT IN SUPPORT OF APPELLEE AND AFFIRMANCE with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Respectfully submitted,

/s/Marsha L. Levick
Marsha L. Levick

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PROFESSOR BRANDON GARRETT
IN SUPPORT OF APPELLEE AND AFFIRMANCE

Marsha L. Levick
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Counsel for Amici Curiae

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 16-3397

Short Caption: Dassey v. Dittmann

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Juvenile Law Center

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Juvenile Law Center

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: s/ Marsha L. Levick Date: 9/29/2016

Attorney's Printed Name: Marsha L. Levick

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** ______

Address: Juvenile Law Center, [redacted]

[redacted]

Phone Number: [redacted] Fax Number: [redacted]

E-Mail Address: [redacted]

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST AND IDENTITY OF AMICI CURIAE 1

ARGUMENT 5

I. Police Policies and Training Materials Make Clear that Brendan's Interrogation Placed Undue Coercion on Him, Putting Him at Risk of False Confession 5

A. The interrogation failed to adequately account for juvenile status or intellectual disability as recommended by police policy, training, and practice materials 6

B. Police training and policies caution against the type of promises, threats and coercion that were used in Brendan's interrogation 11

C. Interrogators inappropriately divulged information, counter to police policies and best practices 12

II. Significant Social Science Research Confirms that Youth Like Brendan, and Particularly Those with Intellectual Disabilities, are Uniquely Vulnerable to Police Pressure and Subsequent False Confessions 15

A. Social science research underscores the vulnerability of youth to police coercion and false confession 16

B. Youth with disabilities are particularly vulnerable to police pressure and false confessions 20

III. Brendan Shares Characteristics Seen in False Confession Cases 22

CONCLUSION 27

TABLE OF AUTHORITIES

Page(s)

Cases

Fikes v. Alabama,
352 U.S. 191 (1957) 20

Gallegos v. Colorado,
370 U.S. 49 (1962) 15

In re: Gault,
387 U.S. 1 (1967) 5

Graham v. Florida,
560 U.S. 48 (2010) 15

Haley v. Ohio,
332 U.S. 596 (1948) 5, 15

Hall v. Florida,
134 S. Ct. 1986 (2014) 20

J.D.B. v. North Carolina,
564 U.S. 261 (2011) 5, 15

In re Jerrell C.J.,
699 N.W.2d 110 (Wis. 2005) 9

Miller v. Alabama,
132 S. Ct. 2455 (2012) 15

Montgomery v. Louisiana,
136 S. Ct. 718 (2016) 15

Payne v. Arkansas,
356 U.S. 560 (1958) 20

Reck v. Pate,
367 U.S. 433 (1961) 20

Statutes

705 Ill. Comp. Stat. Ann. 405/5-401.5 (West 2014) 9

Cal. Penal Code § 859.5 (West 2014) 9

Or. Rev. Stat. Ann. § 133.400 (West 2009) 9

Other Authorities

Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 Law & Hum. Behav. 141 (2003) 18

Allison D. Redlich, *Double Jeopardy in the Interrogation Room: Young Age and Mental Illness*, 62 Am. Psychol. 609 (2007) 22

Brandon L. Garrett, *Contaminated Confessions Revisited,* 101 Va. L. Rev. 395 (2015) 20, 23, 24, 25

Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* 21-44 (Harvard University Press: Cambridge, MA 2011) 19, 23

Brandon L. Garrett, *The Substance of False Confessions*, 62 Stan. L. Rev. 1051 (2010) 19

Christian A. Meissner, Christopher E. Kelly, & Skye A. Woestehoff, *Improving the Effectiveness of Suspect Interrogations*, 11 Ann. Rev. L. & Soc. Sci. 211 (2015) 18

David E. Zulawski & Douglas E. Wicklander, PRACTICAL ASPECTS OF INTERVIEW AND INTERROGATION (CRC Press 2002) 8, 9, 13

Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 Victims & Offenders 428 (2012) 16, 17

Englewood 4, CHICAGO TRIBUNE (Dec. 8, 2012) 26

Fiona Jack, Jessica Leov, & Rachel Zajac, *Age-Related Differences in the Free-Recall Accounts of Child, Adolescent, and Adult Witnesses,* 28 Applied Cognitive Psychol. 30 (2014) 17

Fred E. Inbau, John E. Reid, Joseph P. Buckley & Brian C. Jayne, CRIMINAL INTERROGATIONS AND CONFESSIONS 352 (JONES AND BARTLETT, 5TH ED. 2013) 11

Gisli H. Gudjonsson & Lucy Henry, *Children and Adult Witnesses With Intellectual Disability: The Importance of Suggestibility*, 8 Legal & Crim. Psychol. 241 (2003) 21

Gisli H. Gudjonsson et al., *Custodial interrogation, false confession and individual differences: A national study among Icelandic youth*, 41 Personal. & Individ. Differ. 49 (2006) 18

Hayley M. D. Cleary & Todd C. Warner, *Police Training in Interviewing and Interrogation Methods: A Comparison of Techniques Used with Adult and Juvenile Suspects*, 40(3) Law and Human Behavior 270 (2016) 17

Ingrid Candel et al., *"I hit the Shift-key and then the computer crashed": Children and false admissions*, 38 Personality & Individ. Differ. 1381 (2005) 18

International Association of Chiefs of Police & Office of Juvenile Justice and Delinquency Prevention, *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation*, 7-12 (Sept. 2012) 6, 7

International Association of Chiefs of Police, *Interviewing and Interrogating Juveniles Model Policy* (May 2012)..7

International Association of Chiefs of Police Online Training Series at http://www.theiacp.org/ViewResult?SearchID=2400 7

Jessica Owen-Kostelnik et al., *Testimony & Interrogation of Minors: Assumptions about Maturity and Morality*, 61 Am. Psychol. 286 (2006) 16

John E. Reid & Associates, Inc., *Investigator Tips Making a Murderer: The Reid Technique and Juvenile Interrogations*, at http://www.reid.com/educational_info/r_tips.html?serial=2016 0101-1 10

Joseph Neff, *Judge Overturns Convictions of Robeson Men in Child's 1983 Rape, Murder*, News Observer (Sept. 2, 2014) 24

Kathryn Schultz, Dead Certainty: How "Making a Murderer" goes wrong, The New Yorker (Jan. 25 2016) 14

Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Ann. Rev. Clinical Psychol. 459 (2009) 17

Maggie Bruck & Laura Melnyk, *Individual Differences' in Children's Suggestibility: A Review and Synthesis*, 18 Applied Cognitive Psychol. 947 (2004) 20

N. Dickon Reppucci, et al., *Custodial Interrogation of Juveniles: Results of a National Survey of Police, in* Police Interrogations and False Confessions: Current Research, Practice, and Policy Recommendations 67 (G. Daniel Lassiter & Christian A. Meissner eds., 2010) 17

Naomi E. Sevin Goldstein et al., *Juvenile Offenders' Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions,* 10 Assessment 359 (2003) 19

The National Registry of Exonerations, *Bobby Johnson*, at http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4751.. 25, 26

The National Registry of Exonerations, *Exonerations in 2015 Executive Summary* (Feb. 3, 2016)... 19

Richard A. Leo, *False Confessions: Causes, Consequences, and Implications,* 37 J. Am. Acad. Psychiatric Law 332 (2009) 22

Samuel Gross & Michael Shaffer, *Exoneration in the United States, 1989-2012: Report by the National Registry of Exonerations*.. 19, 21

Saul Kassin, *False Confessions and the Jogger Case*, THE NEW YORK TIMES (Nov. 1, 2002) 26

Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors & Recommendations*, 34 Law & Hum. Behav. 3 (2010).................................. 21

Saul M. Kassin et al, *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs,* 31 Law & Hum. Behav. 381 (2007) 8

Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891 (2004) 18

Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & Hum. Behav. 333 (2003) 18

Wicklander-Zulawski & Associates, Inc., *Netflix's Making a Murderer: An Interrogator's Perspective* (Jan 28, 2016) 11, 13, 14

Wicklander-Zulawski & Associates, Inc., *Netflix's Making a Murderer: Involuntary Confession – An Interrogator's Perspective*, (Aug. 19, 2016) 6

Wicklander-Zulawski & Associates, Inc., Criminal Interview & Interrogation Techniques Training Course (2016) 9, 11, 12, 13

INTEREST AND IDENTITY OF AMICI CURIAE[1]

Amici Curiae, Juvenile Law Center, Wicklander-Zulawski & Associates, Inc., and Professor Brandon L. Garrett share a common interest in ensuring that the full range of constitutional protections are afforded to children subject to interrogation to ensure their confessions are voluntary. *Amici* share a concern that validating Brendan Dassey's confession will undermine crucial Fifth Amendment protections well-established by law and rooted in social science, will fly in the face of best practices in law enforcement, and ultimately, will undermine the truth-seeking function that proper interrogations fulfill.

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[1] Counsel for Appellee has consented to this filing. The State has indicated that they "take no position" in regards to this filing. No counsel for any party in this case authored this brief in whole or in part. No person or entity aside from *Amici Curiae*, its members, or its respective counsel made a monetary contribution to the preparation or submission of this brief. *Amici Curiae* file under the authority of Fed. R. App. P. 29(a).

Juvenile Law Center works to ensure that the juvenile and criminal justice systems consider the unique developmental differences between youth and adults. Juvenile Law Center has written extensively on the issue of constitutional protections for children who are subjects of interrogation in both state and federal courts. Juvenile Law Center authored the *amicus* brief in the United States Supreme Court case, *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), on behalf of 28 individuals and organizations, arguing for special consideration of age in the custodial analysis under *Miranda v. Arizona.*

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Wrong (Harvard University Press, 2011). That book was the subject of a symposium issue in New England Law Review, and received an ABA Silver Gavel Award, Honorable Mention, and a Constitutional Commentary Award. It was translated for editions in China, Japan and Taiwan. In 2013, Foundation Press published Garrett's casebook, *Federal Habeas Corpus: Executive Detention and Post-Conviction Litigation*, co-authored with Lee Kovarsky. In 2014, he authored a major study of corporate prosecutions, *Too Big To Jail: How Prosecutors Compromise with Corporations* (Harvard University Press, 2014).

ARGUMENT

The "greatest care" must be taken when questioning children to ensure their confessions are voluntary. *In re: Gault*, 387 U.S. 1, 45, 55 (1967). *See also Haley v. Ohio*, 332 U.S. 596, 599-600 (1948); *J.D.B. v. North Carolina*, 564 U.S. 261, 271-72 (2011). *Amici* write to underscore the importance of these protective legal standards to the truth-seeking function of police interrogations. The importance of protecting vulnerable youth from police coercion is grounded in police best-practices, supported by social science research, and recognized by decades of Supreme Court case law. These protections are even more vital for children with limited cognitive abilities. Indeed, leading authorities on police interview and interrogation techniques have pointed to Brendan Dassey's interrogation as an example of improper use of coercion and poor technique.

Failing to address these vulnerabilities heightens the risk of false confession, leaving the actual perpetrators at large, and undermining public safety.

I. Police Policies and Training Materials Make Clear that Brendan's Interrogation Placed Undue Coercion on Him, Putting Him at Risk of False Confession

Due in large part to notoriety garnered by the *Making a Murder* documentary on Netflix, Brendan's interrogation has been under much public scrutiny. Certified interrogation specialists have used the video footage of

Brendan's interrogation as the proverbial "what not to do" in training courses and pointed to the officers' practices to demonstrate the impropriety of Brendan's interrogation. They caution investigators and interrogators that "improper questioning or biased strategies can not only result in poor information, but ultimately suppress any legal use of that conversation. When discussing interrogations and confessions – the ends do not justify the means." Wicklander-Zulawski & Associates, Inc., *Netflix's Making a Murderer: Involuntary Confession – An Interrogator's Perspective*, (Aug. 19, 2016) at http://www.w-z.com/blog/netflixs-making-a-murderer-involuntary-confession-an-interrogators-perspective/. Experts point to key errors in the handling of the interrogation: (1) a failure to adequately account for Brendan's juvenile status and intellectual disability; (2) the use of coercion in the form of promises of leniency and threats of harm; (3) the use of false evidence ploys; and 4) the divulging of investigative information through leading questions or other tactics.

A. The interrogation failed to adequately account for juvenile status or intellectual disability as recommended by police policy, training, and practice materials

The International Association of Chiefs of Police and the Office of Juvenile Justice and Delinquency Protection both recommend that when interrogating youth, police should take additional steps to verify comprehension of legal rights and should use less coercive interrogation methods. International

Association of Chiefs of Police & Office of Juvenile Justice and Delinquency Prevention, *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation*, 7-12 (Sept. 2012) at http://www.theiacp.org/portals/0/pdfs/reducingrisksanexecutiveguidetoeffectivejuvenileinterviewandinterrogation.pdf; International Association of Chiefs of Police, *Interviewing and Interrogating Juveniles Model Policy* (May 2012). *See also International Association of Chiefs of Police Online Training Series* at http://www.theiacp.org/ViewResult?SearchID=2400. For example, at the outset of an interrogation, officers should read juveniles the standard *Miranda* warnings, but after having done so, the officer should read simplified *Miranda* warnings that require only a third-grade comprehension level. *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation, supra,* at 7. Officers should tailor their questions to the juvenile's age, maturity, level of education, and mental ability. International Association of Chiefs of Police, *Interviewing and Interrogating Juveniles Model Policy* (May 2012).[2]

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[2] The IACP has set forth model policies on interrogations of juveniles. Examples include: New York State Division of Criminal Justice Services, Recording of Custodial Interrogations, Model Policy (2013) (model policy concerning recording interrogations); International Association of Chiefs of Police, Interviewing and Interrogating Juveniles Model Policy (May 2012) (Detailed policy concerning questioning of juveniles); International Association of Chiefs of Police, Electronic Recording of Interrogations and Confessions Model Policy (February 2006) (detailed model policy providing procedures for electronic recording of interrogations); Broward County Sheriff's Office, G.O. 01-33 (Nov. 17, 2001) (detailed policy

Wicklander-Zulawski's interrogation training materials further clarify that the interrogator of a youth suspect must be "constantly aware of the unique position of power that he holds . . .the child learns what is expected and what is positively reinforced from his interviewer/interrogator adult." David E. Zulawski & Douglas E. Wicklander, PRACTICAL ASPECTS OF INTERVIEW AND INTERROGATION, 82 (CRC Press 2002). The training notes that a suggestible youth may incorporate the information given by the interrogator into his memory, blurring the line between reality and fiction. *Id.* Seeking to be compliant, the youth may also avoid confrontation and give in more quickly, knowing that he will receive positive reinforcement for answering the interrogator's questions, despite the veracity of this responses. *Id.* As a result, the interrogator must take particular precautions to avoid coercion. Indeed, several states have instituted safeguards, either through legislation, policy or practice, to prevent coercion in interrogations of children. *See* Saul M. Kassin et al, *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs,* 31 Law & Hum. Behav. 381, 382 (2007) (providing an overview of a shift in law enforcement attitudes).[3]

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concerning interrogation of suspects with developmental disabilities, including guidelines for interrogation and post-confession analysis).

[3] For example, the Virginia Department of Criminal Justice Services has a model policy that requires that juvenile interrogations be recorded. The policy also notes

Police training further recognizes that special precautions must be taken to avoid coercing those with developmental or cognitive disabilities into false confessions. Such individuals are

> generally more suggestible because they are not assertive, have low self-esteem and an overall high-level of anxiety when dealing with social situations. In many instances, these individuals avoid conflict as a coping strategy, which ultimately results in an increase of suggestibility (i.e. following an interviewer/interrogator's suggestions to reduce their level of anxiety in the situation).

Zulawski, PRACTICAL ASPECTS OF INTERVIEW AND INTERROGATION, *supra,* at 91. Officers are therefore trained on the importance of using open-ended rather than leading questions. Wicklander-Zulawski & Associates, Inc., Criminal Interview & Interrogation Techniques Training Course (2016) at Ch. 3, Presentation and Instructor notes on file with *Amici* [hereinafter "W-Z Training Course"]. Reid & Associates, Inc., developer of the Reid technique of

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that "the interrogation shall be handled by one officer if at all possible in order to lessen the chance of the juvenile feeling intimidated or pressured." VA DCJS Model Police 2-29.10(j)(3). In Wisconsin, where the instant case arises, the Wisconsin Supreme Court "exercise[s] our supervisory power to require that all custodial interrogation of juveniles in future cases be electronically recorded where feasible, and without exception when questioning occurs at a place of detention." *In re Jerrell C.J.*, 699 N.W.2d 110, 123 (Wis. 2005). *See also* Cal. Penal Code § 859.5 (West 2014) (requiring recordings for juveniles suspected of murder; exception for "exigent circumstances"); 705 Ill. Comp. Stat. Ann. 405/5-401.5(b-5) (West 2014) (expanding range of felonies for which recording is required for juvenile suspects); Or. Rev. Stat. Ann. § 133.400 (West 2009) (requiring the recording of interrogations of suspects for aggravated murder, crimes requiring imposition of a mandatory minimum sentence, or adult prosecution of juvenile offenders).

interrogation and leading law enforcement training firm, also instructs law enforcement officers to

> Take special precautions when interviewing juveniles or individuals with significant mental or psychological impairments[sic] Every interrogator must exercise extreme caution and care when interviewing or interrogating a juvenile or a person who is mentally or psychologically impaired. Certainly these individuals can and do commit very serious crimes, but since many false confession cases involve juveniles and/or individuals with some significant mental or psychological disabilities, extreme care must be exercised when questioning these individuals and the investigator has to modify their approach with these individuals. Furthermore, when a juvenile or person who is mentally or psychologically impaired confesses, the investigator should exercise extreme diligence in establishing the accuracy of such a statement through subsequent corroboration. In these situations it is imperative that the interrogator does not reveal details of the crime so that they can use the disclosure of such information by the suspect as verification of the confession's authenticity.

John E. Reid & Associates, Inc., *Investigator Tips Making a Murderer: The Reid Technique and Juvenile Interrogations*, at http://www.reid.com/educational_info/r_tips.html?serial=20160101-1.

This approach was not used in Brendan's case, although he was obviously a young person with intellectual disabilities. (District Ct. Op., ECF No. 23 at 77.) (noting that Brendan's "borderline to below average intellectual ability likely made him more susceptible to coercive pressures than a peer of higher intellect."). Indeed, police interrogation experts have recognized the

problem, noting that "Dassey is alleged to have a 4th grade reading level and a limited cognitive ability. . . . This is also important to recognize as an interviewer, as it could increase the likelihood of a false confession or misrepresentation of the facts." Wicklander-Zulawski & Associates, Inc., *Netflix's Making a Murderer: An Interrogator's Perspective* (Jan 28, 2016) [hereinafter W-Z, *An Interrogator's Perspective*] at http://www.w-z.com/blog/netflixs-making-a-murderer-an-interrogators-perspective/. *See also* Fred E. Inbau, John E. Reid, Joseph P. Buckley & Brian C. Jayne, CRIMINAL INTERROGATIONS AND CONFESSIONS 352 (JONES AND BARTLETT, 5TH ED. 2013) (hereinafter Inbau, Reid, et. al) (The use of fictitious evidence "should be avoided when interrogating a suspect with low social maturity or a diminished mental capacity" because "these suspects may not have the fortitude or the confidence to challenge such evidence . . . and may become confused as to their own possible involvement, if the police tell them evidence clearly indicates they committed the crime.").

B. Police training and policies caution against the type of promises, threats and coercion that were used in Brendan's interrogation

Brendan's interrogation was also suspect because of the numerous threats and promises made during the course of questioning. Law enforcement is trained to never make promises or suggest leniency when questioning. W-Z Training Course at Ch. 6. As the District Court explained, "[m]ore than

merely assuring Dassey that he would *not* be punished if he admitted participating in the offenses, the investigators suggested to Dassey that he *would* be punished if he did not tell 'the truth.'" (ECF No. 23 at 87.)] Reid and Associates specifically instructs its interrogators to "avoid interrogations centered on "helping" the suspect because some courts have interpreted such statements as implied promises of leniency, as happened here. Inbau, Reid, et. Al, *supra,* at 331.

Law enforcement officers are also instructed not to touch the subject of questioning, because even a gentle touch can be interpreted as coercive. W-Z Training Course at Ch. 1 and 9. Several times during Brendan's interrogation, Wiegert placed his hand on Brendan's knee. The District Court called one such instance a "compassionate and encouraging manner," (ECF No. 23 at 76), after which Wiegert continued: "Brendan, were you there when this happened? . . . We already know Brendan. We already know. Come on. Be honest with us. Be honest with us. We already know, it's OK? We gonna help you through this alright?" SA 50.

C. Interrogators inappropriately divulged information, counter to police policies and best practices

Police training manuals recognize that officers sometimes divulge more information than appropriate to the person being questioned to encourage him to confirm their findings, and that this practice, again, is especially

problematic for suggestible youth. Zulawski, PRACTICAL ASPECTS OF INTERVIEW AND INTERROGATION, *supra*, at 73-103. Rather than asking open-ended questions to the youth, the innocent young person is given enough information to make a plausible false confession using details provided by the interrogator's factual approach. *Id*. "The use of a factual interrogation may hamper the interrogator's ability to test the confession against case facts because facts were revealed to the suspect and when repeated by the suspect make a plausible sounding confession to the crime." *Id.* at 80. This contaminates the confession. To avoid this problem, law enforcement is trained to ask questions to elicit details about the crime, without altering the subject's memory. W-Z Training Course at Ch. 11.

Brendan's case is a classic example of police feeding detailed information about the crime and their theory of how the crime must have occurred to induce his confession. As Wicklander-Zulawski explained,

> The major issue with this interrogation is the release of information by the investigators that ultimately contaminates Dassey's confession. Most investigations will contain a piece of evidence or information that is kept from the general public, with the intention that it prevents false confessions and will substantiate a true admission of guilt from the responsible party. . . . This vital information in the Halbach case was the fact that she was shot in the head prior to having her body burned in a fire. If Dassey or Avery had stated, without being prompted, that Halbach was shot in the head it would be a solid substantiation of such admission that they could speak to the intentionally omitted details. However, the investigators that spoke with Dassey revealed

> this information and therefore reduced all of its potential value. The investigators led Dassey down a path, like a game of Taboo, where they gave him all of the clues hoping he would pick the right answer. *"What happened to her head Brendan?"* to which he replies that Avery cut her hair, and that Avery punched her. The viewer can sense the investigator becoming anxious, finally saying *"I'm just going to come out and ask you; Who shot her in the head?"* The valuable piece of evidence that was intended to prevent false confessions had just been given to the most vulnerable subject in the entire investigation.

W-Z, *An Interrogator's Perspective, supra.*

Brendan's interrogation demonstrates the hallmark signs of a coerced confession. The law, social science, and law enforcement best practices support a finding that his interrogation was not voluntary. Indeed, although the public generally has difficulty understanding why someone would confess to a crime he did not commit, the coercion in Brendan's interrogation was so apparent that even untrained laypeople understood it could not be voluntary.

> Most people find it impossible to imagine why anyone would confess to a crime he didn't commit, but, watching Dassey's interrogation, it is easy to see how a team of motivated investigators could alternately badger, cajole, and threaten a vulnerable suspect into saying what they wanted to hear. When Dassey's mother asked him how he came up with so many details if he was innocent, he said, "I guessed." "You don't guess with something like this, Brendan," she replied. "Well," he said, "that's what I do with my homework, too."

Kathryn Schultz, Dead Certainty: How "Making a Murderer" goes wrong, The New Yorker (Jan. 25 2016).

II. Significant Social Science Research Confirms that Youth Like Brendan, and Particularly Those with Intellectual Disabilities, are Uniquely Vulnerable to Police Pressure and Subsequent False Confessions

The Supreme Court has long recognized that adolescents require more protections in interrogations than adults. *Haley*, 332 U.S. at 599; *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962).[4] More recently in *J.D.B. v. North Carolina*, the United States Supreme Court grounded this analysis in emerging research, clarifying that "the [social science] literature confirms what experience bears out," *J.D.B.*, 564 U.S. at 273 n.5, and thus that developmental attributes of children must be considered in examining how a child will experience custodial interrogation differently from an adult. *See id.* at 264-65.

[4] A series of Supreme Court decisions over the past decade has recognized that childhood development warrants distinguishing children from adults along three key characteristics: "[a]s compared to adults, juveniles have a 'lack of maturity and an underdeveloped sense of responsibility'; they 'are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure'; and their characters are 'not as well-formed.'" *Graham v. Florida,* 560 U.S. 48, 68 (2010) (quoting *Roper v. Simmons,* 543 U.S. 551, 569-70 (2005)). *See also Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012) (striking down the mandatory imposition of life without parole sentences for juveniles); *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016) (holding *Miller* retroactive); *J.D.B.*, 564 U.S. 261, 265 (2011) (holding that a child's age properly informs Miranda's custody analysis).

A. Social science research underscores the vulnerability of youth to police coercion and false confession

A significant body of social science research confirms children's unique vulnerability to coercion and the link between their vulnerability and high rates of false confessions. Social scientists have demonstrated that the developmental characteristics of children can "undermine their decision-making capacity, impairing their ability to assess the long-term consequences of their wrongful acts or to control their conduct in the face of external pressures." *See* Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 Victims & Offenders 428, 438 (2012).

Teenagers, more than adults, tend to place significant weight on immediate short-term gains over long-term consequences; stressful situations like custodial interrogations exacerbate impairments in child and adolescent decision making, meaning "adolescents' already skewed cost–benefit analyses are vulnerable to further distortion." Jessica Owen-Kostelnik et al., *Testimony & Interrogation of Minors: Assumptions about Maturity and Morality*, 61 Am. Psychol. 286, 295 (2006). These deficits in youth decision-making result from incomplete brain development: the brain regions responsible for cognitive control develop slowly across childhood and adolescence, leaving youth developmentally unable to engage in the same

decision-making processes as adults. *See* Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Ann. Rev. Clinical Psychol. 459, 464-70 (2009).

Children and adolescents are also more suggestible than adults and have "a much stronger tendency . . . to make choices in compliance with the perceived desires of authority figures." *See* Fiona Jack, Jessica Leov, & Rachel Zajac, *Age-Related Differences in the Free-Recall Accounts of Child, Adolescent, and Adult Witnesses,* 28 Applied Cognitive Psychol. 30, 30 (2014); Cauffman & Steinberg, 7 Victims & Offenders at 440. Yet, police are just as likely to use coercive techniques with youth as with adults. Hayley M. D. Cleary & Todd C. Warner, *Police Training in Interviewing and Interrogation Methods: A Comparison of Techniques Used with Adult and Juvenile Suspects*, 40(3) Law and Human Behavior 270, 272, 281 (2016); N. Dickon Reppucci, et al., *Custodial Interrogation of Juveniles: Results of a National Survey of Police, in* Police Interrogations and False Confessions: Current Research, Practice, and Policy Recommendations 67, 76-77 (G. Daniel Lassiter & Christian A. Meissner eds., 2010).

In light of research on child brain development and police tactics, it is unsurprising that youth are extraordinarily susceptible to making false confessions. Because children and adolescents are "less equipped to cope with stressful police interrogation and less likely to possess the psychological

resources to resist the pressures of accusatorial police questioning," they are grossly over-represented among proven cases of false confession. *See* Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 944 (2004). As one study has observed: "Archival analyses of false confessions, surveys, and laboratory experiments have shown that juveniles are at increased risk of falsely confessing." Christian A. Meissner, Christopher E. Kelly, & Skye A. Woestehoff, *Improving the Effectiveness of Suspect Interrogations*, 11 Ann. Rev. L. & Soc. Sci. 211, 214 (2015). Substantial research has documented the risk that juveniles will falsely confess due to their increased likelihood of complying with authority without understanding the consequences of their decisions. *See, e.g.*, Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & Hum. Behav. 333 (2003), Gisli H. Gudjonsson et al., *Custodial interrogation, false confession and individual differences: A national study among Icelandic youth*, 41 Personal. & Individ. Differ. 49 (2006), Ingrid Candel et al., *"I hit the Shift-key and then the computer crashed": Children and false admissions*, 38 Personality & Individ. Differ. 1381 (2005), Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 Law & Hum. Behav. 141 (2003).

Indeed, approximately one quarter of youth, and particularly the youngest adolescents, believe they would definitely falsely confess in response to commonly used interrogation techniques. *See* Naomi E. Sevin Goldstein et al., *Juvenile Offenders' Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions,* 10 Assessment 359, 365 (2003). Forty-two percent of individuals who were exonerated based on false confessions were under 18 at the time of the alleged offense. Samuel Gross & Michael Shaffer, *Exoneration in the United States, 1989-2012: Report by the National Registry of Exonerations*, 60 *at* https://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf. In the last year alone, 27 of the 149 reported exonerations involved false confessions. Of those 27 cases, most involved confessions by youth under age 18, individuals who were mentally handicapped, or both. The National Registry of Exonerations, *Exonerations in 2015 Executive Summary* (Feb. 3, 2016) *at* https://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2015.pdf. Moreover, juveniles account for one-third of all false confession cases in which defendants have been exonerated by DNA.[5]

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[5] In the first 21 years of post-conviction DNA testing, 250 innocent people were exonerated, 40 of whom had falsely confessed. *See* Brandon L. Garrett, *The Substance of False Confessions*, 62 Stan. L. Rev. 1051 (2010); Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* 21-44 (Harvard

B. Youth with disabilities are particularly vulnerable to police pressure and false confessions

The Supreme Court has also recognized that individuals with disabilities are uniquely susceptible to coercion during police interrogation. Thus, a suspect's "youth, his subnormal intelligence, and his lack of previous experience with the police make it impossible to equate his powers of resistance to overbearing police tactics." *Reck v. Pate,* 367 U.S. 433, 442 (1961). *See also Fikes v. Alabama*, 352 U.S. 191, 197-98 (1957) (interrogation violated due process because petitioner was "of low mentality, if not mentally ill" and would be overpowered by the police pressure); *Payne v. Arkansas*, 356 U.S. 560, 566-67 (1958); *Hall v. Florida,* 134 S. Ct. 1986, 1993 (2014) (citing *Atkins v. Virginia*, 536 U.S. 304, 320-21 (2002) (prohibiting the death penalty for intellectually disabled defendants in part because they are "more likely to give false confessions").

This case law, too, is supported by the research. Studies have demonstrated that low IQ itself is an important determinant for how much more suggestible developmentally disabled children will be when compared to those with normal cognitive development*, see* Maggie Bruck & Laura Melnyk, *Individual Differences' in Children's Suggestibility: A Review and Synthesis*,

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University Press: Cambridge, MA 2011). In just the last five years there have been 26 more false confessions among DNA exonerations. Brandon L. Garrett, *Contaminated Confessions Revisited,* 101 Va. L. Rev. 395, 404 (2015).

18 Applied Cognitive Psychol. 947, 961 (2004), and that children with cognitive disabilities are significantly more likely to succumb to the pressure of interrogations and alter their answers than even adults with disabilities when compared to their respective peer groups. Gisli H. Gudjonsson & Lucy Henry, *Children and Adult Witnesses With Intellectual Disability: The Importance of Suggestibility*, 8 Legal & Crim. Psychol. 241, 247 (2003) (citing two studies that indicate that children are often subject to multiple interviews in which "questions are often repeated, and this may function in the same way as implicit negative feedback").

Indeed, age and intellectual disability are the two most commonly cited characteristics of false confessors. *See* Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors & Recommendations*, 34 Law & Hum. Behav. 3, 19 (2010) (citing Samuel Gross, et al., Exonerations in the United States 1989-2003, 95 J. of Crim. Law and Criminology 523, 545 (finding that 69% of exonerated persons with mental disabilities were wrongly convicted because of false confessions.)) *See also* Samuel Gross & Michale Schaffer, *Exoneration in the United States, 1989-2012: Report by the National Registry of Exonerations*, 60 *at* https://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf (75% of juvenile false confessions involved youth with mental disabilities). Thus, a suspect who is young and has an

intellectual impairment will be doubly susceptible to coercion during police interrogations. *See also* Allison D. Redlich, *Double Jeopardy in the Interrogation Room: Young Age and Mental Illness*, 62 Am. Psychol. 609, 610 (2007) (emphasizing that young age and mental illness are separately recognized as risk factors for false confession).

Shared character traits among the intellectually disabled and adolescents may also explain why these groups are uniquely vulnerable during police interrogations. Their inability to understand the statements and questions made to them and the implications of their own answers to those statements and questions; an abiding desire to please others—especially authority—even if it means knowingly providing incorrect answers; and a propensity to be overwhelmed by the stress of police interrogations as a result of the deficit of psychological resources attendant to their low cognitive function and learned coping behaviors, all increase susceptibility to coercion. Richard A. Leo, *False Confessions: Causes, Consequences, and Implications,* 37 J. Am. Acad. Psychiatric Law 332, 335–336 (2009).

III. Brendan Shares Characteristics Seen in False Confession Cases

Data on false confessions reveals disproportionate numbers of youth, and of individuals with disabilities, making such confessions. In a group of 66 proven false confessions, for example, one-third were juveniles, and at least

22 had an intellectual disability or were mentally ill. Garrett, *Contaminated Confessions Revisited, supra,* note 5, at 399-400, n.16. Similarly, in another study of 40 such false confessions, 14 of the individuals confessing had an intellectual disability, 3 were mentally ill, and 13 were juveniles. *Id.*, *see also* Garrett, *Convicting the Innocent supra* note 5, at 21.

In many of these cases, exonerees waived their *Miranda* rights when they were questioned by the police. Garrett, *Contaminated Confessions Revisited, supra,* at 402; *see also* Garrett, *Convicting the Innocent, supra,* at 37.

More importantly, 94 percent of false confessions by DNA exonerees to date were contaminated by allegedly "inside" information. Garrett, *Contaminated Confessions Revisited, supra,* at 404; *see also* Garrett, *Convicting the Innocent, supra,* at 20. Almost without exception, these confession statements were contaminated with crime scene details that, in retrospect, could not have been known until the individuals being questioned learned of them from law enforcement.

The case of Henry Lee McCollum and Leon Brown, who were both wrongly convicted of murder and sentenced to death, is illustrative of the susceptibility of young people with disabilities to coercive techniques. Brown was an intellectually disabled 15-year-old who testified that he could not read cursive and had no idea what was in the confession statement police pressured him to sign. Garrett, *Contaminated Confessions Revisited, supra,*

at 412-13; Joseph Neff, *Judge Overturns Convictions of Robeson Men in Child's 1983 Rape, Murder*, News Observer (Sept. 2, 2014). His brother, McCollum, was an intellectually disabled 19-year-old who testified that he had maintained his innocence, but signed a statement without knowing what was in it because police said that he could then leave. Garrett, *Contaminated Confessions Revisited, supra,* at 412.

Both brothers denied any knowledge of the detailed facts concerning the crime, including the way that the victim was killed, the location of the crime, a plank of wood that the victim was found on, the Newport cigarettes smoked at the crime scene, or the six-pack of Bull Malt Liquor Schlitz found at the scene. Garrett, *Contaminated Confessions Revisited, supra,* at 413 (citing Tr. Transcript, *State v. Henry Lee McCollum and Leon Brown*, 83 CRS 15506-15507 (Gen Court of Justice, Robeson County North Carolina, Oct. 8, 1984) at 1636-38) (McCollum denied telling police any of the long list of facts contained in confession statement; Brown stated he had no knowledge of anything in the statement; "That ain't true and you know it yourself."). "None of the physical evidence or forensics, such as fingerprint evidence, matched the brothers, and while the brothers had supposedly confessed to participating with three others, there was no effort to prosecute those they supposedly said primarily carried out the murder." *Id*. (citing TR. Transcript, *McCollum* at 1791-92) (defense lawyer in closings "highlighting how none of

the 'victim's blood was on that clothing' worn by the defendants, and how '[w]e don't have any footprints matched up,' or 'hair samples,' or 'any semen that matches up with any blood type of the defendants.'). The prosecutor responded that the 'fingerprints [found on beer cans at the crime scene] were smudged,' and how the detailed facts in the confession statements were corroborated by the autopsy and crime scene investigation.).

At trial, one of the officers who interrogated McCollum claimed that McCollum provided all of the details about the case when questioned. "We didn't have to use any technique. He was cooperative from the time we picked him up." Garrett, *Contaminated Confessions Revisited*, *supra,* at 412 (citing Tr. Transcript, *McCollum* at 1148. The officer continued: "I didn't ask him questions. He would volunteer some things and I would ask him some things." *Id.* (citing Tr. Transcript, *McCollum,* at 1636-38). DNA tests in 2014 cleared both Brown and McCollum and inculpated another man.

Similarly, Bobby Johnson, exonerated last year, was 16 years old, when questioned outside the presence of his parents. The National Registry of Exonerations, *Bobby Johnson*, at http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4751. Bobby had an IQ of 69 and told the police officers that he had committed the murder he was being questioned about after they told him they had physical evidence tying him to the crime. *Id.* Bobby gave very

detailed information about the gun used in the crime and no forensic evidence was collected to corroborate it. *Id.* The well-known Central Park Five case involved false confessions by five adolescents between the ages of 14-16 convicted of a brutal assault and rape and then exonerated by DNA evidence. Saul Kassin, *False Confessions and the Jogger Case*, THE NEW YORK TIMES (Nov. 1, 2002). The confessions were "vividly detailed" and compelling. *Id.* "In the jogger case, the confessions appear voluntary, textured with detail, and the product of personal experience." *Id.*[6] Similarly, as described *supra* at I.C., the officers fed Brendan multiple crucial details known only to them that later became part of his detailed confession.

When Brendan was interrogated, he was sixteen-years-old and had already-identified special education needs. His IQ was 74, in the borderline to below-average range. R.45:3,86. His school counselor testified that Brendan's cognitive disabilities made it difficult for him both to express himself and to understand aspects of language. R.45:89,90. Yet comprehension was only part of Brendan's vulnerability in the interrogation room. A battery of psychological tests highlighted his extremely high suggestibility, including both a tendency to submit to leading questions and to shift answers under

[6] *See also* Steve Mills, *U.S. Investigating Wrongful Murder Convictions of the Englewood 4*, CHICAGO TRIBUNE (Dec. 8, 2012), and the Dixmoor Five, National Registry of Exonerations, Jonathan Barr (last updated Sept. 1 2016).

pressure. R.120:54–56. Brendan was a textbook example of a child highly susceptible to coercion and false confession. In the crucible of police interrogations, where technique and tactics are employed to overcome the will of adults, Brendan's ability to truthfully and cogently confess his actions was profoundly compromised, if not non-existent.

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court affirm the lower court's grant of the writ of habeas corpus.

Respectfully submitted,

/s/Marsha L. Levick
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DATED: December 13, 2016

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. Pr. 32(a)(7)(B) because this brief contains 5,925 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Circuit Rule 32(b) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 13-point Century Schoolbook font.

Respectfully submitted,

/s/Marsha L. Levick
Marsha L. Levick

DATED: December 13, 2016

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2016, I electronically filed the foregoing BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER, WICKLANDER-ZULAWSKI & ASSOCIATES, INC., AND PROFESSOR BRANDON GARRETT IN SUPPORT OF APPELLEE AND AFFIRMANCE with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Respectfully submitted,

/s/Marsha L. Levick
Marsha L. Levick