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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
SOUTH COUNTY FACILITY

BEFORE THE HONORABLE EDWARD F. LEE

THE PEOPLE OF THE STATE)
CALIFORNIA,)
)
Plaintiff,)
)
vs.)Case No. FF301260
)
AMY MARIE GARVIN,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

October 6, 2003

APPEARANCES:

For the Plaintiff: MARK HOOD,
DEPUTY DISTRICT ATTORNEY

For the Defendant: LEONARD CRAVENS,
KENNETH PINTO,
ATTORNEYS AT LAW

MICHELLE CALDWELL, CSR 9045, Official Reporter

2

3 THE COURT: Have a seat, Doctor. As soon as
4 you're comfortably settled in, if you would give us your
5 full name, please, and spell it for the record.

6 THE WITNESS: Richard Ofshe, O-f-s-h-e.

7 THE COURT: Thank you. Counsel?

8 DIRECT EXAMINATION BY MR. CRAVENS

9 Q. Good afternoon, Doctor Ofshe.

10 A. Good afternoon.

11 Q. What -- where do you live?

12 A. Berkeley.

13 Q. That's in California?

14 A. Correct.

15 Q. And what's your current occupation?

16 A. I'm a professor at the University of California
17 at Berkeley. I'm an emeritus professor recalled, and I
18 continue to teach and do research.

19 Q. What's your area of teaching?

20 A. Umm, I'm a social psychologist. I teach in the
21 sociology department. My area of specialty is social
22 psychology. Within that, my area of research specialty
23 and teaching is on the topic of extreme forms of
24 influence.

25 Q. And could you tell the Court what your -- where
26 your training -- in what area of training did you have?

27 A. I have a bachelor's degree from Queens College
28 of the City of University of New York, master's degree

1 from the same institution, Ph.D from Stanford University.

2 Q. And you mentioned social psychology?

3 A. Correct.

4 Q. What is social psychology?

5 A. Specialty area within psychology and sociology,
6 taught in both departments. Just depends on where you
7 get your basic training in the field. I could be in, I
8 suppose, either department.

9 Q. Are you a member of any professional societies
10 or organizations?

11 A. I'm -- I think I'm a member of the American
12 psychological Society, American Psychological
13 Association, American Sociological Association, and
14 probably some regional associations if I pay my dues.

15 Q. Is there any particular licensing procedures or
16 requirements in any of these occupations (sic)?

17 A. No.

18 Q. Is there any type of certification that you get
19 from any governmental agency?

20 A. No.

21 Q. What about a private agency?

22 A. Well, there was a certification committee within
23 the American Sociological Association to certified social
24 psychologists. I served on that committee, but it was
25 short-lived. I'm not sure if they even still have one.

26 Q. As a result of your work in this particular
27 field, have you received any honors or awards?

28 A. I was awarded a John Simon Guggenheim Memorial

1 fellowship, which is considered an honor in my field. I
2 was a member of the three-person research and reporting
3 group that won a Pulitzer Prize, the gold medal for
4 public service which is actually awarded to the
5 organization for the work of particular individuals. So
6 we did the work that produced a Pulitzer Prize for the
7 Point Reyes Light Newspaper, which is a weekly paper in
8 San Marin County. It was the study of a violent cult
9 group by the name of Synanon.

10 Q. Have you published any papers in relation to
11 your field?

12 A. Yes.

13 Q. And could you give some of the high points of
14 those papers?

15 A. Well, over the years, I've published a number of
16 books and papers, all in the field of social psychology.
17 But on the topic of police interrogation, I started
18 publishing in about 1989 and have published a series of
19 papers starting in 1989 with a paper called Coerced
20 Confessions: The Logic of Seemingly Irrational Action, an
21 encyclopedia in my field in 1992. Also in 1992, another
22 paper, Inadvertent Hypnosis During Interrogation.

23 And then in 1997, I started publishing a series
24 of fairly long papers with my colleague Richard Leo, the
25 first one being The Social Psychology of Police
26 Interrogation, Theory and Classification of True and
27 False Confessions, and then a paper in the Denver
28 University Law Review called The Decision to Confess

1 Falsely, Rational Choice and Irrational Action, and then
2 The Consequences of False Confessions, Deprivations of
3 Liberty in the Age of Psychological Interrogation. And
4 then most recently, The Truth About False Confessions.

5 And then also an updated version of the
6 encyclopedia, an entry in the encyclopedia of my field
7 which included work on police interrogation and
8 influence.

9 Then there have been a few minor papers as well.
10 A lengthy series is now being worked, and hopefully we'll
11 have a book that will arise out of these papers within a
12 year or so.

13 Q. Now, you mentioned these -- some of these papers
14 deal with police interrogation.

15 A. The ones I have mentioned do. There are 30, 40
16 papers that deal with other topics in social psychology.
17 Since we're here about police interrogation, that's what
18 I thought you were asking about.

19 Q. Well, if -- would these papers be equally
20 applicable if it was a non-police person doing the same
21 kind of interrogation?

22 A. Sure.

23 MR. HOOD: Objection. Lack of foundation. I
24 don't think Mr. Ofshe's done any studies whatsoever on
25 interrogations by non-police officers.

26 THE COURT: The Objection is noted and taken
27 under submission.

28 THE WITNESS: The papers are all on tactics of

1 police interrogation. And some of the tactics are
2 common, used by both law enforcement officers and
3 security people. Often they're taught to use these
4 methods at the same training courses.

5 BY MR. CRAVENS: Have you -- how long have you
6 been publishing in the area of police interrogation and
7 the sub-area of false confessions?

8 A. Well, it isn't false confessions. It's
9 influence in police interrogation, which can sometimes
10 result in true confessions and sometimes result in false
11 confessions. I've been publishing on tactics of
12 influence and interrogation for at least 14 years.

13 Q. Have you worked as a consultant with any law
14 enforcement agencies, either police or prosecuting or
15 defense agencies?

16 A. Over the years, I've been a consultant to the
17 Marin County Sheriff's Department; the Office of the
18 Attorney General of the State of California; the U.S.
19 Attorney's office in Los Angeles on two occasions, one
20 involving the Delorean case; the Office of the Attorney
21 General of the State of Arizona; the U.S. Department of
22 Justice, Tax and Criminal Division; the prosecuting
23 agency of West Virginia; the L.A. D.A.'s office; the
24 Internal Revenue Service; U.S. Attorney's Office in West
25 Virginia, Thirston County; Washington; State's Attorney's
26 Office in Fort Lauderdale, Florida; Office of the
27 Governor of the State of Missouri; the Office of the
28 District Attorney in Los Angeles, in connection with the

1 second Menendez Brothers' trial; the prosecuting
2 attorney's office in Franklin County, Indiana; and I'm
3 currently working on a case at the request of a
4 prosecutor from the State's -- the California Attorney
5 General's Office.

6 Q. So you do work for both prosecutors and defense;
7 correct?

8 A. I'll look at materials whenever they're provided
9 to me.

10 Q. Now, have you presented lectures or seminars to
11 law enforcement agencies?

12 A. Yes.

13 Q. What about -- what about attorneys and judges?

14 A. All three over the years. I've spoken before a
15 large number of non-social science associations.
16 Probably the largest category would be defense attorneys,
17 and then a mixed groups of defense attorneys and
18 prosecutors. A special session, for example, of the
19 American Bar Association, and it might include both
20 prosecutors and defense attorneys.

21 I've been requested to lecture to judges on the
22 issue of interrogation and confession and have put on
23 continuing education courses for judges or a course for
24 judges on that subject at the request of the Supreme
25 Court of the State of Florida, and I'm scheduled to
26 lecture again as part of continuing education for the
27 Judiciary in Canada in December.

28 Q. Particularly in the area of interrogation and

1 false confessions, have you testified as an expert
2 witness before?

3 A. Yes.

4 Q. And how many -- how many times have you
5 testified as an expert witness in those areas?

6 A. A hundred and ninety-three times in thirty-one
7 states.

8 Q. Have you ever testified in California before
9 today?

10 A. On the subject of influence and police
11 interrogation, I've testified in California 64 times.

12 Q. With respect to police interrogations, and
13 particularly with respect to false confessions, are there
14 any recognized studies in the field to support or discuss
15 that phenomenon?

16 A. False confession in particular? There are
17 probably three benchmark studies. There are lots of
18 small studies about interrogation and confession and
19 false confession, particularly false confession. But as
20 far as the major studies, there are three that establish,
21 one, that false confessions happen with some regularity;
22 and two, say something about how dangerous they are when
23 it comes to producing miscarriages of justice.

24 The first would be a study done by Professors
25 Biddot and Ratliff published in the Stanford Law Review
26 on miscarriages of justice in potentially capital cases.
27 They studied 350 examples of miscarriages in capital
28 cases and concluded in their analysis that 14 percent of

1 the miscarriages were caused by false confession. Then
2 there's a study done at the Center on Wrongful
3 Convictions at Northwestern University Law School where
4 I'm a fellow of that center but was not involved in the
5 study. This is a study of miscarriages in homicide cases
6 in the State of Illinois. And in that study, slightly
7 more than 50 percent of the miscarriages involved a false
8 confession.

9 Then there's the ongoing work being done by the
10 Innocence Project, and I believe the current number is a
11 hundred and thirty-eight exonerations arising from DNA
12 analysis of people who had been convicted or had pled
13 guilty, I suppose, in relation to charges which were then
14 shown to be simply wrong.

15 Of those, of the 138, I believe it's about 25
16 percent of those cases involved false confession of the
17 individual who was subsequently shown to be innocent.

18 Q. Have you ever not been qualified -- have you
19 ever had a court not qualify you to testify as an expert
20 witness?

21 A. No one has ever felt that I'm not qualified.

22 Q. Okay. As far as your work in false confessions
23 in interrogations, can you describe some of the theories
24 on what that kind of work is based on?

25 A. Well, most of the modern work on interrogation
26 and confession and false confession is really based on
27 theories of decision making, fundamental rational
28 decision making. And then it's coordinated to the

1 particularities, exactly what goes on in interrogation.
2 That brings in the studies of social influence. Police
3 interrogation is simply a method of influence that has
4 developed over the years that police are taught to use,
5 police and interrogators, interrogators are taught to
6 use. It's not a naturally occurring phenomena. It's
7 something they're typically trained to do. And because
8 the training is fairly -- well, uniform is too strong.
9 The training has great similarities. I tend to see
10 examples of the same sort of interrogation literally from
11 Miami, Florida to Berel, Alaska. It's the method that's
12 used in the United States.

13 Q. And are you familiar with -- are you familiar
14 with any particular -- you say there's common methods
15 that you see across the country; correct?

16 A. Yes.

17 Q. Is there any particular method that stands out
18 in your mind?

19 A. Well, I mean, I can explain how modern
20 interrogation works, if that's what you're asking.

21 Q. I'm almost there.

22 A. All right.

23 Q. Let me back up a little bit. The body of work
24 in false confession and interrogation, are those -- the
25 studies you've talked about -- are they generally
26 accepted in the scientific community?

27 A. I just mentioned the three principal studies.
28 The leading textbook reference book basically for

1 professionals in the field is now in its second edition.
2 And the bibliography in that text runs to approximately a
3 thousand citations. Those citations go to the literature
4 on interrogation, confession, and false confession
5 without even touching -- except for a few examples -- the
6 fundamental literature on influence and decisionmaking.
7 There's a highly specialized literature. It's pervasive.

8 The study of interrogation and confession is a
9 specialized topic but well-recognized and a well-accepted
10 topic in the field of social psychology.

11 Q. Have you participated in any court proceedings
12 that discuss the issue of admissibility based on the Fry
13 standard? First of all, let me stop. Do you know what
14 the Fry standard is?

15 A. I think so.

16 Q. Have you participated in the hearings that
17 addressed -- the hearings of the Fry standards regarding
18 false confessions?

19 A. I've done at least 18 Fry hearings.

20 Q. Any in the State of California?

21 A. Two.

22 Q. Any in this particular county?

23 A. I think so, in the main courthouse in San Jose
24 in a case called Parelez. For whatever it's worth, Fry
25 hearings are uncommon in California. In my experience in
26 the 60 times, 60 some odd times I've testified, it's only
27 come up once or twice.

28 Q. In those particular proceedings you testified

1 in, you've gone on to present testimony that's been based
2 on your body of work in interrogations and false
3 confessions?

4 A. Correct.

5 Q. And I think you mentioned this earlier. Is
6 there methods and publications that train people how to
7 do these kinds of interrogations?

8 A. Most interrogators have to be sent to school to
9 learn an interrogation method. It's not a naturally
10 occurring phenomena, and people are trained on how to do
11 it.

12 Q. Okay. Could you mention -- are you familiar
13 with these methods of training?

14 A. Somewhat. I can't claim to be familiar with
15 everything that's done, but I'm familiar with the
16 principal training organization and its derivatives.
17 That would be the Reid organization. They do more
18 training of police and private interrogators than any
19 other organization in the U.S.

20 Q. And tell us how the interrogation works in the
21 modern interrogation methods?

22 A. Okay. For that, to do it efficiently, if I
23 could have an easel and something to write with, I could
24 explain it.

25 THE COURT: Michael, donde esta our easel?

26 THE BAILIFF: I have to fetch another deputy to
27 get it, I guess.

28 THE COURT: Hold on. Let me see. I have a pad

1 of paper. Let's see if we can find one out here.

2 If you want to get started, you can do this, or
3 perhaps counsel table, or we can find a flat surface
4 while we find the actual easel.

5 Let's go off the record for a second.

6 (A discussion was held off the record.)

7 THE COURT: All right. We've got the easel. Go
8 ahead and proceed.

9 THE WITNESS: In order to understand how modern
10 interrogation works, I'll simply use this diagram and
11 speak in terms of what happens over the course of an
12 interrogation. In this diagram, this axis, running from
13 zero to one hundred-percent is intended to denote the
14 confidence that a person has that all they need to do is
15 say "I didn't do it," and they will get through the
16 upcoming -- whether it's called an interrogation or it's
17 called an interview. It's still -- that is, in fact, an
18 interrogation. So they get through the upcoming session,
19 whatever it's called, without there being a major change
20 in their life circumstances.

21 This axis running from zero to X refers simply
22 to the length of time that the interrogation goes on.
23 Any modern interrogation can be split into two parts.
24 The break point comes when the person has been gotten to
25 say, "I did it," to make an admission that they have some
26 involvement in the crime.

27 Everything that happens up to this point, I'll
28 refer to as the preadmission phase. And everything that

1 happens afterwards is the post-admission phase. An
2 interrogator who is trained to do the job properly knows
3 that it's the post-admission phase that's crucial. The
4 preadmission phase is like one sees on television. And
5 then when a person breaks, that's when the screen goes
6 dark, and there's a break for commercial.

7 But this is the important part of the
8 interrogation. Interrogators should be trained, and
9 typically are trained, to seek to get a confession to the
10 crime; that is, a full and detailed account of the
11 person's involvement in the crime that corroborates the
12 "I did it" statement.

13 The way to do that is to get the person to
14 reveal that they have factual knowledge of the
15 circumstances of the crime, something that's not
16 available to the general public, something that the
17 perpetrator would reasonably be expected to know,
18 something that has not been told to the person in the
19 preadmission phase, not community rumor, so on. By
20 getting a detailed post-admission narrative of the crime,
21 that can be compared to the objectively knowable facts of
22 the crime for the purpose of weighing a confession.

23 It can turn out that obviously a confession, if
24 it fits the facts of the crime, if it corroborates the "I
25 did it" statement because it describes things that make
26 the person at least a witness to the crime, is powerful
27 evidence that the "I did it" statement ought to be
28 weighed heavily against. A confession can be almost

1 useless if it's formatted by the interrogator, and the
2 person simply agrees, because that doesn't demonstrate
3 the person had the knowledge. It simply demonstrates the
4 person has become willing to agree to what the
5 interrogator has to say.

6 The third circumstance can be that a person can
7 actually confess to having committed a crime, give a
8 detailed account of the crime which, upon careful
9 analysis of the crime, can be evidence supporting the
10 assumption that the person is indeed innocent and in fact
11 knows nothing about the crime but is simply guessing in a
12 matter that would be consistent with what one would
13 expect from an individual who was coerced into giving an
14 opinion and is, therefore, guessing wrong.

15 So it is possible to get to a reasonable answer
16 about how to weigh an "I did it" statement by carefully
17 analyzing a confession statement in relation to the
18 facts; that's a fundamental principal, to get corroboration
19 to demonstrate the person knows about the crime because
20 they were there. That doesn't tell us how both true and
21 false confessions come about. That's what happens in the
22 preadmission phase. It starts typically with a person
23 who is confident, that if they allow the interrogation to
24 go forward, they are going to remain okay. Otherwise, if
25 it's a criminal investigation, they may simply invoke
26 their right not to take part, and there would be no
27 interrogation.

28 If someone doesn't believe that they've

1 committed any sort of a crime, they often will be quite
2 confident that all they have to do is tell the police or
3 the interrogator "I didn't do it" and since they didn't
4 do it and they know they didn't do it, they should be
5 really at no risk.

6 However, interrogation is designed to manipulate
7 someone's perception of their situation and to manipulate
8 their expectations for the future. It's that, together
9 with the introduction of a motivator that can get someone
10 who starts here to eventually get here.

11 The way in which it is done is actually very
12 simple: There's a stage setting for the interrogation.
13 Typically, interrogations are done in a space that's
14 controlled by the interrogator as opposed to the
15 suspect's comfortable space. Won't be done at someone's
16 home, more likely to be done at a police station or in a
17 private area in a private organization.

18 The interrogator will appear to be absolutely
19 certain about everything that he says. The interrogator
20 will attempt to effect a demeanor that exudes confidence.
21 The interrogator will attempt never to let the suspect
22 know that they are questioning their own accusations or
23 that they are questioning whether the suspect's alibi
24 might hold. The interrogator wants to appear absolutely
25 certain of what they're doing. The stage setting simply
26 contributes to the interrogation. It's not what does the
27 job. What does the job involves first driving the
28 person's confidence that they're gonna remain okay from

1 high down to low, for the simple reason that in the
2 beginning, if someone is accused of having committed a
3 crime, they know they did it, but they don't feel like
4 being punished for it, and they simply say "I didn't do
5 it."

6 To make the admission is a huge step. It's
7 enormously costly. It's going to change their lives.
8 For an innocent person accused of having committed a
9 crime, the same analysis exists. It's hugely costly to
10 say "I did it" when I didn't do it, especially when I
11 believe all I have to do is continue to deny my involvement,
12 and I'll be fine.

13 The interrogator is trained to introduce a
14 series of what I'll refer to as evidence ploys. Evidence
15 ploy is a claim made by an interrogator that I possess
16 evidence which, if the claim is true, would tend to link
17 you to the crime. Police interrogators and interrogators
18 in general in America use the same rule. That is, they
19 feel that it is appropriate, and it is often legally
20 appropriate, for them to invent the existence of evidence
21 that they don't have. They can claim to have
22 eyewitnesses. They can claim --

23 MR. HOOD: Objection, Your Honor. I know this
24 is a narrative, and that's the quickest way to go. But I
25 feel we should stick to what is relevant in this case. I
26 don't believe there's any evidence of lying or ploys or
27 anything like that in this case. I know the expert does
28 have a lot of knowledge about a lot of areas regarding

1 false testimony, but I think we should focus on what's
2 relevant to this case, instead of spending so much time
3 on examples that don't apply here.

4 THE COURT: Response? It does seem that might
5 be helpful in terms of time management.

6 MR. CRAVENS: Your Honor, what we have -- does
7 the Court have -- does the Court have the transcript of
8 the proceedings between Brandon Greg and -- we also have
9 two things for the Court. Then I think we can -- we can
10 speed this up and get to the specific of this case. I
11 think that's what Mr. Hood is trying to do.

12 THE COURT: I this so. For instance, here, if
13 there is no evidence of a witnesses -- well, I think he
14 was going to get to fingerprints as his third one
15 eventually. But I --

16 THE WITNESS: If I might interject, everything
17 I'm saying will attach to this case, not the specifics of
18 it but the general use of evidence plays absolutely. The
19 other things I will talk about, absolutely. That's what
20 I'll do next, after giving this general introduction,
21 hook this model up to the facts of this particular case.

22 THE COURT: Thank you. Do you have things you
23 want me to take a look at?

24 MR. CRAVENS: Yes, Your Honor.

25 THE COURT: Let's go ahead and have them marked
26 as exhibits.

27 MR. HOOD: Your Honor, I'll object to one of the
28 exhibits.

1 THE COURT: Okay. Let's mark it, first, so we
2 know what we're objecting to and what we're not.

3 How many do you have there?

4 MR. CRAVENS: Two.

5 THE COURT: Describe Number 1 for the record.

6 MR. CRAVENS: Number 1 is a transcript of an
7 interview between Brandon Greg of Ross Stores and Amy
8 Marie Garvin, the defendant.

9 THE COURT: Exhibit 1.

10 Exhibit 2?

11 MR. CRAVENS: Exhibit 2 is a -- a subset or a
12 sorted version of the same data, the same words but
13 sorted in a matter that makes it easier for the Court and
14 for everybody here to determine what the motivators are,
15 evidence plays, and other things that are happening.

16 THE COURT: This represents what you believe
17 will be a synthesis or subset of the doctor's testimony?

18 MR. CRAVENS: It's a subset of the transcript of
19 the interview.

20 THE COURT: That will reinforce the anticipated
21 expert opinion?

22 MR. CRAVENS: Yes.

23 THE COURT: What's the objection?

24 MR. HOOD: With respect to the statements taken
25 out of context, they're not relevant. With respect to
26 the statements being bolded, they're not relevant.
27 Counsel's trying to take statements out of context, put
28 them into blocks where they don't belong, to suggest a

1 statement. The witness can testify to that. But to
2 submit this conglomeration -- frankly, it's a report
3 which is hearsay. So under hearsay, under 352, it should
4 not be admitted. I have no objection to the transcript.

5 THE COURT: The people's objection to Exhibit 2
6 will be noted and under submission.

7 Next question of the doctor?

8 MR. CRAVENS: Thank you, Your Honor.

9 BY MR. CRAVENS: Q. Now, when you talk about --
10 Doctor, when you talk about motivators, what do you mean
11 by motivators?

12 A. Let me get to that in one second. I just want
13 to clarify. An evidence ploy can be a reference to
14 evidence that exists or evidence that the interrogator
15 wishes existed. The reason I call it a ploy is it's a
16 ploy in the tactical maneuvering of the suspect. So it
17 can be true. It can be utterly fabricated.

18 Now, on the subject of motivators, as an
19 interrogator introduced evidence ploys and tries to
20 convince the suspect to change his or her perception of
21 their situation, going from "I'm gonna be okay if I deny
22 it" to "My situation is hopeless: whether I deny or not,
23 I'm about to be credited with or arrested for this
24 crime."

25 If the person can be made to feel hopeless, the
26 marginal cost of saying "I did it" is diminished. It's
27 easier. Doesn't make any difference. In anticipation of
28 being able to convince the person they're hopeless, and

1 that's directed at people who did and did not commit the
2 crime, because this is how it's done.

3 The interrogator will also typically, early on,
4 begin to introduce a motivator and then emphasize the
5 motivator as the interrogation progresses through the
6 preadmission phase. That motivator is intended to get
7 the person to take that last step and say, "Okay, I did
8 it." The motivator is what interrogators tend to use,
9 from low end to high end. Low ends might or would be
10 statements such as, At least admit you did what we know
11 you did. Show you have character; show you're a decent
12 person; show that you seem to be a better person from my
13 perspective than I'm otherwise gonna think of you; or
14 people in general will recognize that you're better. It
15 appeals to self-image.

16 Those kinds of interpersonal benefits, those
17 kinds of appeals can get someone who, in fact, knows they
18 committed a crime, used by a skilled interrogator, to
19 say, "Okay, I did it" because there's a rapport that may
20 have developed between them, not likely to produce a
21 false confession. I've never seen that happen.

22 If that doesn't work, and the interrogator is
23 committed to try to get the person to make that last move
24 across that line, they may start talking about how the
25 system works and try to get the person to believe that
26 they will be better off if they confess than if they
27 deny, by really posing problems to them, saying things
28 such as Now's the time for you to show remorse; now's the

1 time for you to tell your side of the story, the idea
2 being to get the person to think about the future and
3 reason without the interrogator suggesting it, that you
4 will be better off in the future, to reach that
5 conclusion by giving them a very simple puzzle to solve.

6 This is a sort of gray area because somewhere in
7 here, if the interrogator keeps going up the scale, the
8 interrogator will cross a line and now begin to introduce
9 what I'll refer to as psychologically coercive
10 motivators. The definition that I'm using for
11 psychologically coercive motivator is a motivator in
12 which the two alternatives of confession or denial are
13 linked up to consequences. It's a consequence of --
14 confessing is linked up to minimum punishment.

15 The consequence of denial is linked up to
16 maximum punishment in its most blatant form. An
17 interrogator might say, If you continue to deny you did
18 this, I'll make sure you get the death penalty, and you
19 know that this is a capital state, and you will go to the
20 gas chamber. That's as blatant as it can get. The
21 denial -- I'm sorry, that was denial.

22 If you confess -- and very often what they will
23 do at this point is introduce a scenario for the crime
24 and often change the facts of the crime to make it a much
25 less serious crime. They may suggest, This may look like
26 a premeditated murder, but in fact I think it's actually
27 self-defense, and then they'll lay out a scenario that
28 fits a self-defense description, endorsing the idea it's

1 self-defense, making it seem they're willing to accept
2 self-defense and may even say, If this is self-defense,
3 you can go home at the end of the day, if it's being
4 blatant.

5 Or that can be done, the connecting of
6 consequence for confession and denial, can be done
7 through a series of suggestions which are less than
8 blatant. But the totality of the suggestions, when you
9 look at everything that is said by the interrogator over
10 the course of the interrogation that is corrected at
11 motivating the suspect, makes -- succeeds in
12 communicating the idea that if you confess, you'll get
13 minimum punishment whereas if you deny, you'll get
14 maximum punishment.

15 The typical pattern is these suggestions are
16 given in the most subtle form in the beginning. And then
17 over the course of the delivery of the motivator, because
18 the suspect is resisting, may get more blatant. So one
19 can identify, over the course of an interrogation if one
20 has a recording of it, every statement made by the
21 interrogator that could be categorized as part of the
22 delivery of the motivator and see, step-by-step, the way
23 in which the motivator is being introduced, the way in
24 which the interrogator is trying to get the person to say
25 "I did it."

26 The problem is -- one of the many problems is if
27 the interrogator continues to go up the scale and starts
28 introducing psychologically coercive motivators, those

1 motivators can produce true confessions from people who
2 know they committed the crime. But the same
3 psychologically motivator can induce false confessions
4 because the person believing their situation is hopeless
5 is offered the way out. The way out is so powerfully
6 attractive because of what happens if you deny or what
7 happens if you confess, that it may turn out that an
8 innocent person, upset by the fact they're being
9 interrogated, pressured, offered a way out, may elect to
10 give a false confession. Or a person who knows they're
11 guilty may decide to take the deal and give a coerced but
12 nevertheless reliable confession.

13 So the motivator doesn't tell you, whether at
14 the confession or the preadmission phase, doesn't tell
15 you whether the confession is true or false, only tells
16 you about how it was elicited. And that's what I think
17 we're here to talk about today.

18 THE COURT: All right. Thank you. Next
19 question.

20 BY MR. CRAVENS: Yes. At this time, I would
21 like to offer this witness as an expert witness in the
22 areas of interrogation and false confessions.

23 MR. HOOD: Objection. Relevancy. There's been
24 no showing whatsoever that there's any false confession
25 here. There's no evidence presented that it is false
26 confession, and testimony on whether this is a false
27 confession requires admissible evidence that there is
28 such.

1 THE COURT: The ultimate question I'm asked to
2 decide isn't whether or not the confession is true or
3 false. While I was listening to the professor explain
4 what he just has, it occurred to me that even a
5 psychologically coercive interrogation, of course, can
6 produce true confessions because they can contain ample
7 amounts of witness specific facts at the post-admission
8 stage, that kind of stuff. All of that is good and fine,
9 but that's not my job. My job isn't to decide whether
10 it's true or false. The jury may get to do that, if they
11 hear that and the rest of the evidence. My job is to
12 determine whether it is voluntary or not.

13 MR. CRAVENS: I don't mean to interrupt --

14 THE COURT: I --

15 MR. CRAVENS: There's been no objection to
16 Exhibit 1. I guess I should lay a foundation to it at
17 this point. My next question was --

18 THE COURT: I'm dealing with an objection of
19 relevance as to this expert witness qualifying as an
20 expert. I'll overrule the relevance objection because
21 ultimately, I think the sole issue he's here to help me
22 on is whether or not the particular confession in this
23 case is voluntary or not under the federal standards.

24 MR. HOOD: That was -- I should have gone
25 further into my objection. He was offered as an expert
26 into false confessions. That's not the question before
27 the Court. The question was whether or not this was
28 voluntary. There's been no showing he's an expert in

1 determining whether this statement was voluntary or not.

2 Secondly, Your Honor, beyond that objection, I
3 do have voir dire. If the Court is going to overrule
4 that objection, I do have some voir dire.

5 THE COURT: Yes. It may be that I'm not sure
6 that the professor would label his field of expertise as
7 false confessions or not, because that begs a question
8 that isn't the question we're here for.

9 I'll overrule the objection. I haven't
10 qualified him yet. You wish to voir dire?

11 MR. HOOD: Yes, thank you.

12 VOIR DIRE EXAMINATION BY MR. HOOD

13 Q. You were offered as an expert in the California
14 case of People versus Sunn?

15 A. Yes. Actually, I don't -- I was set to testify
16 in that case. I don't know that there was any hearing
17 about -- I know there was no hearing about
18 qualifications. All I know is I was set to testify and
19 was down in San Diego.

20 Q. The Court stated your expert testimony was
21 unnecessary.

22 A. That seems to be what the judge thought.

23 Q. Okay. So you did not qualify in that case to
24 testify; is that correct?

25 A. There was no finding that I was not qualified.
26 The judge decided it wasn't relevant, apparently.

27 Q. Then didn't the Court find there was no evidence
28 presented that the police engaged in any tactics wearing

1 down the defendant, Mr. Sunn?

2 A. I don't know. I never entered the courtroom,
3 and there was never any hearing, and my testimony was
4 never proffered.

5 Q. U.S. versus Barchee. That was, I think, an
6 Oregon case. Was that an Oregon case or a Florida case?

7 A. It's an Oregon case, I think.

8 Q. What happened in that case?

9 A. I don't know. I was contacted by an attorney
10 defending Ms. Barchee, and I don't think I made a report.
11 I don't believe -- I know I did not appear at any
12 hearing, so I have no idea what if anything the attorney
13 did.

14 Q. In the Barchee case, wasn't your testimony moved
15 to be excluded because it was unscientific, unreliable,
16 confusing to the jury, and failed to meet the standards
17 of admissibility under the Rules of Evidence?

18 A. I have no idea what the prosecutor argued or
19 suggested in that case. I do know there was never any
20 hearing. I never testified in that case. So whatever
21 moving papers the prosecutor filed are outside my
22 knowledge, never having seen them.

23 Q. Okay. So when you say you have never been not
24 qualified, you are admitting, in fact, there are cases
25 that you were supposed to testify that you were not
26 permitted to testify?

27 A. I said no one has ever found that I was not
28 qualified.

1 Q. Okay. Listen to my question. My question is:
2 Were there cases you were supposed to testify in that you
3 were not permitted to testify?

4 THE COURT: Mr. Hood, let me interrupt. I don't
5 know that that's helpful to me. We have no idea of the
6 facts of the other cases. I just don't know the fact
7 that he didn't testify, for whatever reason, is going to
8 be helpful to me.

9 MR. HOOD: One more case, Your Honor.

10 THE COURT: Sure. Take your time.

11 MR. HOOD: There's a bit too much information on
12 this expert. I've got to go through it rather quickly.

13 THE COURT: Take a minute if you need it.

14 BY MR. HOOD: Q. Now, in Nathan Brinkley,
15 Florida case, are you familiar with that case?

16 A. Brinkley? Sure.

17 Q. And you testified in that case?

18 A. I testified at the suppression hearing, and then
19 I testified at trial.

20 Q. Now, you indicated other --

21 MR. HOOD: I'll save everything. I'll move on.
22 No further questions.

23 THE COURT: Is it submitted then?

24 MR. HOOD: Yes.

25 THE COURT: All right.

26 MR. HOOD: Just so I can have some
27 clarification, Your Honor, what is the Court considering
28 him as an expert in?

1 THE COURT: I thought I was going to phrase it
2 in terms of interviews and interrogations.

3 MR. HOOD: So is the Court indicating that any
4 witness who qualifies as an expert in interviews and
5 interrogations would be relevant to this, such that I can
6 bring in a police officer? I know that is generally not
7 appropriate. It's not relevant what goes on in other
8 interrogations.

9 THE COURT: Again, I think you all are ahead of
10 me on this in that I haven't seen this transcript. I'm
11 not entirely sure what may be relevant. It may be I
12 won't find the expert's opinion helpful. It may be he'll
13 be spot on, and I'll be so thankful that he was here.

14 What I was told, I think, was this expert will
15 be able to assist me in spotting otherwise subtle
16 coercive measures that might not be apparent to me had I
17 not had the benefit of this expert. He seems to have
18 some qualifications that might bear on that. Whether I
19 give much credit to his testimony is something I won't do
20 until I've heard all of it, and counsel have the
21 opportunity to present additional evidence.

22 MR. HOOD: I'll submit it on the Court's basis
23 of his expertise for this motion only, Your Honor.

24 THE COURT: So noted. Thank you.

25 BY MR. CRAVENS: Q. Doctor, have you examined
26 the transcript of a conversation between an investigator
27 named Brandon Greg and the defendant, Amy Garvin?

28 A. Yes.

1 Q. And Doctor, have you identified any of these
2 motivators that you talked about earlier in determining
3 how that -- how that confession went? Was there any
4 motivators in that particular confession?

5 A. Yes. What I did was analyze the transcript of
6 the interrogation and isolate all the statements made by
7 the interrogator that I would categorize as contributing
8 to delivering the motivator starting from the very first
9 statement, which occurs on Page 3, running through to the
10 conclusion of the interrogation.

11 As I indicated, these motivational -- this
12 motivational message is often delivered in a series of
13 statements. In an interrogation, I've analyzed it and
14 run through as many as 40, 50 statements. It's a theme
15 developed over the course of the interrogation. And by
16 isolating each statement that contributes to the
17 development of that theme, each particular statement can
18 be looked at. Someone can agree with my categorization
19 as this having a motivator or not. One can look at the
20 series of statements that are, in my opinion, the
21 implementation of the motivational tactic.

22 Q. Did you prepare a -- did you prepare a report or
23 a -- let's call it a report of those things that you
24 thought were motivators?

25 A. I prepared 12 pages of excerpts from the
26 interrogation in sequence, marking the page number from
27 which each excerpt comes, and putting in bold the
28 particular statements within the statement made by the

1 interrogator that I categorize as making a contribution
2 to the psychologically coercive motivator which, in my
3 opinion, was in play in this interrogation.

4 Q. Okay. And in your analysis, how many times --
5 how many times in your opinion did the interrogator give
6 one of these motivators?

7 A. The interrogator first lays foundation for it.
8 And then as it develops, it makes particular statements
9 which in fact do the linking up. But to understand the
10 entire strategy, one should start in the beginning and
11 watch it develop over time because it's a strategy that
12 interrogators are trained to use. They understand what
13 they're doing. When they're laying foundation, they know
14 they're laying foundation. They lay the foundation, they
15 build on it, they develop it. And sometimes if they meet
16 resistance, they may become very explicit in the linking
17 up.

18 It's not just the last linking-up statements
19 that are significant. It's the entire process
20 culminating in either an explicit linking up or in a
21 series of statements which do the work of communicating
22 to the suspect that if you cooperate, if you confess, you
23 will receive leniency. Whereas if you continue to deny,
24 you will receive the harshest possible treatment, setting
25 it up so that there's a benefit for confessing and a
26 punishment for denying.

27 Q. And did you see these either benefits or
28 punishments as noted in the transcript of the interview

1 between Brandon Greg and Amy Garvin?

2 A. Yes. I saw the interrogator using a coherent
3 strategy of introducing and delivering threats and offers
4 of leniency starting, as I said, on Page 3 and
5 culminating on Page 36.

6 Q. Okay.

7 A. Oh, 37, actually.

8 Q. Excuse me, Doctor. Let's start with Page 3.
9 Page 3. This is on the Page 1 of the Court's Exhibit
10 Number 2.

11 A. Correct.

12 Q. Could you explain -- when you bolded something
13 in this report, let's get that straight, what does that
14 mean?

15 A. That means that that is -- the particular things
16 that I bolded are the things to which I wish to draw
17 attention.

18 Q. Okay. The first thing that I see bolded, it
19 starts with I sit down. It says Greg. Could you explain
20 what kind of motivator is there?

21 A. In that first passage, the interrogator is
22 beginning to lay foundation, open up the idea that at
23 Ross, they take an enlightened view of theft and that if
24 associates are making mistakes, if they can fix it, they
25 will. He's also introducing the idea that there are
26 different ways that they can go. Again, laying
27 foundation for things that will become a lot clearer as
28 he makes continued reference to the initiating ideas.

1 Q. So in this first Page 3 example that you use,
2 are these motivators or just laying foundation?

3 A. This is introducing the terms and setting up the
4 categories that he will use. It's part of delivering the
5 motivator, but it starts off with these kinds of
6 statements.

7 Q. Now, the next thing you have highlighted is
8 Pages 6 through 7. You have something bolded starting at
9 the beginning. Could you tell the Court if this is
10 foundation or motivator or some other thing?

11 A. He's again repeating the refrain that here at
12 Ross, we have a mediator, and we want to find out why
13 these things are happening, so we can fix them. He has
14 not yet been very specific about how here at Ross, we fix
15 these things. But up to this point, he's indicated there
16 are a number of different things that can happen. He's
17 playing a mediator roll, that they're really interested
18 in finding out the cause of the problem and in fixing the
19 problem. The definitions of these things will get
20 clearer as he continues to develop the theme.

21 Q. On the next page, Page 2 of this exhibit, you
22 have bolded -- it starts, You know she wasn't prepared
23 for it. Explain what this is.

24 A. He's talking about an employee who was caught
25 stealing. She was afraid she would go to jail, so he
26 reports -- that's the first introduction of jail as a
27 possibility. He's pointing out, and I quote, no, that's
28 not my job. I'm not here to judge. I'm not here to hire

1 or fire. I don't even have that power.

2 He's indicating he's here to find out why. But
3 the idea of jail as a possibility has been introduced by
4 the interrogator. The idea of hiring or firing has been
5 mentioned by the interrogator. And he's also introduced
6 the idea that there's a decisionmaker who will handle
7 these decisions based on what comes out of this session.

8 Q. Now, further on down the page, Obviously I hear
9 this all the time. What kind of statement is that?

10 A. Well, he goes on to say that we're not here to
11 get them in trouble for giving out the discounts, for
12 making small mistakes. Again, he's introducing the idea
13 that this is an enlightened employer, if you will, an
14 employer who is not seeking to be punitive to employees,
15 an employer who wants to fix problems and isn't even
16 terribly upset by the fact that the employee is giving
17 out discounts improperly.

18 Q. Now, on the scale of the motivators you have on
19 this chart, where does this go on the scale between low
20 and high, if you will?

21 A. He's still laying the foundation for the
22 delivery of an entire tactic, which will become clearer
23 as this develops. There's no sense in trying to
24 categorize each and every statement, although some of the
25 statements towards the end could be categorized on that
26 scale on their own. Right now I'm talking about the use
27 of the tactic throughout the entirety of the
28 interrogation. As I suggested, these tactics continued

1 to be used in interrogation.

2 Q. Next page, Page 3. You've got something bolded
3 that starts with I'm looking for --

4 A. He's making it clear what the standard is, what
5 he seeks to obtain, supposedly, from the suspect. He
6 wants a statement, I made a mistake; I want to fix it.
7 So in other words, an admission of having done the
8 mistake which turns out to be theft later. But he wants
9 an admission to having done the theft and also a plea for
10 leniency.

11 Q. Now, Doctor, I want to step back a second.
12 There was a question I forgot to ask. Can you -- in
13 your -- when you're testifying, you sometimes say
14 admission, and you sometimes say confession. Is there a
15 difference in the meaning that you attach to each of
16 those two words?

17 A. As I use the terms, an admission is a statement
18 that tends to show the person committed the crime. A
19 confession is a detailed account of the person's carrying
20 out of the crime.

21 Q. So at this point, is he wanting an admission,
22 confession or what? In your opinion, what is he trying
23 to get here?

24 A. At this point, he's making it clear one of the
25 things you have to do is admit you did the crime and also
26 plead for leniency, and somehow that will feed into the
27 Ross system which supposedly is to fix problems rather
28 than punish people.

1 Q. Okay. On the next -- the bottom part, Page 10,
2 you have things bolded. Explain what's going on here, in
3 your opinion.

4 A. He's trying to -- he's introduced in this
5 passage the idea that there's another decisionmaker to
6 whom he's going to bring the result of this interrogation
7 and whether or not Ms. Garvin cooperates will have an
8 impact on the decision of the third party, the human
9 relations or his boss, I guess the loss prevention boss,
10 and the human relations department boss. And they will
11 make the decision about which way to go, as it's been
12 undetermined up to this point. And of course he's making
13 it clear it makes a difference whether Ms. Garvin
14 cooperates or if she wasn't cooperating. Cooperating
15 means admitting to having committed the thefts.

16 Q. Are we still in the laying foundation here?

17 A. He's still laying foundation.

18 Q. Next page, Page 4. And it talks -- this is Greg
19 talking. It starts in the bold, But like I said. What
20 is he doing here?

21 A. He's beginning to introduce the idea that there
22 are two very different courses of action that will
23 eventually be revealed. They can go different ways.
24 He's making it clear in the second bolded statements in
25 that passage that this is a chance for you to get a fresh
26 start. So you can wipe out the prior transgression.
27 Again, he's emphasizing leniency but also introducing --
28 he's also constantly making reference to the fact that

1 things don't have to go that way, and there is another
2 alternative, a punitive alternative.

3 Q. And the next thing you have noted is Pages 15
4 through 16 and Mr. Greg -- the first bold starts, Listen,
5 I know why it's happening, et cetera. What's going on
6 here?

7 A. Standard interrogation technique to report to
8 the suspect that there's no question that you committed
9 this crime. I'm only here to find out why you did it,
10 and thereby try to -- to focus on getting an explanation
11 for why the crime was committed. And of course in giving
12 that explanation, the person is also admitting to having
13 done the crime. So it's just a little tactic that one
14 sees in interrogation all the time.

15 Q. Is this a motivator or just a tactic?

16 A. Well, it's a tactic to say we're past the point
17 at which there's any question that you committed the
18 crime. You have to understand that interlaced in all of
19 this will be constant, as I indicated in the diagram,
20 introduction of evidence ploys. We have this evidence.
21 We have a videotape of your stealing things. We have
22 computer records of your I.D. being on bogus returns and
23 things like that.

24 All of those evidence ploys are being introduced
25 as this theme is being developed. That's why I pulled
26 this out. Because otherwise, unless one is well-versed
27 in breaking down an interrogation, it can look like a
28 bowl of spaghetti.

1 Q. I.E., it can be very confusing; is that what
2 you're saying?

3 A. I hope I got it across the other way, but yes,
4 you're right.

5 Q. On Page 5, continuing with this, the
6 interrogator starts, Look -- let me back up.

7 Ms. Garvin says, Show me the tape. Mr. Greg
8 says, Listen, tapes aren't for showing right now.

9 What's going on here in this dialogue?

10 A. You'll notice he also says, Before we can go in
11 that direction, that's when you go to court. Okay? Now,
12 she has just asked, and that's quoted, Show me the tape.
13 This is a reference to the tape of her allegedly having
14 stolen some goods from the store. She wants to see the
15 evidence that he has referred to. That's the evidence
16 ploy.

17 He is now telling her that he doesn't want to
18 show it to her unless they're going in the direction of
19 going to court, which of course means bringing in the
20 police and so on. What he's playing on is, again, this
21 constant reference to one alternative which is very
22 punitive, and the other alternative which is very
23 lenient.

24 Q. Okay.

25 A. He says at the conclusion, because we wants to
26 settle it, bottom line, okay.

27 Q. Now -- and is this line, is this a motivator, a
28 tactic, or is he still laying foundation?

1 A. Part of the delivery of the motivator. It is
2 constant reference back to the two alternatives,
3 constantly making it clear to her that one alternative
4 can lead to court. Later in these passages, he'll
5 mention police again explicitly, or he will even develop
6 explicitly the idea that there are other positions in the
7 store that you could be given if you simply cooperate.
8 All of these things are to come.

9 Q. Now, moving down still on the same page, Pages
10 19 through 20, what is going on here?

11 A. He's saying that a decision will be made, and
12 he's pointing out that he cannot give his bosses the
13 input that she's not being cooperative, that they're not
14 gonna be happy with that input. In other words, that's
15 an unsatisfactory result for her, and that unsatisfactory
16 result is going to be linked up with the police being
17 called, whereas if she cooperates, if she confesses, she
18 will then qualify for a different job in the store.

19 Q. So I want to back up just a little bit, because
20 I'm a little hazy on when you talk about the motivators
21 versus linking up the motivators. Could you explain how
22 that works or what happens?

23 A. He's introducing -- all of these statements are
24 about introducing a high/low: High punishment if you
25 deny, low punishment if you confess. He can do that
26 first through these suggestions, which are setting up
27 categories and later in a more explicit way. All of
28 these statements are part of introducing this theme,

1 developing this theme, acquainting Ms. Garvin with the
2 alternatives before her, acquainting her with how her
3 conduct during the session will be linked up to the harsh
4 outcome or the lenient outcome. And the conduct is, Does
5 she confess? Yes or no?

6 Q. On Page 22, and then it turns to Page 26 on
7 Exhibit 2, Brandon says, We're trying to start it now.
8 What's going on here?

9 A. He's saying I'm not trying to get you in
10 trouble. I'm trying to, you know, get you -- I'm trying
11 to figure out why this happened. So he's making clear
12 the trouble for her is one alternative. His job is not
13 to get her in trouble, but of course he's reminding her
14 that trouble is a possibility. What he's trying to do,
15 and you have to understand this is in the context of her
16 resisting, and her constantly reporting she didn't steal
17 anything, she didn't do any phoney returns. So she's
18 resisting. And as she's resisting, again, something I
19 had not tracked but it's going on in the same way the
20 presentation of the evidence ploy is going on, as she's
21 resisting, his conduct is changing. I'm focusing on what
22 he says in pulling out these excerpts.

23 Q. On Page 23, Brandon Greg, I'm gonna go use the
24 phone. What's going on here?

25 A. Well, he continues on in that very statement,
26 and he says that a lot of things can happen with this,
27 okay? You can be verbally warned, you can be written up,
28 you can be terminated, and even an outside agency can be

1 called. So now he has clearly defined the different ways
2 that we can go.

3 Q. And -- and is this in the introduction of a
4 motivator at this point?

5 A. It's continuing to develop the motivational
6 theme.

7 Q. Page 23, continuing. He says, I mean, I'm not
8 gonna BS you here. There are things that are gonna
9 happen, okay? Then he goes on. But I want you to be
10 aware of these things.

11 What's happening here.

12 A. After that, he says you know, this is the
13 direction you can take, and it all depends on your
14 cooperation and how you want to fix it. Now he's making
15 an explicit connection between if you cooperate, which
16 means confess, admit you did it, then you will determine
17 the direction that this takes. And the direction is
18 either call the police or, at the other end of the
19 continuum, you can be verbally warned. And he will
20 identify other less punitive alternatives as we continue.
21 But the range is verbal warning or police called, depends
22 on whether you confess or not.

23 Q. Is this what you -- what you were referring to
24 earlier, what you referred to as linking up the
25 motivator?

26 A. He's now beginning to explicitly connect
27 confession and minimum punishment, denial and maximum
28 punishment. She's been resisting now for 23 pages. So

1 what one sees, and of course the interrogation would be
2 over, my analysis would be, over at the moment she
3 confesses. So you got 23 pages of her resistance. Over
4 the course of her resistance, he's getting more and more
5 obvious, more and more heavy-handed.

6 Q. Now, Pages 26 through 27, he starts, and I want
7 you to think about this because obviously, et cetera.

8 What's going on there.

9 A. I'm looking at Page 24, next at the top of Page
10 7.

11 Q. Oh, okay. That's right. I'm sorry. I'm sorry.
12 Let me -- let me skip back up there because I did miss
13 something.

14 It says Greg, you're not in trouble. It's just,
15 et cetera.

16 What's he doing there?

17 A. He's telling her there's still an option for her
18 to fix this. If you go in that direction we don't want
19 to take it -- he's -- this is again in the context of her
20 resisting. He's telling her, you're not in trouble. But
21 if you don't cooperate, we could go in the direction of
22 calling the police, which he's already now defined. The
23 outside agency is what he's talking about when he says,
24 you know, we can call in -- the outside agency that he's
25 talking about is indeed the police.

26 Q. Now, on Page 27 at the beginning at the top of
27 Page 7 at the top of Exhibit 2 -- strike that.

28 Pages 26 through 27, you pick out, and it starts

1 with, and I want you to think about this because

2 obviously these mistakes, et cetera.

3 What's going on here?

4 A. Well, he's introducing -- at the beginning, he
5 wants her to think about something. And then at the end,
6 he gives her what he wants her to think about. And he
7 repeats, just think about it, okay? Because like I said,
8 things can come from this. And I really don't want to go
9 in that direction. And I know why. And I know -- and I
10 know how. You know what? I know how my boss is, and I
11 know what he's gonna say. He's gonna say to call
12 somebody else. Let them deal with it. All right? And
13 you're pretty cool up front. We don't usually talk to
14 associates too much. They come in, they come and go, but
15 I don't want to -- you know, I don't want to have to go
16 in that direction.

17 He's telling her if she doesn't confess, he's
18 going to tell her boss she hasn't confessed. And her
19 boss, who's the meanest guy in town is the idea of this,
20 is gonna, say, throw her to the police as opposed to give
21 her the lenient treatment we know as good Ross employees,
22 is available to associates who just confess. That's what
23 he's been developing and will continue to develop.

24 Q. Now, on the top of the next page, Page 8, it
25 talks about -- he leaves to call his boss. He says well,
26 I talked to the boss.

27 What happened here.

28 A. He's reporting back what he told the boss he's

1 disappointed, and the consequence of the boss' being
2 disappointed is the likelihood that the police will be
3 called in, as opposed to her getting the lenient
4 treatment of maybe the verbal warning which has been
5 mentioned. He'll mention other lenient alternatives to
6 calling in the police before this is over. He even goes
7 on to say -- to list the things that she's afraid of.

8 You're scared of -- that's all you're scared of,
9 not being arrested. You're not scared of getting written
10 up, you're just scared of losing your job. Is that
11 pretty much it? That's what she's been saying, she's
12 scared of losing her job. He brings it in. And he's
13 mentioned it again. And now he uses the word arrest.

14 So we've gone from calling some vague, outside
15 agency, to going to court, and now he's talking directly
16 about arrest as a possibility.

17 And he continues on in that passage at the
18 bottom. You want me to reassure you that the direction,
19 you know, like I told you before, that we take on this
20 depends on you. And right now, from the store level,
21 from where we're sitting right now, we can decide to call
22 someone, or let's put her back on the floor, okay? Like
23 I said at the very beginning, it all comes down to your
24 cooperation.

25 There is the explicit link between the
26 categories that he's been setting up, and it depends on
27 your cooperation which, as set up, means confessing. We
28 can call somebody in, and the somebody is the police.

1 And if we call the police in, you're gonna be arrested,
2 and you're gonna go to court, or we can put her back on
3 the floor. In other words, we can forget about this and
4 go on with your employment if you just confess, is what
5 he is promising her.

6 Q. Now, on Page 29 through 30, Page 9 of Exhibit 2,
7 Brandon says but with Ross, this is what's bolded out.

8 What's going on here.

9 A. With Ross, we sit down with an associate, and we
10 talk, okay? Once we get past the point of yes I made the
11 mistake, I'm sorry, the things he asked for in the
12 beginning, you know, what we can do, we have the power to
13 fix it now. And fixing it, as he's been using it, means
14 continue your employment. He will define that there are
15 other positions in the store that you could be given
16 where you're not handling money. That's what he means by
17 fix it. You can keep your job and not get arrested.

18 Q. So this is one of the -- in your opinion, would
19 this be, say, a leniency motivator?

20 A. He's promising her, as he did on Page 28, that
21 if you cooperate, we won't call the police. We'll put
22 you back on the floor. He's reemphasizing on Pages 29
23 and 30 that what you have to do is confess, say you're
24 sorry, and then we'll fix the problem.

25 And then he goes on to say, in the second bolded
26 part of that statement passage, you know what we can do,
27 we can put them in the fitting room. We can put them in
28 departments that we're putting the stock in, that way the

1 temptation is not there anymore. He's illustrating what
2 the fix can be if she just confesses.

3 And then he goes on to say that she's a good
4 employee, that she's a hard worker, that -- and he
5 concludes with, after listing all of her sterling
6 attributes, he says we want those kind of people, okay?
7 And the price for staying in the fold is simply
8 confessing to having done the thefts, is the message he's
9 delivering.

10 Q. Now on the top of Page 10, he's saying I also
11 know what happened here.

12 What's happening there?

13 THE COURT: I'm sorry, where are you?

14 MR. CRAVENS: Top of Page 10 of Exhibit 2, Your
15 Honor.

16 THE COURT: There I am. Okay.

17 THE WITNESS: He's again reemphasizing the
18 common tactic of saying the fact of what you did is no
19 longer at issue. The evidence of what you did is
20 overwhelming. And bear in mind, this is all in the
21 context text of having told her they have observations,
22 videotapes, computer records, they have all sorts of
23 stuff that shows that she supposedly committed these
24 crimes. Therefore, that's not a question, about whether
25 she did it or not.

26 All he wants to do is sit down here and try to
27 fix it with her, and he's defined what "fix it" means.
28 He's defined what she has to do to get the fix.

1 And then he continues, in the second bolded
2 portion of that statement, and says in situations where
3 associates don't want to work with us, then we just give
4 them to someone else and say you deal with it, and that's
5 what my boss wants to do, and obviously we don't want to
6 do that. I don't really want to do that because that
7 means a whole bunch of other junk for me.

8 He's again reemphasizing if you don't confess,
9 we'll turn you over to the police, and we'll see about
10 going to court. But he doesn't want to do that, although
11 the boss wants to do it. The reason the boss is unhappy,
12 he's told her before, is that you haven't confessed. It
13 could not be clearer.

14 He goes on in the final bolded portion of that
15 statement and says, you know, you were doing it, and it's
16 a simple mistake. If you add it all up, it can be
17 corrected easily. Like I said, there are positions in
18 the store where you can still work as hard as you do.
19 And then she says, Then why don't you put me there? And
20 he says, Because we need to clear this up first.

21 The price of getting leniency is confession.

22 Q. On Page 11, the bold that starts that's my boss,
23 the H.R. manager --

24 A. He says these people make the decision, but what
25 they make the decision on is what you tell me here today,
26 my opinion and obviously this stuff. They're going to
27 make the decision about whether to call the police in or
28 give you another job in the store. And they'll make that

1 decision on what you do here today, confess or don't
2 confess.

3 Q. In all of this, did you see -- in your opinion,
4 was there any urgency in wanting her to confess? Do you
5 see any of that?

6 A. The whole purpose of doing an interrogation is
7 to get an admission and confession. You don't start
8 interrogating someone, accuse them for doing something
9 wrong for interviewing them. Interrogation is not an
10 interview. Interview is about getting information. You
11 ask questions and note the answers. Interrogation is
12 about getting someone to admit they committed a crime and
13 confess to it and nothing less than that.

14 Q. Let's see. On Page 12, you've got some things
15 bolded where it says there's a certain, and it's
16 inaudible, who work here, and then there's the same
17 thing.

18 What's going on here?

19 A. Look at what he's saying. There's a certain,
20 and I'll guess that what's inaudible is kind of associate
21 who works here today that do the same thing with me, and
22 they're still working here, okay? And then she says,
23 There are other associates? And he says, They aren't
24 here. Those associates are in jail. I'm not gonna joke
25 around with you. It all depends on the associate, how
26 well they're working. And now it's inaudible how he
27 finishes that.

28 He goes on to say that I know you tried to work

1 with me, which might suggest what's missing, but you just
2 haven't crossed that boundary because you're scared,
3 because you're nervous. You don't want to lose your job.
4 You -- you don't want to go to jail. Now he's setting
5 out the two negative alternatives. You can work with me.
6 I can sit here right now and work with you on planning
7 something out. I promise you I will, okay? But we
8 really need to get past that part of why, okay?

9 He's promising, explicitly promising her they'll
10 sit there and work something out. He's made clear the
11 working out involves another job in the store, and he's
12 telling her in no uncertain terms that it all depends on
13 whether you confess or not. If you don't confess, you'll
14 be like the other associates, and you'll be in jail.

15 Q. Now, the interrogation technique that you saw
16 here, is -- is this one you've seen in other cases?

17 A. This is classic psychological coercion. I've
18 seen this technique used in other private security cases
19 before. He's hooking up the option of leniency from the
20 store versus throwing you to the dogs, the police, the
21 jail, and the price is simply confessing.

22 Q. Now, when you say psychological coercion, could
23 you give us a definition?

24 A. Definition is seeking to motivate someone
25 through threats of harm or offers of benefit or leniency.
26 In my opinion, he's threatening her with harm and
27 offering her leniency. That's the theme that is
28 developed over this series of statements, culminating in

1 explicit linkage between confession and leniency, and
2 punishment and denial and maximum punishment.

3 Q. And Doctor, just for the record, do these kind
4 of interrogations elicit true confessions?

5 A. They can.

6 Q. And can they elicit false confessions?

7 A. They can.

8 Q. And do you have any experience or know an
9 approximate percentage of confessions that would be false
10 confessions by using this particular method of
11 interrogation?

12 A. No one in the world knows. No one knows how
13 many interrogations result in confession of any sort. No
14 one knows how many interrogations result in true
15 confessions, how many interrogations result in false
16 confessions because no statistics are kept that are
17 adequate to allow one to say that here is the -- here is
18 the probability that an interrogation will result in true
19 or false confession.

20 Q. What kinds of people come to ask for your
21 services?

22 A. People --

23 MR. HOOD: Objection. Relevance.

24 THE COURT: Sustained.

25 MR. CRAVENS: No further questions at this time.

26 THE COURT: Cross examination?

27 MR. HOOD: I will not finish.

28 THE COURT: I don't think we're going to finish

1 today. I sure hope --

2 MR. HOOD: Well, let me go into one area if I
3 could.

4 THE COURT: All right.

5 CROSS EXAMINATION BY MR. HOOD

6 Q. You prepared this report?

7 A. Correct. Correct.

8 Q. Did you prepare any other reports?

9 A. No.

10 Q. Why did you interview the defendant in this
11 case?

12 A. To find out what happened off the tape.

13 MR. CRAVENS: Your Honor, at this time --

14 MR. HOOD: Excuse me.

15 BY MR. HOOD: Q. And that helped you in your
16 opinions about the motivator -- motivating or lack of
17 motivating things?

18 A. Everything I've said today --

19 MR. CRAVENS: Objection, Your Honor. We would
20 object on the attorney-client privilege issue. There was
21 a report that was handed to Mr. Hood that was handed to
22 him in mistake -- by a mistake, and I guess this is
23 probably the time to deal with that.

24 THE COURT: The objection or the inadvertent
25 discovery?

26 MR. CRAVENS: The inadvertent discovery, Your
27 Honor.

28 THE COURT: I'm not sure it is time to deal with

1 that. I'd like to deal with the objection and the
2 examination of the witness.

3 MR. CRAVENS: The objection is based on
4 attorney-client privilege. May we approach? If you
5 would like us to approach, we can do that.

6 THE COURT: Why would you approach?

7 MR. CRAVENS: Your Honor, there was some
8 inadvertent -- there was inadvertent discovery. I don't
9 believe the prosecutor should be going into this area
10 because of attorney-client privilege. I apologize for
11 the speaking objection.

12 THE COURT: I asked you, and you're answering.
13 It's mostly in front of jurors that I have a hard time
14 with that.

15 The objection to the question is overruled. I
16 think Doctor Ofshe had partially answered the question.
17 Perhaps we should re-ask it and get a full answer.

18 BY MR. HOOD: Q. Okay. Let's start from the
19 beginning.

20 You interviewed the defendant in this case?

21 A. Correct.

22 Q. And it was in relation to her interview with
23 Mr. Greg?

24 A. Correct.

25 Q. And you asked her about the circumstances
26 surrounding that interview?

27 A. I asked her about what happened off the tape.
28 That was not the parts -- that was the parts that were

1 not recorded.

2 Q. Did you ask her about what happened off the tape
3 about the interview?

4 A. Correct.

5 Q. Your interview was principally, if not
6 completely, related to her interview with Mr. Greg?

7 A. It was related to that part of the interview of
8 Mr. Greg that was not recorded.

9 Q. Okay. And you interviewed her because you felt
10 it was important?

11 A. I interviewed her because there were parts of
12 the interrogation that were not recorded, and I wanted to
13 find out what happened.

14 Q. Okay. And you wanted to find out what happened?

15 MR. CRAVENS: Objection, Your Honor,
16 attorney-client privilege. Just a continuing objection
17 to this line of question.

18 MR. HOOD: I still have not asked for the
19 content.

20 THE COURT: I'm not sure the fact of the
21 interview is privileged, unless you have some theory as
22 to whether or not he interviewed her is privilege.

23 MR. CRAVENS: I know we'll get there eventually.

24 THE COURT: I'm on notice it may come. Thank
25 you.

26 Mr. Hood, you may continue.

27 BY MR. HOOD: Q. And you wanted to find out
28 what happened during that interview?

1 A. I wanted to get more information about the
2 totality of the interrogation, correct.

3 Q. Because the totality of the interview was
4 important to you?

5 A. Not necessarily for different purposes. For the
6 purpose of my testimony today, I relied entirely on what
7 was in the recorded part of the interrogation. And
8 you'll notice that all of my analysis is of what Mr. Greg
9 said that was recorded. And that analysis leads me to
10 the conclusion that I stated.

11 Q. But your analysis about what Mr. Greg said is
12 only relevant insofar as it affects her; correct?

13 MR. CRAVENS: Objection. Calls for a legal
14 conclusion.

15 THE COURT: Sustained.

16 BY MR. HOOD: Q. Your analysis of what he said
17 to her, your saying this is a motivating factor or this
18 is coercion, would only be relevant if, in fact, she felt
19 coerced?

20 MR. CRAVENS: Same objection, Your Honor.

21 THE COURT: Same ruling.

22 BY MR. HOOD: Q. In interviewing her, you
23 wanted to determine if, in fact, her subsequent
24 confession was voluntary or involuntary?

25 A. That's your theory. I know why I interviewed
26 her, and that was not the reason.

27 Q. Your reason was so you understood the full
28 interview?

1 A. My reason was that I wanted to find out what if
2 anything Mr. Greg said beyond what was in the recorded
3 part of the interrogation.

4 Q. During -- okay.

5 But you're still interviewing her about that
6 interview; correct?

7 A. I'm interviewing her about the events that
8 happened during the portion of the interview that was not
9 recorded, prior to her making the written so-called
10 confession statement. So there is a gap in the record.
11 I was interviewing her about the events in that gap. The
12 record -- what I testified about today was the record
13 that is available through the tape recording.

14 Q. Why was it important for you to interview her
15 regarding that?

16 A. Well, because things might come up about his
17 having said things that were even beyond, perhaps, what
18 he had said in the recorded part. I don't know what
19 happened. There may be other purposes that my testimony
20 might be used for or useful about that I was seeking to
21 gain information on. For the purpose of this hearing, I
22 was asked to analyze the recorded part of the
23 interrogation and testify about that, which is what I
24 did.

25 Q. And nothing she said in your interview in any
26 way affected your opinion; is that what you're telling
27 us?

28 A. That's correct.

1 Q. You didn't consider what she told you about that
2 interview at all?

3 A. I didn't review it. I did the interview,
4 reviewed it at some point. But in preparing my testimony
5 for today, it's based on what's there, although -- well,
6 I'll hold it at that.

7 Q. Go ahead and finish.

8 A. No thanks.

9 Q. So you interviewed her about Mr. Greg's
10 interview, and yet you --

11 THE COURT: Let's just go ahead and call it a
12 day.

13 MR. CRAVENS: Thanks, Your Honor.

14 THE COURT: And Doctor Ofshe is ordered to
15 return tomorrow morning at 9 o'clock, as are counsel and
16 the defendant.

17 THE WITNESS: Your Honor, I have a problem.

18 THE COURT: What's up?

19 THE WITNESS: I teach at 8 o'clock in the
20 morning until 9:30, and then noon until 2.

21 THE COURT: I'm open to suggestions, one of
22 which is not being dark tomorrow.

23 MR. HOOD: Your Honor, I don't have a
24 suggestion.

25 THE COURT: Let's go off the record and have
26 counsel approach. We'll try to work this out so some
27 combination of students and this Court don't get hosed,
28 to use the legal term.

1 (Whereupon a discussion was held off the
2 record.)

3 THE COURT: All right. After a brief discussion
4 at the bench, and I again appreciate the tolerance of the
5 staff and others involved, it appears that we have other
6 items in limine we can work on tomorrow morning while the
7 doctor is teaching his class. And also, we can start
8 selecting a jury tomorrow afternoon if we're done.

9 I'll order that the doctor return Wednesday
10 morning at 9 o'clock to continue this. He is, therefore,
11 excused for now, and I guess I'll see counsel tomorrow
12 morning at nine. And we better have evidence and things
13 to do to keep us busy, guys.

14 All right. See you tomorrow morning at nine.
15 As a matter of fact, let me see counsel in chambers now.

16 We're in recess.

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1 STATE OF CALIFORNIA)
)
2 COUNTY OF SANTA CLARA)

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6 I, Michelle Caldwell, CSR 9045, in and for the State
7 of California, County of Santa Clara, do hereby certify
8 that I was appointed by the Court to act as court
9 reporter in the above-entitled action; that I reported
10 the same into typewriting as appears by the foregoing
11 transcription; that said transcript is a full, true and
12 correct statement of the proceedings to the best of my
13 ability.

14

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16 Dated this 25th day of November, 2003.

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Michelle Caldwell
Certified Shorthand Reporter No. 9045

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SANTA CLARA
3 SOUTH COUNTY FACILITY

4 BEFORE THE HONORABLE EDWARD F. LEE

5

6	THE PEOPLE OF THE STATE)	
	CALIFORNIA,)	
7)	
	Plaintiff,)	
8)	
	vs.)	Case No. FF301260
9)	
	AMY MARIE GARVIN,)	
10)	
	Defendant.)	
11	_____)	

12

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 October 6, 2003

15

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17

18 APPEARANCES:

19 For the Plaintiff: MARK HOOD,
20 DEPUTY DISTRICT ATTORNEY

21

22 For the Defendant: LEONARD CRAVENS,
23 KENNETH PINTO,
24 ATTORNEYS AT LAW

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28 MICHELLE CALDWELL, CSR 9045, Official Reporter.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
SOUTH COUNTY FACILITY

BEFORE THE HONORABLE EDWARD F. LEE

THE PEOPLE OF THE STATE)	
CALIFORNIA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. FF301260
)	
AMY MARIE GARVIN,)	
)	
Defendant.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

October 8, 2003

APPEARANCES:

For the Plaintiff: MARK HOOD,
DEPUTY DISTRICT ATTORNEY

For the Defendant: LEONARD CRAVENS,
KENNETH PINTO,
ATTORNEYS AT LAW

1

2 MICHELLE CALDWELL, CSR 9045, Official Reporter

3 SAN MARTIN, CALIFORNIA

OCTOBER 8, 2003

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5 THE COURT: We're back on the record in the
6 Garvin matter. The defendant is present. All three
7 attorneys are present. We're outside of the presence of
8 the jury.

9 Professor Ofshe is on the stand. We're
10 partially through cross-examination.

11 Mr. Hood?

12 BY MR. HOOD: Q. Now, approximately how many
13 cases involving false confessions have you worked
14 yourself as an expert, either as reviewing or testifying
15 in the last three years?

16 A. Last three years? I've -- I don't keep track of
17 the number of cases I work on annually. It would -- I
18 would be guessing if I told you. The number is
19 significant, but it would be guessing.

20 Q. Why don't you estimate?

21 A. Whether you call it a guess or an estimate, I
22 don't have a basis for doing it. It's a significant
23 number: Fifty? A hundred? A hundred and fifty? Two
24 hundred? Two hundred and fifty? I couldn't tell you.

25 Q. Approximately how many cases do you review a
26 year?

27 A. Since I don't keep track of how many cases I
28 review a year, I can't answer that question.

1 Q. Is it between 50 and 150?

2 A. Could be between 50 and 250. I don't know.

3 Q. How many cases have you testified to where you
4 have been called as a witness in the last three years?

5 A. I don't keep it by year. I testified before
6 that I think the number is about 193 in toto on the
7 subject of interrogation, and that's over the ten, twelve
8 years I've been doing this, at least. Maybe longer.

9 Q. Okay.

10 A. Fifteen years probably.

11 Q. Of those 193 cases that you testified on, how
12 many of them involved civilian interrogators?

13 MR. CRAVENS: You know what? Excuse me, Your
14 Honor. Objection, relevance unless -- objection,
15 relevance.

16 THE COURT: The objection is overruled.

17 THE WITNESS: I can think of two in particular.

18 BY MR. HOOD: Q. All right. And those two,
19 what was the focus of your testimony?

20 A. On the techniques that were used to elicit the
21 statement.

22 Q. Okay. The techniques that were used in those
23 two, were the techniques proper or improper?

24 MR. CRAVENS: Objection. Vague.

25 THE COURT: Do you understand the question,
26 Professor?

27 THE WITNESS: Yes.

28 THE COURT: You may answer it.

1 THE WITNESS: Techniques were techniques that
2 involve the use of psychological coercion. And as given
3 my understanding of what's permissible, they would have
4 to be considered improper.

5 BY MR. HOOD: Q. In your opinion?

6 A. Given my understanding of what's permissible,
7 they would be considered improper.

8 Q. Okay. And those -- so those two cases involved
9 coercive techniques?

10 A. Those are techniques -- those are cases, the two
11 that I recall, in which I actually testified that
12 involved the use of psychological coercion. And as I
13 define psychological coercion, my understanding is that
14 they would be considered improper.

15 Q. Okay. Now, you yourself have done your own
16 studies on false confessions; is that correct?

17 A. Yes.

18 Q. Okay. And in your -- probably your main
19 studies, you looked at --

20 MR. CRAVENS: Objection, vague as to what main
21 study means.

22 MR. HOOD: That's why I'm looking on my paper
23 for the name of the study.

24 MR. CRAVENS: Thank you.

25 BY MR. HOOD: Q. Consequences of false
26 confessions, and it's a long title, 1998.

27 A. That's not the main study that I've done, but
28 that is one of the publications that I've done.

1 Q. Okay. And in that article, you studied -- you
2 looked for or looked at what you consider to be false
3 confessions; is that correct?

4 A. We took a collection of 60 cases, of the
5 hundreds of cases that we were aware of in which false
6 confessions were quite possible. We analyzed those 60
7 cases. We categorized those 60 cases in terms of the
8 likelihood that -- that it was a false confession,
9 running from essentially very strong in our conclusion
10 that this was a false confession to absolutely certain.
11 Then we analyzed the consequences for an individual of
12 working their way through the criminal justice system
13 with a confession statement attached to their case.

14 Q. Let me see if we can speed these things up.
15 I'll try and narrow my questions, okay?

16 You indicate you looked at what you thought were
17 hundreds of cases of potential false confessions;
18 correct?

19 A. We have hundreds of cases of -- that are
20 reported as false confessions. Not all of them have we
21 investigated.

22 Q. Okay. And of those, you looked at 60?

23 A. We took 60 of the ones available to us at the
24 moment.

25 Q. And these are ones that you thought were false
26 confessions prior to your study?

27 A. We categorized those statements into --

28 MR. CRAVENS: Actually, objection.

1 Argumentative.

2 THE COURT: The objection is overruled.

3 Doctor, you may finish.

4 THE WITNESS: We put those cases into categories
5 that all of the cases were cases we had concluded were
6 probably false confessions. We put them into categories
7 of proven false confession versus virtually certain or
8 strongly likely -- very, very strong likelihood that they
9 were indeed false confessions. So we did a
10 categorization of those 60 cases.

11 BY MR. HOOD: Q. And of those 60 cases, you
12 came to the opinion that only 34 of those were actual
13 proven false confessions?

14 A. Given the standards that we used, 34 fell into
15 the category where we could say because the murder victim
16 turned up alive, we are absolutely certain that the
17 person falsely confessed to having murdered that
18 individual or because the person was proven to be in
19 another city or in jail, or the real killer shows up and
20 confesses and proves that they committed the crime, or
21 the DNA exonerates and points to somebody else, or other
22 reasons of that gold standard that we could say these are
23 proven false confessions.

24 Q. Okay. Again, you only determined 34 of the 60
25 cases were indeed false; correct?

26 MR. CRAVENS: Objection. Argumentative.

27 THE COURT: The objection is overruled.

28 THE WITNESS: Given the standards that we used,

1 that's the conclusion we came to.

2 BY MR. HOOD: Q. Thank you.

3 Every single one of those involved a homicide;
4 correct?

5 A. Probably. I don't recall for every single one.

6 Q. You wrote the article, didn't you?

7 A. Yeah. But unfortunately, I don't have total
8 recall of everything I've ever done in my life. I'm
9 giving you the answer that reflects my state of
10 knowledge. I said probably.

11 Q. Okay. And in all of those 34 of those cases,
12 the police were under pressure to solve those murder
13 cases?

14 A. Possibly.

15 MR. CRAVENS: Objection. Relevance.

16 THE COURT: The objection is overruled, but I'm
17 hoping the D.A. will get to the point quickly.

18 BY MR. HOOD: Q. In looking at those cases, you
19 determined there was common characteristics of each of
20 those 34 cases; correct?

21 A. I don't think we went through and formally did
22 that. I certainly have an opinion about the
23 circumstances that are likely to produce a sufficiently
24 intensive interrogation method, that it might produce a
25 false confession. I've noted a similarity in some of the
26 cases, and I've commented on that.

27 Q. Okay. Those similarities that you noticed in
28 those, they were all murder, they all involved police

1 pressure to solve the case, the police were unable to
2 identify the suspect without physical evidence, the
3 police relied on hunches and gut instincts, and there was
4 little or no credible evidence against the suspect?

5 A. That sounds right.

6 Q. If that's a character common of false
7 confession, just the opposite would be the character of a
8 true confession?

9 A. Wrong.

10 Q. Okay. The interrogation you looked at, the
11 interview you looked at, could you show me in that
12 interview where the defendant confessed?

13 A. I don't think it's contained in that interview.
14 I think it's contained in the written statement.

15 Q. So what you're looking for in what you consider
16 improper methods, is to see an improper method that
17 overcomes an innocent person's will to say I didn't do
18 this crime?

19 A. Wrong again.

20 Q. What are you looking for?

21 A. What I'm looking for are the tactics that the
22 interrogator introduces that bring into the interrogation
23 a connection between confessing and receiving lenient
24 treatment, and denying and receiving the worst possible
25 outcome.

26 Q. Okay.

27 A. It's the interrogator's conduct I'm looking at,
28 and whether or not the interrogator has introduced these

1 psychologically coercive elements into the interrogation.

2 Q. Okay. And many of these techniques are, in
3 fact, proper?

4 A. Wrong. I'm talking about psychologically
5 coercive, where I define psychologically coercive as
6 linking the decision to confess to receiving leniency,
7 and linking the decision to continue to deny and maintain
8 I did not commit the crime to the worst possible outcome.
9 That, in my understanding, is not proper. That's what
10 I'm talking about.

11 The other things that often appear in
12 interrogation which will appear in interrogations that
13 also include psychological coercion may very well be
14 proper.

15 Q. Okay. And in order to see if there's
16 psychological coercion, you have to look at whether the
17 person is susceptible to that coercion?

18 A. Wrong.

19 Q. Okay. I mean, you just have to say "wrong" to
20 me?

21 A. Because you are, in fact, wrong.

22 Q. Why don't you just correct it?

23 A. Because I'm answering your question. I'm not
24 volunteering. I'm not going to teach you. I'm just
25 answering your question.

26 THE COURT: All right, all right, all right.
27 Folks, we have time pressures here.

28 If it's helpful to the attorneys, it's not

1 helpful to me to hear the two of you argue.

2 If you think I need information, ask further
3 questions on cross examination. If you don't, you don't
4 have to.

5 BY MR. HOOD: Q. Okay. So you look at what --
6 the word susceptibility. What do you mean by that?

7 A. There are some people, or there are some
8 characteristics of individuals that would make them more
9 likely to respond to interrogation pressures than other
10 individuals.

11 Q. And susceptibility is an important factor?

12 A. Not necessarily.

13 Q. When is it important?

14 A. It is important if you want to explain why a
15 particular individual has responded to these
16 interrogative tactics. Sometimes there are -- there in
17 fact are individuals who are so susceptible, so
18 vulnerable, sometimes because they're so damaged that
19 even ordinary, otherwise legitimate interrogation tactics
20 can lead them to comply and give false confessions.

21 The most prominent example are people
22 intellectually handicapped, mentally retarded and so on.
23 That's a vulnerability factor. It tells you what the
24 individual is likely to do in reaction to a particular
25 interrogative strategy.

26 Q. So you would agree that some people are more
27 vulnerable to susceptibility than others; is that
28 correct?

1 A. That's correct.

2 Q. Okay. And oftentimes you look at whether there
3 is a mental illness or a mental attribute such as, for
4 example, the person suffers anxiety attacks?

5 A. That's a character of an individual which may be
6 present. That characteristic doesn't necessarily feed
7 into the analysis of the behavior of the interrogator.
8 It may have to do with an overall evaluation of what
9 happened between this individual and the interrogative
10 experience. But that's a different question than looking
11 at the tactics that are used to motivate a person to give
12 a statement.

13 Q. Well, in looking at the tactics used, you have
14 to determine whether or not they're effective; correct?

15 A. Not necessarily.

16 Q. So whether or not they're effective is not
17 relevant to you?

18 A. I didn't say that. I said you don't have to.
19 What I said was, and what I meant was, that one can look
20 at the conduct of the interrogator, and one can see
21 whether or not the interrogator introduced
22 psychologically coercive motivators into the
23 interrogation.

24 Q. All right.

25 A. If one is then asked the question were they
26 effective, then you proceed and look at other things.

27 Q. Okay. So you look at a case, there are coercive
28 tactics used. You, without knowing more about the

1 individual, don't know whether they were effective or
2 not; correct?

3 A. Not necessarily. In fact, wrong.

4 Q. Okay. Do you want to explain that?

5 A. For example, one can have an interrogation that
6 introduces psychological coercion. The person can then
7 offer a statement. There's no other explanation
8 available for why the person offered a statement that
9 they committed a crime but turns out to be wrong,
10 inaccurate, false, because there's objective evidence
11 that shows up, such as the victim turns up alive.

12 So now we have a situation in which we have a
13 record of an interrogation in which psychological
14 coercion has been introduced. The person has confessed,
15 but they've confessed to something that's demonstrably
16 wrong. One can look at what happened in the
17 interrogation even, even the characteristics of the
18 individual, but just looking at the characteristics of
19 the interrogation, there is no other viable hypothesis
20 for why they confessed.

21 One might then want to look at the
22 characteristics of the individual to see if a coercive
23 interrogation was directed at a child, was directed at
24 someone who was mentally ill, was directed at someone who
25 was intellectually impaired, or directed at someone who
26 happens to be so vulnerable to pressure that they are
27 hypervulnerable.

28 That doesn't change the fact that what was

1 present in the interrogation is psychological coercion,
2 if the interrogator introduces it.

3 Q. Just because there's psychological coercion
4 doesn't make it a false confession; correct?

5 A. Correct.

6 Q. But in this case, you have no idea whatsoever
7 whether the defendant was susceptible any more or any
8 less than any other person?

9 A. The issue of the defendant's susceptibility in
10 this case is not an issue that I addressed, because I was
11 asked to address the properties of the interrogation.

12 Q. Okay. But you indicated you would want to, in
13 some cases, look at the susceptibility of the person?

14 A. Depends on what I'm trying to accomplish. It
15 depends on how broad the analysis of the interrogation
16 is, and perhaps even the result of the case. Depends on
17 whether I'm doing it for the purpose of coming into court
18 to testify at a pretrial suppression hearing, where a
19 limited set of issues are significant, or I'm doing
20 something that contributes to an article to be published
21 in a professional journal that has an entirely different
22 purpose. Different strokes under different conditions.

23 Q. Under some circumstances, you use the scientific
24 method?

25 A. I didn't say that.

26 Q. I'm asking.

27 A. No. I'm saying depending on what I'm trying to
28 accomplish, I study different things.

1 Q. Okay. A variable would be their susceptibility
2 to consider; correct?

3 A. Correct.

4 Q. You did not consider that variable in this case?

5 A. Because I am not analyzing whether this is a
6 true or false confession. I'm analyzing the techniques
7 used in order to elicit the statement that was initially
8 denied. I'm analyzing how the change was brought about,
9 through the conduct of the interrogator.

10 Now, bringing about that change might be easier
11 with some people than with other people. But I'm
12 looking, for the purpose of my testimony here, at what
13 happened, how the person was motivated, what tactics the
14 interrogator used.

15 Q. So your answer is no?

16 A. I don't remember what your question was. My
17 answer is what I said.

18 Q. Let me ask you the question.

19 MR. HOOD: Can the court reporter read back the
20 question?

21 THE COURT: Sure.

22 (Whereupon the record was read.)

23 THE COURT: I think that answer is referring to
24 susceptibility.

25 BY MR. HOOD: Q. Did not consider
26 susceptibility?

27 A. It was not relevant to the work I was doing.

28 Q. So you did not consider it?

1 A. I did not consider it because it was not
2 relevant to the task that I had.

3 Q. And when you say the task that you had, you were
4 told what to look at --

5 A. No.

6 Q. -- correct?

7 A. No one tells me what to look at.

8 Q. But you specifically did not look at her
9 susceptibility; correct?

10 A. I specifically prepared for this hearing today
11 and prepared for it in the way that I think is
12 appropriate.

13 Q. Whether that considers all variables or not?

14 A. I considered the variables I think are important
15 in preparing for the testimony that I was prepared to
16 give and gave here.

17 Q. Okay. You have previously indicated that a
18 person's susceptibility to the coercive tactics is an
19 important consideration to see if those tactics were
20 effective; correct?

21 A. I didn't say that. I said sometimes the
22 person's vulnerability can be extremely important.

23 Q. Okay. So it can be extremely important in some
24 cases; correct?

25 A. If you're trying to figure out whether or not it
26 is a true or false confession, then that's something that
27 you would want to possibly eliminate, if there's a reason
28 to even consider it.

1 Q. Or --

2 A. One doesn't necessarily consider the
3 vulnerability factor, unless there's a reason to. If
4 someone has a history of mental retardation, you want to
5 know about that. If someone is depressed, suicidally
6 depressed, you want to know about that.

7 THE COURT: Excuse me for just a moment, Doctor.

8 Mr. Hood, do remember the scope of this hearing,
9 which is whether or not this is a voluntary confession.

10 MR. HOOD: Correct.

11 THE COURT: Not whether or not it's true or
12 false.

13 MR. HOOD: And one of the areas of voluntariness
14 relates, if I may speak, whether there was offers of
15 leniency.

16 An offer of leniency must be accepted by the
17 defendant, and the defendant must act on that offer.
18 Now, I'm trying to find out if she acted on offers of
19 leniency. If this witness didn't look into whether she's
20 susceptible to the offers, that's very relevant.

21 THE COURT: I don't know how susceptibility is
22 helpful to whether or not she acted on it. She either
23 did or she didn't. And so far, actually, no one has
24 given me evidence that she actually confessed. So far,
25 all the professor has testified to is a portion of the
26 hearing wherein she did not confess.

27 MR. HOOD: Correct.

28 THE COURT: So I'm suggesting to you that the

1 current argument doesn't seem helpful to me in the
2 analysis I'm being called upon to make. That's as big a
3 hint as a judge knows how to give to an attorney.

4 BY MR. HOOD: Q. Now, people can confess
5 because they've been offered leniency or because
6 truthfully or untruthfully, they can confess because
7 they're afraid, they're suffering from a mental illness,
8 they've been threatened; is all that true?

9 A. Those are possible reasons for eliciting a
10 confession.

11 Q. Okay. And those officers or interrogators use
12 different tactics.

13 A. Correct.

14 Q. Would you consider a powerful tactic to get a
15 person to confess, or an effective tactic to get a person
16 to confess, is to show them the evidence?

17 MR. CRAVENS: Objection. Compound and vague as
18 to powerful, vague as to effective.

19 THE COURT: The objection is overruled.

20 You may answer, sir.

21 THE WITNESS: As I said yesterday, or the day
22 before yesterday, one of the contributing factors to
23 setting up the effective use of a motivator is to first
24 convince the person there's overwhelming evidence linking
25 them to the crime. That's a standard part of
26 interrogation, and one of the necessary conditions to
27 elicit a confession.

28 THE COURT: I think the diagram referred to that

1 with the letters EP, if I recall correctly.

2 BY MR. HOOD: Q. Would you say that it would be
3 considered very effective in getting a person to confess
4 to lay out very strong evidence in front of them?

5 A. That's one of the things that's typically done.
6 And the research shows that it is effective in concert
7 with other things.

8 Q. In fact, you wouldn't even consider it part of
9 an interrogation to lay out, you know, here's physical
10 evidence; here's your bloody handprint on the wall;
11 here's a videotape of you killing the victim.

12 A. Of course I would consider it part of an
13 interrogation.

14 Q. Would you consider it -- it's not a question to
15 lay out the physical evidence. Would you consider it
16 interrogation to show the suspect, Here's the evidence?

17 A. It's the -- one of the major steps in moving a
18 person from "I didn't do it" to preparing them to make
19 the admission.

20 Q. Okay. In laying out the evidence, you wouldn't
21 consider laying out a piece of physical evidence -- would
22 you consider that coercive?

23 A. No.

24 Q. Would you consider it improper?

25 A. No.

26 Q. Would you admit that when a person sees the
27 actual evidence against them that it can, in fact, cause
28 them to finally reach that breaking point?

1 A. It's possible.

2 Q. Isn't it often the case?

3 MR. CRAVENS: Objection. Vague.

4 THE COURT: Sustained.

5 BY MR. HOOD: Q. In this case, when did the
6 defendant confess?

7 A. The -- there's a written statement that the
8 defendant wrote in order to satisfy the demands of the
9 interrogator. That's the statement.

10 Q. "Satisfy the demands"?

11 A. Yeah.

12 Q. What do you mean by that?

13 A. Well, you may recall that Mr. Greg told her
14 repeatedly that if you don't cooperate, we are going to
15 call the police. Whereas if you do cooperate, you can
16 receive leniency, you can perhaps keep your job, maybe be
17 moved to another position. It all depends on whether you
18 cooperate or not. That's what's being determined here.
19 Responsive to that, she wrote out the statement.

20 Q. Okay. I didn't see anywhere where he said, I
21 demand that you do that.

22 A. He told her that either we're going to call the
23 police, or you're going to get moved to another job. It
24 depends on what you do here and now, whether or not you,
25 in effect, confess.

26 Q. Those are your words, he demanded?

27 A. That's my characterization of the following:
28 Let me just find it for you.

1 Q. My question is --

2 A. Can I finish, please? Thank you.

3 THE COURT: No, you may not finish.

4 I'd like you to move on to a new area, Mr. Hood.

5 It is just not helping me here.

6 BY MR. HOOD: Q. There's two parts -- would you
7 agree there was two parts to the confession or admission,
8 written and then the statements after that. Would you
9 agree with that?

10 A. No.

11 Q. Okay. How many parts to the confession were
12 there?

13 A. There was an interrogation process that started
14 from the time she goes into the room and finishes to the
15 time she walks out of the room and leaves the store.

16 Q. Okay. Are there two points or one point, if you
17 will? I'm looking for your characterization, your words,
18 so I can go from there of -- did she admit? Confess?
19 Make statements on one occasion? Two occasions? For
20 example, I'm breaking it down to the written part and the
21 oral part after the written, just so we're on the same
22 page.

23 A. Why don't I get the written -- the statement
24 that she wrote or the statement she signed.

25 Q. Okay. You are -- have you read all the reports
26 in this case?

27 A. I read everything that was supplied to me.

28 Q. Okay. I'm sorry. Let's take a step back.

1 Did you read the police reports in this case?

2 Well, can I see what you --

3 A. Sure.

4 Q. -- are referring to?

5 A. Here? This? Is that what you're talking about?

6 Q. I'd like your whole pile of papers real quick.

7 Okay. I have the complaint. It appears you
8 have the Morgan Hill police report. I'm assuming you
9 read everything here.

10 A. I've read everything there.

11 Q. Okay. You have Lynett Beard's statement.

12 You've read that. You have an interview. You have Ross'
13 reports; correct?

14 A. Correct.

15 Q. Ross' store apprehension report. You've read
16 that.

17 And at some point, I'm going to want a copy of
18 some of these things here because it doesn't look like I
19 have them. I don't want to slow things down now.

20 So there is the written part, and then there's
21 an oral admission after the written part; is that
22 correct?

23 A. Seems to be correct.

24 Q. Okay. Thank you. The -- isn't it correct that
25 immediately preceding her written confession, immediately
26 preceding, a videotape was shown to her?

27 A. That's my understanding.

28 Q. Okay. And a videotape of one of the crimes is

1 your understanding of what was shown to her?

2 A. Videotape of her walking out of the store was
3 shown to her.

4 Q. Which is alleged as one of the crimes?

5 A. Oh, you're adding "alleged" now.

6 Q. Counsel (sic), do you understand the question?

7 A. I understand that you changed the question from
8 the way you said it the first time --

9 Q. Doctor, I mean.

10 A. -- to the way you just said it the second time.

11 Q. Was she shown a videotape of her walking out of
12 the store?

13 A. Yes.

14 Q. Okay. And was it just then -- immediately after
15 that is when she confessed; correct?

16 A. My recollection is that that --

17 MR. CRAVENS: I'll object on speculation, unless
18 he knows. It also calls for hearsay.

19 THE COURT: Sustained.

20 BY MR. HOOD: Q. Based upon your review of the
21 reports, based upon your understanding, based upon the
22 timing of when she confessed, based upon everything you
23 read, it is your understanding the event immediately
24 preceding her written confession was a showing of that
25 videotape; correct?

26 A. I don't believe so.

27 Q. Okay. What was the event immediately preceding?

28 A. My understanding is that after Mr. Greg turned

1 off the tape recorder -- I'm trying to -- my recollection
2 is that there was a break in the interrogation when she
3 was shown the tape.

4 Q. Correct.

5 A. My understanding is that it went back on the
6 record -- back on tape after she was shown the tape.
7 It's my understanding that subsequent to that,
8 Mr. Brandon turned off the tape recorder, and then there
9 was exchange between them, and then she wrote the written
10 statement.

11 Q. You lost me. Where -- where was she shown the
12 videotape?

13 A. I thought there was -- my recollection as I'm
14 sitting here now is that there was a break in the
15 recording at a time when she was shown the tape. And
16 then there was more recording, and then the tape recorder
17 was turned off.

18 Q. If -- I'm gonna ask you to assume facts
19 differently.

20 A. Okay.

21 Q. Assume that it was after the tape was turned
22 off.

23 A. Okay.

24 Q. She was then taken to another room where there
25 was a VCR and a television.

26 A. Right.

27 Q. Assume those facts. She was then shown the tape
28 of her leaving Ross on that night in question.

1 A. Right.

2 Q. Have you seen that videotape?

3 A. No.

4 Q. So you have no idea the effect of that
5 videotape?

6 MR. CRAVENS: Objection. Relevance on this line
7 of questioning.

8 MR. HOOD: Your Honor --

9 THE COURT: The objection is overruled.

10 THE WITNESS: I haven't seen the tape.

11 BY MR. HOOD: Q. Okay. You don't think looking
12 at the evidence that was shown to her during the
13 interrogation would be important to determine why she
14 confessed?

15 A. I'm not determining why she confessed. I
16 haven't been asked to do that. What I have been asked to
17 do is analyze the tactics that were used and the fact
18 that at a certain point in this interrogation, after
19 being exposed to highly psychologically coercive tactics,
20 she is then shown the videotape of her walking out, is
21 merely another part of the interrogation. I was aware of
22 that, and I was aware she wrote the written statement
23 after that.

24 Q. All right.

25 A. Perhaps I misremembered where that happened.
26 But the point is, it's all one process. The deal was
27 offered. The deal was on the table. The additional
28 evidence she'd asked to see before was finally shown to

1 her. There was another exchange off the tape, and then
2 she confessed. No one has informed me that the deal was
3 ever withdrawn.

4 Q. Okay. Let's ask you some questions on that.
5 Are you expressing an opinion as to whether certain
6 conduct during that interrogation caused her to confess?

7 A. I'm expressing an opinion that the interrogator
8 introduced psychologically coercive factors into this
9 interrogation, and I see no other explanation for why she
10 elected to write the statement.

11 Q. Okay. But you yourself have said showing a
12 suspect physical evidence can, in fact, cause a person to
13 confess; correct?

14 MR. CRAVENS: Objection. Relevance.

15 THE COURT: More important, it's been asked and
16 answered. Please move on.

17 BY MR. HOOD: Q. You never looked at a tape
18 that was shown to the defendant immediately --

19 THE COURT: He already told us that, Counsel.
20 Next question.

21 BY MR. HOOD: Q. Would looking at that tape you
22 consider relevant in your opinion?

23 A. No. I'm aware of the existence of the tape.
24 I'm aware of what was on the tape.

25 Q. But it's not relevant?

26 A. Looking at it doesn't necessarily tell me
27 anything more than I already knew.

28 Q. The type of room she's in, is that relevant?

1 A. Not particularly. There are standards set up,
2 tactics for the interrogations, usually done in private.
3 I satisfied myself that that was the case here. It
4 wasn't done in the middle of the store, wasn't done in
5 her living room. It was done in the privacy of the
6 store.

7 Q. So whether or not she was shown actual physical
8 evidence is not relevant to determine her reasons for
9 confessing?

10 A. The existence of the videotape was discussed
11 during the recorded part. She asked to see it during the
12 recorded part. She was told that that only happens when
13 you're on your way to court. That was a factor that was
14 part of the interrogation from early on. I was well
15 aware of the fact that she was shown the tape and that
16 that preceded her writing the statement.

17 Q. Would factors you would consider be whether the
18 defendant has knowledge that the police didn't have and
19 mentioned it in the confession?

20 MR. CRAVENS: Objection. It calls for
21 speculation on what the cops might have known.

22 THE COURT: And of course there were no "cops"
23 in this case. But I think the question is not helpful
24 for the purpose for the witness' testimony.

25 MR. HOOD: At this point, this testimony, you're
26 correct, Your Honor. I'm going on to phase two. I will
27 withdraw the question.

28 BY MR. HOOD: Q. There were, as far as you

1 know, no false accusations or lies in this interrogation
2 by the interviewer?

3 A. I haven't been provided with any information
4 that tells me the true status of the evidence ploys that
5 were introduced.

6 Q. So the answer to the question is, as far as you
7 know, there were no false accusations or lies by the
8 interviewer; is that correct?

9 A. I don't know whether they were true or false. I
10 just know they were introduced.

11 Q. False accusations and lies, you know were
12 introduced?

13 A. I know statements were introduced. I don't know
14 the true status of those statements.

15 Q. Thank you. I thought I misheard you.

16 I apologize. I don't know if we actually
17 finished that hypothetical. I may be going back into it.
18 I apologize if I am.

19 Assuming, because you have one understanding of
20 when the videotape was shown and I have another, and
21 we'll present other witnesses that the videotape was
22 shown, it was shown in a separate room, and it was
23 immediately after the showing of the videotape, and we
24 both know what videotape we're talking about, right?

25 A. Correct.

26 Q. Would you think --

27 MR. CRAVENS: Objection. Calls for facts that
28 are not in evidence.

1 THE COURT: The objection is overruled.

2 BY MR. HOOD: Q. Would you consider that, if
3 the confession occurs right after, that that showing of
4 the evidence played a role in the confession?

5 A. I've always assumed that confronting someone
6 with what purports to be evidence of their involvement in
7 the crime is a factor that contributes to someone
8 deciding to confess. It's part of my basic analysis.
9 What you're adding in doesn't change anything.

10 Q. Okay. Okay. And don't you often look at what
11 happened immediately before the confession, what was the
12 breaking point?

13 A. No. Because in my work on this subject, I've
14 learned that what happens, particularly in cases in which
15 innocent people confess, is that often an interrogator
16 will make a deal offer, put it on the table, so to speak.
17 The innocent person, not wanting to confess to something
18 they didn't do under any circumstances, doesn't
19 immediately respond to the deal offer. But the deal
20 offer remains on the table.

21 The interrogation continues up to the point at
22 which the person has now given up on any possibility of
23 ever convincing the interrogator that they didn't commit
24 the crime. The deal offer remains sitting in the middle
25 of the table. The person, now despairing of their
26 ability to prove their innocence to the intransigent
27 interrogator, now decides to accept the deal. The person
28 may or may not verbalize that at that point.

1 But if you asked them about it, as I often do, I
2 find out that they in fact at that moment decided to
3 accept the deal which was available to them from the time
4 it was put on the table. It's only when they become so
5 dispirited by their inability to extricate their self
6 from the situation that is getting worse and worse that
7 they decide to accept the deal that's been there for
8 quite a while.

9 So that's what I find sometimes happens when I
10 study carefully and fully the whole process of witnessing
11 a false confession from someone who is innocent. It may
12 also happen, and I've had experience with this as well,
13 someone who in fact committed a crime is made aware of a
14 deal. They don't want to accept it. At a later point,
15 they decide the deal is the best thing for them to do.
16 Then they act on accepting the deal.

17 Now, what immediately preceded the decision to
18 accept the deal may not be very important because the
19 deal was on the table. The deal was never withdrawn. It
20 was always available. And at some later point, they
21 decide to act on it. It's sort of like a sale that's
22 going on until Thursday afternoon at noon. You've got
23 until that time to get there, until the sale closes.

24 Q. You have no idea in this case whether she acted,
25 in other words she confessed, because of the
26 interrogation techniques or because of finally seeing the
27 videotape?

28 A. It's not how she described it to me.

1 Q. You have no idea?

2 A. I interviewed her.

3 Q. Prior to interviewing her, you mean you're
4 assuming what she tells you is the truth?

5 A. You're assuming it's not.

6 Q. My question is, you're assuming what she tells
7 you is the truth; correct?

8 A. I'm assuming it's what she told me.

9 Q. You don't know whether -- you just assume it's
10 true; correct?

11 A. I'm assuming it -- it's what she told me, and it
12 happens to square very nicely with the objective evidence
13 in this case.

14 Q. Okay. So is that that you assume it's true?

15 A. I'm assuming it squares nicely and is consistent
16 with the evidence of the way in which she was exposed to
17 psychological coercion in the objectively provable part
18 of the record of this interrogation.

19 Q. Did the viewing of that videotape have any
20 effect on whether or not she confessed?

21 A. Not that I know of.

22 Q. Don't you think it odd that the confession
23 occurred right after she viewed it?

24 A. Not in the least.

25 MR. CRAVENS: Objection. Argumentative.

26 THE COURT: That objection is overruled.

27 Let me sustain my own relevance objection.

28 Whether it's odd or not isn't going to help me. Let's

1 just get going, Mr. Hood.

2 BY MR. HOOD: Q. Nowhere in that interview that
3 you read, and you're talking about these tactics or
4 coercive tactics, did she confess to any of those?

5 A. Correct.

6 MR. HOOD: Nothing further, Your Honor.

7 THE COURT: Is there to be redirect?

8 MR. CRAVENS: Just very briefly.

9 REDIRECT EXAMINATION BY MR. CRAVENS

10 Q. Doctor Ofshe, in the area of false confession,
11 does your theories and methods and your hypothesis change
12 because it's a murder case versus some other kind of
13 case, like a theft case?

14 A. No.

15 Q. So you're -- so it has -- so it has nothing to
16 do with the type of crime?

17 A. No. It has to do with the type of tactics that
18 the interrogator uses. If the interrogator uses the
19 standard set of tactics, there's no reason to change the
20 analysis, because the interrogator is practicing the same
21 interrogation directed at a different crime.

22 Q. And have you ever actually done another theft
23 case?

24 A. Oh, yes.

25 Q. Could you tell us how many theft cases you've
26 done, if you know?

27 A. I couldn't tell you the number. I can think of
28 three or four examples.

1 Q. Could you give us some example of a theft case
2 you've done, the last theft case that you have done that
3 you can remember?

4 A. The last one I worked on, I never testified.

5 MR. HOOD: Objection, Your Honor. This is
6 getting far afield and irrelevant.

7 THE COURT: I'll sustain the relevance
8 objection.

9 BY MR. CRAVENS: Q. And is it a common
10 technique of an interrogator to ask the person being
11 interrogated to prove that they're innocent?

12 A. In effect, that's what happens.

13 Q. And in your experience, is it possible for a
14 person that's pulled into a room to legitimately prove
15 their innocence?

16 MR. HOOD: Objection. I don't -- well, if the
17 witness understands the question. I don't. Objection,
18 vague.

19 THE COURT: Again, Counsel, it's just not
20 helpful to me in the decision that I need to make
21 considering the voluntariness. The professor brings a
22 great deal of expertise. Whether someone can prove their
23 innocence in a closed room, I don't think, is within his
24 expertise.

25 So please, let's move on.

26 MR. CRAVENS: No further questions, Your Honor.

27 THE COURT: Anything, Mr. Hood?

28 MR. HOOD: No.

1 THE COURT: Doctor, you can step down.

2 THE WITNESS: Thank you, Your Honor.

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1 STATE OF CALIFORNIA)
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2 COUNTY OF SANTA CLARA)

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6 I, Michelle Caldwell, CSR 9045, in and for the State
7 of California, County of Santa Clara, do hereby certify
8 that I was appointed by the Court to act as court
9 reporter in the above-entitled action; that I reported
10 the same into typewriting as appears by the foregoing
11 transcription; that said transcript is a full, true and
12 correct statement of the proceedings to the best of my
13 ability.

14

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16 Dated this 7th day of November, 2003.

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Michelle Caldwell
Certified Shorthand Reporter No. 9045

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IN AND FOR THE COUNTY OF SANTA CLARA
SOUTH COUNTY FACILITY

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BEFORE THE HONORABLE EDWARD F. LEE

THE PEOPLE OF THE STATE)	
CALIFORNIA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. FF301260
)	
AMY MARIE GARVIN,)	
)	
Defendant.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

October 15, 2003

APPEARANCES:

For the Plaintiff: MARK HOOD,
 DEPUTY DISTRICT ATTORNEY

For the Defendant: LEONARD CRAVENS,
 KENNETH PINTO,
 ATTORNEYS AT LAW

MICHELLE CALDWELL, CSR 9045, Official Reporter

2

3 MR. CRAVENS: Yes, Your Honor. The defense
4 calls Doctor Richard Ofshe to the witness stand, please.

5 THE COURT: As soon as you're seated with the
6 microphone pointed directly at your chin, if you would
7 give us your full name, please, and spell it for the
8 record.

9 THE WITNESS: Richard J. Ofshe, O-f-s-h-e.

10 THE COURT: Counsel?

11 MR. CRAVENS: Good morning, Your Honor.

12 DIRECT EXAMINATION BY MR. CRAVENS

13 Q. Good morning, Doctor Ofshe.

14 What city do you reside in?

15 A. Berkeley, California.

16 Q. And what is your current occupation?

17 A. I'm an emeritus professor at the University of
18 California at Berkeley, although I've been recalled and
19 continue to teach and research.

20 Q. How long have you been on the faculty at Cal
21 Berkeley?

22 A. Since 1968, I believe.

23 Q. And what is your position there at the
24 university?

25 A. Professor in the department of sociology.

26 Q. Is that a full professor?

27 A. Yes.

28 Q. And do you have tenure at the university?

1 A. Yes. I've had tenure since 1969 or 1970.

2 Q. How long -- approximately how long did it take
3 you to get tenured?

4 A. Two years.

5 Q. What's the normal time it takes for a professor
6 to get tenured at a university such as Cal Berkeley?

7 A. Seven.

8 Q. What's your area of teaching at Cal Berkeley?

9 A. Social psychologist. I teach and do research in
10 that specialty area, which is common to both psychology
11 and sociology. My work is on that part of social
12 psychology that deals with influence and decisionmaking
13 and, more particularly, with extreme forms of influence.
14 That's been my specialty for the last 25 years at least.

15 Q. And what is your -- what areas have you been
16 trained in?

17 A. Trained in psychology, trained in sociology.
18 Initially in my career, I did micro economics,
19 mathematical models of decisionmaking, lab research,
20 field research methods, everything that's relevant to the
21 kind of research and teaching I do.

22 Q. What exactly is social psychology?

23 A. It's a sub-field common to both psychology and
24 sociology. It studies really the relationship between a
25 person and an environment, a setting. So it deals with
26 decisionmaking. It deals with influence in different
27 social settings. And in my part of it, I focus on
28 influence in extraordinary social settings capable of

1 eliciting extraordinary conduct from people.

2 Q. What areas do you specialize in?

3 A. I specialize in the study of extreme forms of
4 influence. Particularly, over the years, I've worked on
5 three applied problems, three areas: One had to do with
6 the way in which people would be recruited, manipulated,
7 and made to be willing to engage in violence or suffer
8 high levels of exploitation in what would be called a
9 high controlled group, otherwise known as a cult group,
10 the way in which ordinary people can be gotten to do very
11 extraordinary things. That was the first area that I
12 worked in.

13 The second area had to do with the way in which
14 poorly trained psychotherapists misusing techniques of
15 influence could lead people to come to sincerely believe
16 they had suddenly recovered memories of sexual abuse that
17 may have gone on for ten, fifteen years that they didn't
18 know about until they entered psychotherapy. This was a
19 recovered memory problem. It was a public health problem
20 that arose in the late eighties and into the mid
21 nineties. I did a lot of work on the way in which people
22 could be gotten to mistake usually hypnotically created
23 imagery and classify that imagery as memory and,
24 therefore, be made to believe that their parents,
25 neighbors, teachers had been sexually abusing them for
26 decades, and they didn't know it, or that they were
27 kidnapped by space aliens or had suffered trauma in a
28 past life, any of the things that depend on creating a

1 belief about something that didn't happen.

2 And then the third area, the one that's been my
3 principal focus for the last 15 plus years, has been the
4 study of police interrogation, the techniques and tactics
5 of influence that police bring to bear, police or
6 interrogators in general, bring to bear on an individual
7 for the purpose of getting that person to admit to having
8 committed a crime and then to give a confession, which is
9 a detailed account of the crime. And I study the tactics
10 that are used and the way in which such tactics can
11 produce both true and false confessions.

12 Q. Doctor, in the area of cults, are you considered
13 a leading figure in that area as far as influence goes?

14 A. When I was working in that area, I was regarded
15 as one of the principal people working in the area.
16 During the period that I was working in that area, I
17 shared in the award of a Pulitzer Prize to the Point
18 Reyes Light Newspaper for an exposÈ of a violent group
19 called Synanon, which started out as a drug rehab
20 organization.

21 And my work on that got a lot of attention.
22 Then I worked on issues involving other violence
23 generating cult groups.

24 Q. In the area of recovery memory syndrome, are you
25 considered a leading figure in that area?

26 A. I think that's also fair to say. The book that
27 I wrote about that was called Making Monsters, which was
28 a contributor to bringing the problem to an end.

1 I was awarded a prize for the best paper on
2 clinical hypnosis of the year in 1994 by the
3 International Society for the Study of Clinical and
4 Experimental Hypnosis.

5 Probably the most well-known of the cases that I
6 worked on eventually became a movie in which I was played
7 by William Devane. That gives you a certain notoriety as
8 well.

9 Q. In the area of interrogations, are you
10 considered a leading figure?

11 A. I think I'm probably considered the leading
12 person in the United States.

13 Q. Could you explain how -- what happened to get
14 you there?

15 A. I began studying police interrogation, began
16 writing about it, published a series of articles, long
17 treatises, sometimes in law reviews, reporting the
18 research my colleague Richard Leo and I were doing.
19 Those papers, I think, have been fairly influential. And
20 I also did a lot of the fundamental work that has brought
21 this area of research into courtrooms all over the United
22 States and worked on some of the most widely known false
23 confession cases in recent American history.

24 Q. And have you worked on any well-known cases in
25 the area of police interrogation?

26 A. Yes.

27 Q. Could you name just a few?

28 A. I'm currently working on the Central Park jogger

1 case, the new version of it, where the young men who
2 falsely confessed have now been exonerated. I was the
3 person who worked on what's called the Phoenix temple
4 murder case in which nine Buddhists, seven of them monks,
5 were killed at a Buddhist temple just outside Phoenix.
6 And three young men who were identified supposedly as
7 having been participants in the crime, but indeed had
8 nothing to do with it, were made to falsely confess to
9 mass murder.

10 I've also worked on, for the prosecution, the
11 second Menendez' brothers trial having to do with the
12 issues of the confession that they gave to their
13 psychologist; some of the Innocence Project cases, cases
14 in which individuals have been exonerated of crimes
15 because their DNA was found to be present and exonerated
16 them, but they had confessed. And so after the original
17 convictions were thrown out, the state was threatening to
18 retry them based on the confession. Then I would work on
19 those projects in connection with the Innocence Project.

20 Q. Hey, Doctor, could you explain to the jury what
21 your education is?

22 A. I have a bachelor's degree in psychology,
23 masters in sociology, Ph.D in the sociology department,
24 with all of my work in social psychology, from Stanford.

25 Q. Did you get any other specialized training while
26 you've been getting your education?

27 A. Not specialized training while I was getting my
28 education.

1 Q. Are you a member of any professional societies
2 or organizations?

3 A. I'm a member of the American Psychological
4 Association, the American Psychological Society, the
5 American Sociological Association.

6 Q. Do any of those organizations have any special
7 licensing procedures or requirements?

8 A. The organizations don't. If you're a certain
9 kind of psychologist, you need to be licensed, if you're
10 a clinical psychologist. I'm not, so there's no
11 licensing requirement that applies to me.

12 Q. Do any of the areas that you work in require
13 licensing?

14 A. No.

15 Q. As a result of your work in this field, in this
16 particular field, have you received any awards or honors
17 besides what you already mentioned?

18 A. I was awarded a John Simon Guggenheim Foundation
19 Fellowship early in my career. That's considered an
20 honor in my field. I mentioned my work with Point Reyes
21 Light, and then also the award for the best paper on
22 clinical hypnosis. So those are the principal awards.

23 Q. Okay. And are you published in your field? And
24 could we please keep this brief, because I suspect you
25 have a lot.

26 A. I published a number of books and five or six
27 pages worth of articles. But since we're talking about
28 interrogation, I published -- since 1989, a long series

1 of papers on the subject of police interrogation and true
2 and false confession, as I said, beginning in 1989, a
3 series. Currently, we are turning that series into a
4 book which hopefully will be done in maybe a year. And
5 the book is called Confessions of the Innocent.

6 Q. And you're working on that right now?

7 A. Correct.

8 Q. And how long have you been working in the field
9 of interrogation in the subarea of false confessions?

10 A. Since the mid -- mid 1980s, maybe two-thirds of
11 the way through the eighties.

12 Q. Have you worked as a consultant with any law
13 enforcement agencies, either police or prosecuting or
14 defending?

15 A. Yes. Over the years, I've been a consultant to
16 the Marin County Sheriff's Department; Office of the
17 Attorney General; United States Attorney's Office in Los
18 Angeles on two occasions, one involving the Delorian
19 case; the Office of the Attorney General of the State of
20 Arizona; the United States Department of Justice, both
21 the tax division and the criminal division; the
22 prosecuting attorney of Jefferson County, West Virginia;
23 the L.A. D.A.'s office; the Internal Revenue Service;
24 U.S. Attorney's Office in West Virginia, Thirston County;
25 Washington prosecutor's office; state's attorney's office
26 in Florida, Fort Lauderdale office; Office of the State
27 of Missouri in connection with a pardon of Johnny Lee
28 Wilson; L.A. D.A.'s office in connection with the

1 Menendez case; prosecuting attorney of Franklin County,
2 Indiana; and I'm currently working with the Attorney
3 General's Office in the State of California in
4 preparation for a trial that should happen later this
5 year.

6 Q. So in short, you have testified and consulted
7 with both prosecuting- and defense-type people; correct?

8 A. Certainly.

9 Q. Particularly in the area of interrogation, false
10 confessions, have you testified as an expert before?

11 A. Yes.

12 Q. Could you tell the jury how many times that you
13 testified, if you know?

14 A. On the subject of police interrogation,
15 influence in police interrogation or interrogation in
16 general, 194 times.

17 Q. And -- and could you describe the circumstances
18 in just a couple of those?

19 A. Typically, the cases that I'm involved in are
20 cases in which one of two things has happened: Either the
21 police have elicited a confession improperly using
22 techniques that are prohibited, and the issue will come
23 up whether the interrogation -- how the interrogation
24 should be treated. And so I might testify at a hearing
25 on that subject.

26 And then I've testified numerous times in 31
27 different states at trials involving the confessions of
28 people that are arguably, if not certainly, false

1 confessions.

2 Q. Doctor, how many times have you testified in the
3 State of California?

4 A. Sixty-four times.

5 Q. With respect to interrogations, and particularly
6 with respect to false confessions, are there any
7 recognized studies in the field that support or discuss
8 this phenomenon?

9 A. There are. On the subject of false confession
10 in particular, there are numerous studies, numerous
11 publications, but three principal publications. The
12 first is a study by Professors Biddot and Ratliff
13 published in the Stanford Law Review in 1987, and the
14 title was Miscarriages of Justice in Potentially Capital
15 Cases.

16 They studied 350 miscarriages, cases in which
17 the innocent were convicted, and found that in 49 of
18 those cases, that is 14 percent, the principal cause, the
19 cause of the miscarriage of justice was the person had
20 been made to falsely confess.

21 The second principal study was done at the
22 Center on -- was done at the Center on Wrongful
23 Convictions at Northwestern University Law School.
24 That's a study of homicide, miscarriages in the State of
25 Illinois. And in that one, slightly more than 50 percent
26 of the miscarriages of justice that were identified
27 were -- there was a false confession, and that's presumed
28 to be the principal cause of the miscarriage.

1 The third study on the issue of how significant
2 a problem false confessions are comes from the Innocence
3 Project, the project that is ongoing today looking at DNA
4 in connection with, usually, crimes that have happened a
5 long time ago. There have now been something slightly
6 more than, I think, 130 exonerations of people who had
7 previously been convicted, based on DNA analysis which is
8 now available that was not available at the time they
9 were tried. And of those, more than 25 percent were
10 individuals who had been made to falsely confess to the
11 crimes they were convicted of.

12 What that tells us is that false confession is a
13 very significant contributor to the phenomenon of
14 convicting the innocent. Doesn't tell us how frequently,
15 but it --

16 MR. HOOD: Objection, Your Honor. This does not
17 appear to be responsive to the question.

18 THE COURT: Sustained.

19 BY MR. CRAVENS: Q. Can you describe for the
20 jury what some of the theories on which your body of work
21 is based on?

22 A. The work principally comes from the study of
23 rational decisionmaking. Interrogation is an influence
24 method that is designed to be applied to someone who is a
25 rational individual, who's not mentally ill, who's not
26 mentally impaired, not retarded. It is a method that has
27 to do with manipulating a person's perception of their
28 current situation.

1 So it involves the research on the study of
2 social perception. It is a method that involves
3 manipulating someone's expectations for what the future
4 will bring to them. So it really studies, again,
5 rational choice. And it's an area that also involves
6 dominance, the way in which an interrogator conducts him
7 or herself, the impact of these things, how all of this
8 affects an individual's decisionmaking coordinated to the
9 particular tactics that interrogators are taught to use
10 when they conduct an interrogation.

11 Q. The studies you're talking about, is there any
12 particular crimes that are being investigated?

13 A. The studies that have been published
14 particularly will involve serious crimes: Murders,
15 rapes -- rapes and murder. Very, very serious crimes
16 where there are huge penalties up for grabs.

17 Q. And so what about lesser crimes?

18 A. I don't know of any organized studies of lesser
19 crimes. It's generally accepted in the field that the
20 bigger the issue, the more difficult it is to get
21 somebody to falsely confess. And so for a lesser crime,
22 the consensus in the field would be that it's probably
23 easier to accomplish.

24 Q. Are these principals and studies, are they
25 reliable, accurate, and generally accepted in the
26 scientific community?

27 A. Yes.

28 Q. And have you participated in any court

1 proceedings that discuss the issue of admissibility based
2 on the Fry standard?

3 A. Yes.

4 MR. HOOD: Objection. Relevance.

5 THE COURT: Sustained.

6 MR. CRAVENS: Moment, Your Honor.

7 Your Honor, at this time we would like to offer
8 Doctor Ofshe as an expert in the area of interrogation
9 and false confessions.

10 THE COURT: Do you wish to voir dire?

11 MR. HOOD: No, Your Honor.

12 THE COURT: All right. Any objection?

13 MR. HOOD: No, Your Honor.

14 THE COURT: All right. We will recognize Doctor
15 Ofshe as an expert in that area, which means he'll be
16 permitted to give you opinion testimony in that regard.
17 Counsel?

18 MR. CRAVENS: Thank you, Your Honor.

19 BY MR. CRAVENS: Q. Are there -- Doctor Ofshe,
20 are there recognized methods that train people how to do
21 interrogation?

22 A. Yes. Interrogation is not a naturally occurring
23 phenomenon. It's not something that arises out of social
24 experience. Interrogation is a method. Interrogators,
25 police or private security interrogators, typically go to
26 schools to learn how to do interrogation. It's a
27 collection of tactics and techniques they need to learn.
28 They need to learn how to conduct themselves as well as

1 what to direct at the suspect. I see essentially the
2 same interrogation from Miami, Florida to Berel, Alaska
3 because the training is so uniform these days.

4 Q. And when you say a training, do interrogators
5 need to be trained?

6 A. They have to be; otherwise, we wouldn't observe
7 any coherence; and two, they wouldn't know what they were
8 doing.

9 Q. Does an interrogator need any set of special
10 skills?

11 A. An interrogator has to be trained how to be an
12 accomplished liar. An interrogator needs to be able to
13 look someone in the eye and lie to them. I'll explain
14 why in a few minutes. But the interrogator has to learn
15 how to conduct their demeanor, how to exude -- appear to
16 exude absolute confidence in everything they're saying,
17 and how to deliver to someone a bold-faced lie without
18 giving any cues to the fact that they doubt what they're
19 saying or that they know what they're saying is
20 absolutely false. An interrogator is a performer.

21 Those are some of the skills an interrogator
22 needs to acquire.

23 Q. Can you describe methods that are used for
24 training people in interrogation practices?

25 A. The usual method is going to school to get the
26 basics, and then on-the-job training, sometimes working
27 with someone who's been doing it longer or just
28 practicing what's been taught in school. It's actually a

1 fairly simple process.

2 Q. Tell us how modern interrogation works.

3 A. Modern interrogation? The principals of it are,
4 one, to manipulate someone's perception of their current
5 situation, to manipulate and create particular
6 expectations about what will happen in the immediate and
7 long-run future and three, to introduce a motivator to
8 get them to be willing to say "I did it."

9 Interrogation is designed to get confessions
10 from people who know they committed the crime. But a
11 poorly done interrogation, one that uses tactics that are
12 dangerous, can produce a false confession.

13 Q. And Doctor, could you explain to the jury what
14 the third degree is?

15 A. Third degree is a term of art that refers to
16 literally beating the confession out of a suspect.

17 Q. And is there anything significant that makes
18 modern interrogation different than the third degree?

19 A. Well, modern interrogation does not involve the
20 use of third degree. There's a history as to how the
21 third degree went away. And modern interrogation is
22 called psychological interrogation because it depends on
23 manipulating, the things I was talking about a minute
24 ago. It's not done through the use of physical assault,
25 although it is possible to introduce threats. But
26 physical assault is very rare these days, except in
27 Chicago.

28 Q. Are you familiar with the Reid method?

1 A. Very.

2 Q. And could you tell the jury how you know about
3 the Reid method?

4 A. The Reid organization, which is based in
5 Chicago, is the principal training organization for
6 training interrogators in the United States. I believe
7 they claim to have trained, over the last 40 years or
8 so --

9 MR. HOOD: Objection, Your Honor, relevancy.

10 THE COURT: Sustained.

11 BY MR. CRAVENS: Q. Are you familiar with a
12 book, Practical Aspects of Interrogation and Interview
13 (sic) by Zulawski and Wicklander?

14 A. Yes.

15 Q. Who is Zulawski and Wicklander?

16 A. I believe they're former trainers who went out
17 on their own, who started marketing a method that was
18 virtually identical to the Reid method. They were sued
19 by the Reid organization for use of their copyright
20 materials without permission. And I believe a settlement
21 was finally reached, so they were licensed to deliver the
22 training, which is essentially the Reid training.

23 Q. And is the Reid or the Wicklander Zulawski
24 method a type of psychological interrogation?

25 A. Yes.

26 Q. And how is it used to get information from
27 suspects?

28 A. By structuring things as I've described and then

1 carrying out the method. It's -- it's just a set of
2 steps that have to be done in a particular order to
3 accomplish particular things.

4 Q. Okay. Now, you had mentioned a little bit
5 earlier -- what is an evidence ploy?

6 A. An evidence ploy is a term that I use to refer
7 to the claim that the interrogator is in possession of
8 evidence that would link the person to the crime, if that
9 claim were true. The reason I refer to it as a ploy is
10 that in the context of the interrogation, it's done for
11 influence purposes, so whether the claim itself is true
12 or false. The reason the interrogator is introducing it
13 is to accomplish certain things, which I could explain if
14 I could go to the blackboard, the easel.

15 Q. Well, thank you. Now, why don't we just get
16 to -- if you could explain to us how psychological
17 interrogation goes about getting a confession.

18 A. That's when I need to get over there.

19 Q. There should be a pen right in front of you.

20 A. There is. I'll explain how modern interrogation
21 works, using a simple diagram.

22 This axis, running from zero to a hundred
23 percent, represents the confidence to get through the
24 experience that is about to start or is unfolding.
25 They're confident that their life is not gonna change if
26 they're up in this range. This axis running from zero to
27 X refers to the length of time the interrogation takes.
28 It can be anywhere from an hour, hour and a half, to 15,

1 16 hours, 20 hours, any length of time.

2 Any modern interrogation can be broken into two
3 parts. The break point comes when the person says or
4 acknowledges in some way, I did it. I'm gonna refer to
5 that as an admission. An admission is different than a
6 confession, as I use the terminology. A confession is
7 the full and complete story of the person's involvement
8 in the crime, the details of it: When did it start, how
9 was it accomplished, what did you do with the loot, what
10 did you do with the murder weapon. It's the full story.

11 In any interrogation, this part that I'll call
12 the preadmission phase, has to do with getting someone
13 who initially says, "I did not commit this crime" to get
14 to the point where they said, "I did it." Interrogators
15 are trained that once they've gotten the person to that
16 point, to make the admission, then they set about
17 collecting the confession itself.

18 Interrogation is not really about this section
19 of it, going from here to here. The important part of
20 interrogation is what happens from here to here, because
21 interrogators are trained to get a confession that will
22 link the person to the crime in a way that they can never
23 repudiate. The object is to corroborate the "I did it"
24 statement by showing the person has the kind of knowledge
25 that would be acquired by somebody who was there, who was
26 a participant, and so on, so that they can reveal things
27 that make them, in fact, a witness to the crime,
28 physically present, that they know what they know because

1 they were there, not because somebody told them.

2 So getting the confession is what's important
3 because if a person committed a crime, and a
4 well-developed confession is elicited from the
5 individual, they're never going to be able to repudiate
6 that confession. They may have told the police, for
7 example, where is the missing murder weapon, something
8 the police didn't know and couldn't have told them.

9 It's dramatic. It's dramatic because it
10 involves the murder weapon. It's important because it
11 involves telling the interrogator something the
12 interrogator couldn't have possibly have known, and it's
13 reasonable to believe the perpetrator of the crime would
14 have known.

15 So it can be something dramatic, like the murder
16 weapon, or it can be something sort of mundane: the room
17 in which the crime is committed, the physical description
18 of the room, the fact that there was a struggle and the
19 coffee table got broken, things that are unusual enough
20 that the person's not likely to guess them but reveal
21 that the person has the kind of knowledge you would
22 expect someone to have if they were there.

23 That's the confession. That's what it's all
24 about, because the confession should link the person to
25 the crime. If a false confession is being taken, then
26 usually what will happen is even if there's been
27 contamination, even if the person has been told a fair
28 amount about the crime so that every fact that they are

1 given that comes up in this part is no longer useful in
2 figuring out whether they know about the crime because
3 they were there or not, you can look at those things that
4 they should know that are asked about and see whether
5 they're getting those answers correct or incorrect.

6 In a false confession, what very often happens
7 is the interrogator asks about things that the suspect
8 cannot answer because the suspect doesn't know because
9 the suspect wasn't there. So in the course of doing
10 that, what can actually occur is that a confession
11 statement can turn out to be evidence of a person's
12 innocence rather than evidence of their guilt because the
13 confession statement can show that this person doesn't
14 know something that the perpetrator should know.

15 But the dramatic part of an interrogation is
16 what happens from here to here. This is the part that
17 you see on television when Sipowicz gets the confession.
18 That's when they cut for commercial, because this part is
19 relatively boring from here to this part.

20 Interrogators are trained in how to accomplish
21 the entire process. It starts with the stage setting.
22 Typically, the interrogation will happen in a space that
23 the interrogator controls, where the interrogator feels
24 comfortable, and the person is aware of the authority of
25 the interrogator. It could happen at a police station,
26 in a secure area, or it could happen in a restricted area
27 in a private setting, someplace that's been designated as
28 the place in which this will occur.

1 The interrogator will appear to be
2 authoritative. The interrogator that will effect a
3 demeanor intended to convey absolute certainty in
4 everything the interrogator is saying, absolute certainty
5 in "I know you committed the crime," absolute certainty
6 that "I have this evidence," which I don't necessarily
7 have that links you to the crime. That's a performance
8 component. Those things alone will not produce
9 confession, usually true or false.

10 Some people, when simply accused of a crime,
11 say, "Okay, I did it." There's really no interrogation
12 involved. There's accusation and agreement that I did
13 it. The interrogation really only begins when the person
14 says, "I didn't do this." Now the game is on.

15 We can assume that anyone who allows themselves
16 to be interrogated in the beginning is confident that
17 they're gonna be okay at the end of the experience;
18 otherwise, they would simply refuse to allow the
19 interrogation because they would be better off.

20 Sometimes people who know --

21 MR. HOOD: Objection, Your Honor. Can we go
22 back to question and answer, please?

23 THE COURT: I think that's probably the way we
24 should do it. Let's ask a question.

25 BY MR. CRAVENS: Q. Doctor, when you get --
26 when you get the -- when the person is -- when you first
27 start, you were talking about the person will either --
28 when they go into there, they're confident they'll come

1 out of the interrogation okay.

2 A. Correct. And that's equally true for someone
3 who committed the crime and someone who didn't commit the
4 crime. Person who committed the crime may feel all they
5 have to do is continue to deny, and they'll be able to
6 out-maneuver the interrogator, and they're okay. Person
7 who didn't commit the crime may very well feel "I don't
8 have anything to worry about because I didn't do anything
9 wrong so therefore, this conversation," which is all they
10 see it as being at that point, "is not a threat to me."

11 Q. And after they go into the interrogation, what
12 would happen after that?

13 A. Interrogation in this part involves three
14 different things, or two different things: It involves
15 first driving the person's confidence that they're gonna
16 be okay from high down to practically zero. Let's call
17 that creating a sense of hopelessness, that in my current
18 situation, I'm in a hopeless position; continuing to deny
19 is hopeless.

20 The other thing that happens is the interrogator
21 will typically lay foundations for a motivator, to get
22 the person to make -- to take that last, last step and
23 say, "I did it." The foundation will get introduced
24 usually early on. But as the interrogator delivers the
25 tactics that change someone's confidence, they're likely
26 to shift and start emphasizing the motivator because
27 they're getting close to the point which they think they
28 can elicit the "I did it" stage.

1 Q. Let me stop you there. Can you explain what a
2 motivator is?

3 A. After I explain what an evidence ploy is.

4 Q. Okay. Let's start with evidence ploy.

5 A. Thank you. In order to accomplish this change,
6 interrogators will introduce evidence ploys. And
7 evidence ploys is a claim that I possess evidence that
8 links you to this crime. Interrogators in America are
9 permitted to lie about the existence of evidence. That's
10 not true everywhere in the world, but it is true in
11 America. So interrogators are free to invent all sorts
12 of supposed evidence that links the person to the crime:
13 We have a videotape of you climbing out of the victim's
14 back window because there was a surveillance camera. Or
15 I've actually seen -- there was a satellite flying
16 overhead, and we enhanced the photograph. We have
17 biological evidence. The hair sample you gave me at the
18 beginning of this interrogation, I sent down to our super
19 lab in the basement. And an hour later, we get a DNA
20 match on that. Impossible. We have fingerprint
21 evidence. We have eyewitness evidence. We have other
22 damaging evidence which may or may not exist.

23 The interrogator introduces these things. And
24 what would typically happen over the course of the
25 interrogation is having introduced it once, the
26 interrogator will introduce something else to overcome
27 resistance. As the person keeps saying "I didn't do it,
28 I didn't do it," or the person says "I have an alibi,"

1 and the interrogator will say, "Oh, no. You're trying to
2 tell me you were with your girlfriend three Thursdays
3 ago? We already talked to her, and she told us that you
4 weren't with her that night."

5 The interrogator may have just made that -- for
6 example in the example, did just make that up. The
7 interrogator is free to make up whatever they want. The
8 object is to overcome resistance and make the person feel
9 hopeless, feel that no matter what I do, my fate is
10 determined. If I committed the crime, no matter what I
11 do, this interrogator is telling me I have so much
12 evidence, I don't even need your confession, that I'm
13 history.

14 The problem is that this same tactic directed at
15 someone who did not commit the crime can produce the same
16 state of hopelessness. Being told that we have this
17 evidence and that evidence and this evidence and this
18 other thing, all of which convinces me, and this is
19 typical, it's not a matter of whether you committed this
20 crime; I know you committed the crime. I'm only
21 interested in why you committed the crime. Trying to, as
22 a tactical maneuver, to try to foreclose the person's
23 denial by saying this isn't on the table any longer. We
24 know you did it. For the person who committed the crime,
25 that can be very powerful. For the person who did not
26 commit the crime, it can contribute to anxiety,
27 hopelessness, a sense that they are being railroaded or a
28 sense that their world has just turned to mud, and

1 everything is falling apart because the interrogator is
2 so good at looking at them and sincerely telling them a
3 pack of lies. And the interrogate really appears to
4 believe it, and people are influenced by the demeanor of
5 the person who delivers the message.

6 So the person starts down this slope. The
7 object is to get the individual here because if you think
8 about it, in the beginning, someone accused you of having
9 committed a crime. So to say "Yes, I did it," is a huge
10 step. It makes a tremendous difference. But if you've
11 been made to feel hopeless, it doesn't make a lot of
12 difference whether you admit or not because the
13 interrogator really doesn't need your confession. The
14 marginal cost of saying "I did it" has gone from great to
15 practically nothing. It just doesn't make any
16 difference. That's setting up an individual to get a
17 confession, but they still have to be motivated. The
18 motivators --

19 Q. Doctor, let me just stop you there. What
20 happens after these evidence ploys are introduced?

21 A. Then we can talk about the introduction of the
22 motivators, which tends to start early on, tends to
23 develop and tends to become used to overcome resistance.
24 And in studying the actual step-by-step process of an
25 interrogation, one can see the motivator being used to
26 move the person, threaten the person, offer the person
27 leniency sometimes in order to get them to take the last
28 step because they're already feeling hopeless. So the

1 motivator can start off with some foundational
2 suggestions to introduce concepts and introduce ideas,
3 then will tend to get more and more emphasis as the
4 interrogation goes on.

5 Motivators can run from what I'll call low-end
6 motivators to high-end psychologically coercive
7 motivators. A psychologically coercive motivator, as
8 I'll use the term, refers to trying to motivate a person
9 to say "I did it" by threatening them with maximum harm
10 or offering them -- and/or offering them leniency if they
11 cooperate. It's psychologically coercive because the
12 motivator is threat upon an offer of leniency.

13 But that doesn't occur in every interrogation.
14 It only occurs in bad interrogations, because it is
15 controversial, impermissible and highly dangerous. In
16 order to get a false confession, I have never seen an --

17 MR. HOOD: Objection, Your Honor.

18 THE COURT: What's the objection?

19 MR. HOOD: Narrative, also nonresponsive. Move
20 to strike the last portion.

21 THE COURT: The last portion will remain, but it
22 is nonresponsive.

23 Let's ask another question, please.

24 MR. CRAVENS: Okay.

25 BY MR. CRAVENS: Q. And how are these
26 motivators used in -- in connection with the evidence
27 ploys?

28 A. The motivators, or if we think as motivators on

1 a scale of low to high, motivators would be statements
2 designed to get the person to go along with it because
3 it's the right thing to do. Admit you did this. We know
4 you did it. We have all of this evidence that shows that
5 you did it. I've treated you decently. I haven't yelled
6 at you. I haven't screamed at you. I haven't insulted
7 you. Be a decent person. Be a man about it. Admit you
8 did what we know you did. Show yourself to be a better
9 person than I will otherwise think of you or the
10 community will think of you if you don't admit it. Just
11 kind of -- make yourself out to be, even though you've
12 done this crime, make yourself out to be a more
13 attractive, if you will, person than I'm otherwise gonna
14 think of you if you don't admit it.

15 That will sometimes work to permit a true
16 confession from someone who knows they committed the
17 crime, who feels hopeless. And if the interrogator has
18 developed rapport, that can be the grease that gets them
19 to step across the line.

20 Why? Why not? Well, as to producing a false
21 confession, the false confession in this situation is one
22 in which the person is saying, I didn't do this. This
23 evidence may be there, my situation may be hopeless, but
24 I know I didn't do this. That person is desperate. That
25 person is not gonna do the right thing by confessing when
26 the right thing is maintaining their innocence.

27 If low-end motivators don't work and the
28 interrogator is being orderly, then what he'll do is

1 start to talk about the system, try to get the person to
2 think about the future, think about their situation in
3 relation to all this overwhelming evidence that they
4 committed the crime and start to make statements designed
5 to think about what's going to happen down the road, such
6 as now's the time for you to show remorse, without
7 telling you why now is the time to do it, because the
8 strategy calls for trying to get the person to reason. I
9 will be better off in the future if I show remorse now.
10 Or now is the time to get your side of the story out.
11 The idea being the interrogator wants the person to think
12 about the future, to reason that if I confess, I'm gonna
13 get better treatment, lenient treatment later on.

14 What the interrogator is attempting to do is
15 create a cognitive structure, a set of beliefs in which
16 confession is linked to minimum punishment, and
17 continuing to deny is linked to maximum punishment.
18 That's what the interrogator wants the person to think
19 about the future, because if that's the case, it becomes
20 rational to confess. If you know you're gonna be
21 arrested or you believe you're gonna be arrested, you
22 believe you'll be punished, and if you believe you can
23 minimize the punishment by falsely confessing, you just
24 may do it.

25 But there's a problem. The problem is the more
26 obvious these links are, the more inappropriate,
27 improper, and dangerous the interrogation is. Because
28 these are the links that create false confessions, and

1 these are the links that interrogators, if they're
2 well-trained, know full well that they should not use
3 because they are too dangerous. But some interrogators
4 will use them nevertheless. If the interrogator is
5 willing to go higher --

6 MR. HOOD: Objection, Your Honor. Can we again
7 stick to question-and-answer?

8 THE COURT: Sustained. Ask a question, please.

9 BY MR. CRAVENS: Q. Doctor Ofshe, if those --
10 can I term it mid-level motivators -- don't work, what
11 does the interrogator typically do next?

12 A. If an interrogator continues to continue on,
13 they now move up into the range of psychologically
14 coercive where they can use two different strategies for
15 getting this message across. One strategy that
16 interrogators use is to make it blatant: If you continue
17 to deny that you were involved in this crime, you're
18 gonna be identified as the shooter, and you're gonna get
19 charged with capital murder, and this is a death penalty
20 state, and you're going to go to the gas chamber.

21 Whereas if this was something that happened by
22 accident, or it was self-defense, or it was something
23 like that, if you confess, they'll often introduce a
24 scenario for the crime that takes the crime and makes it
25 far less serious and, therefore, worthy of a far less
26 serious punishment.

27 If you agree that it was just self-defense, well
28 then maybe you can go home at the end of the day. One

1 doesn't have to be an attorney to recognize that
2 confessing to first-degree murder is gonna produce a
3 bigger punishment than admitting to having killed someone
4 in self-defense, even if you don't know self-defense is a
5 legal excuse for having done the killing.

6 So the object here is to make very blatant
7 connections between these two choices and these two
8 outcomes. The other way to do it is through a series of
9 suggestions which are more subtle but are designed to
10 communicate this overall picture.

11 Typically when that happens, when the
12 interrogator is using the more subtle suggestion method,
13 if one goes through the record of the interrogation, one
14 can find introductory statements introducing a concept,
15 beginning to lay out the associations and then more and
16 more obvious. If the person continues to resist, there
17 can be threats of harm and offers of leniency occurring
18 later in the interrogation. So sometimes they may get to
19 the point where they're being fully blatant at the end or
20 close to blatant, but they've been laying foundation and
21 returning to this idea for the last hour over and over
22 and over again.

23 The object is to get the person to recognize:
24 Like it or not, I'm gonna be punished; like it or not,
25 the police are gonna be called; like it or not, I'm gonna
26 lose my job if I don't cooperate; whether I committed the
27 crime or not, that's what's gonna happen to me if I don't
28 cooperate. Whereas the interrogator may be telling them

1 if I do cooperate, I will get very lenient treatment.
2 Under that circumstance, it becomes rational for an
3 innocent person to elect to say, "I did it" when they
4 didn't.

5 Q. Doctor Ofshe, you mentioned that using evidence
6 ploys is dangerous. What did you mean by that?

7 A. Using evidence ploys is only dangerous in
8 conjunction with the introduction of psychological
9 coercion. The introduction of the evidence ploys alone
10 can be very stressful. For someone who didn't commit the
11 crime, being told that there's a great deal of evidence
12 that you committed the crime, is not gonna make you feel
13 good. It's also not gonna make you confess. So the
14 evidence ploys set up a circumstance whereby if something
15 else is present, then the undesired result can obtain,
16 the undesired result being eliciting a confession from
17 someone who is innocent.

18 Q. Doctor, and how can a motivator be dangerous?

19 A. If the motivator gets into the psychologically
20 coercive range, it transforms the decision situation so
21 that it looks to the person as if the only way I'm gonna
22 save my life, the only way I'm gonna save my job, the
23 only way I'm gonna save the life as I know it is by
24 confessing.

25 And if the punishment is made so minimal, hey,
26 if this was just self-defense, you can go home at the end
27 of the day. Or if you admit you did this, we'll take
28 care of you, and everything will be fine. So then the

1 cost of making the admission appears to be so little, and
2 the risk of continuing to tell the truth so great that
3 someone who is upset, not thinking clearly, thinking only
4 in terms of the things that the interrogator has put on
5 the table, not thinking about how the world really works,
6 not thinking about their options -- interrogators have
7 been trying to focus them on what the interrogator is
8 interested in. That person can make a very bad choice
9 and say "I did it" thinking it's the best choice for them
10 to make.

11 Q. Doctor, could you explain -- okay. Let's say
12 we're at the mid level on your chart where somebody
13 decides to make an admission. Could you explain how
14 that -- how they get there, or how are they -- how do
15 they go over the edge?

16 A. They go over the edge because they decide either
17 that I'm caught, if they know they committed the crime,
18 or they decide I better go along with this to minimize
19 the punishment I'm gonna get, even though I don't deserve
20 it.

21 Q. What about the high -- the high motivator like
22 you have in your chart? In that case, what would be
23 pushing them over the edge?

24 A. Same thing, the analysis that it is the rational
25 thing for me to do. That presumes the person is thinking
26 only about those things the interrogator put on the
27 table. It's like that problem with the dots. You put
28 nine dots in a square, and you have to connect them with

1 four lines, I think, or three lines, some number of
2 lines. If you try to just connect the dots, you can't do
3 it. You have to go outside the box and then come back
4 down and then connect them, and then you can do it.

5 As long as the person thinks in terms of what
6 the interrogator puts on the table, then the logic of
7 confessing, truly or falsely, follows. It just ends up
8 that way. The person has to go outside the box and
9 recognize this person is misrepresenting the way in which
10 the world works: I know that this evidence doesn't exist,
11 and I'm not going to admit to something that I didn't do.

12 But in the context of an anxiety-provoking,
13 stressful interrogation, people don't necessarily think
14 all that clearly. That's part of the interrogation
15 method, to maximize a person's anxiety, talk about the
16 things that will be anxiety-provoking for them. That
17 helps muddy their thinking and, therefore, make them
18 easier to manipulate.

19 Q. Doctor, if an interrogator is poorly trained,
20 how would that go about in this model? Where can a
21 poorly trained interrogator make mistakes that could
22 possibly lead to false confession?

23 A. An interrogator can be so poorly trained, so
24 ignorant of the dangers of what they're doing that
25 they've never been told that using these methods will
26 produce false confessions. They could be that ignorant.
27 Interrogation school takes three to five days, and then
28 you go practice it. An interrogator is not somebody with

1 a Ph.D in police science and has studied interrogation
2 for years. These interrogators, they're somebody who
3 can't get a job doing anything else, and they wind up
4 going to the school, learn a method, and they run it off
5 mechanically. They've been told not to think about the
6 innocence or guilt of the person.

7 Once they start an interrogation, it's all about
8 producing the result. They're like those people selling
9 a timeshare condo. They've got a script, they know what
10 objections they're gonna get, and they know how to
11 overcome the objections. They want to make the sale.
12 They don't think about whether the person can afford the
13 timeshare condo, whether it's good for them. They've got
14 a job, and that's to get the confession. And I think
15 that's all they ever think about.

16 Q. Doctor, in the training that you know about, in
17 these methods, are the people actually trained to detect
18 whether or not a confession is true?

19 A. No. That's one of the big problems with
20 interrogation training in America. It would be easy to
21 train interrogators to detect false confessions as they
22 are taking them. But interrogation training programs do
23 not do that. The interrogator, therefore, doesn't think
24 about it. The interrogator thinks only about what
25 they've been told, and they just run it out.

26 Q. Is -- do you know of any safeguards that are
27 built into these interrogation programs to prevent a
28 false confession?

1 A. Into the training program? None of the ones
2 that I'm familiar with have any safeguards built into
3 them. The Reid method, for example, used to tell people
4 that what we teach cannot produce false confessions,
5 until the social science community started criticizing
6 their methods, along with the supreme court, so severely
7 in fact that they finally started backing off. They
8 haven't changed what they teach, only what they say about
9 it.

10 MR. HOOD: Objection. Nonresponsive and
11 narrative.

12 THE COURT: Sustained.

13 MR. HOOD: Move to strike the last portion
14 regarding the supreme court, Your Honor.

15 THE COURT: Granted. Please disregard the last
16 portion of the witness' answer.

17 BY MR. CRAVENS: Q. Now, in these interrogation
18 methods, Doctor, do they teach people to be able to tell
19 whether somebody is telling the truth or telling a lie?

20 A. They teach them to believe that they can do
21 that. They teach them to believe that they can read
22 someone's demeanor they've never met before and determine
23 whether or not the person's obvious distress is because
24 they have committed the crime, or they teach them to
25 interpret stress, resignation, dejection as evidence that
26 they committed the crime for their own purposes. But
27 they don't teach them to discriminate between the
28 distress and dejection and hopelessness of someone who's

1 Q. Someone who can't get a job doing something
2 else. Comparing people who do interrogations to
3 timeshare condo sellers. You don't like people who do
4 interrogations, do you?

5 A. Not true. I don't dislike them. I don't know
6 many of them, to have a personal opinion. But the
7 qualifications to get a job that then get you trained as
8 an interrogator are minimal.

9 Q. Someone who can't get a job doing something
10 else?

11 A. Could be.

12 Q. Is that a negative statement?

13 A. Yep. Could be.

14 Q. You don't think you have a slight bias?

15 A. I think --

16 MR. CRAVENS: Objection. Calls for legal
17 conclusion.

18 THE COURT: The objection is overruled.

19 Professor, answer the question.

20 THE WITNESS: I think that, given my experience
21 of working all over this country involved in cases in
22 which innocent people's lives are at risk, and
23 interrogators have cavalierly ignored their rights,
24 protections and are willing to extract from them
25 confessions that even an idiot would recognize to be a
26 false confession, and then go ahead and allow them to be
27 prosecuted on it, and that gives me a very low opinion of
28 people who would do that.

1 Not all interrogators fit into that category by
2 any means. Those who would be willing to do that, I
3 think, are reprehensible, the lowest of the low.

4 BY MR. HOOD: Q. Someone who can't get a job
5 doing something else, the lowest of the low, they're
6 people who interrogate?

7 A. The people who do it wrong, I think that's
8 probably true.

9 Q. Do you prefer professor or doctor?

10 A. Doesn't make any difference.

11 Q. Are interrogations useful?

12 A. Sure.

13 Q. To be encouraged?

14 A. Absolutely. It's a very important tool. If it
15 were done right, it would save money. It would produce
16 reliable results. It would shorten the length of the
17 amount of energy that has to go into solving a particular
18 crime and getting a just resolution. Interrogation is
19 quite valuable. I have no problems with interrogation
20 properly done.

21 Q. Even though they're by people who can't get a
22 job doing anything else?

23 A. It's the ones who -- who are willing to use
24 illegitimate, dangerous methods and who know how
25 illegitimate and dangerous they are who are the truly
26 despicable.

27 Q. Even interrogators that use, as you call them,
28 despicable methods --

1 A. What about it?

2 Q. -- get true confessions?

3 A. Sometimes you can coerce a true statement. You
4 can coerce a false statement. If you can't tell the
5 difference, you're gonna cause a lot of damage over your
6 career.

7 Q. Okay. So even coercive confessions result in
8 true confessions?

9 A. You can coerce a true confession from someone
10 who committed the crime, and you can coerce a false
11 confession from someone who did not commit the crime.

12 Q. So the answer is yes?

13 A. You can coerce a true confession from someone
14 who committed the crime, and you can coerce a false
15 confession from someone who did not.

16 Q. You've testified a hundred and ninety-four times
17 in the United States?

18 A. Correct.

19 Q. How many cases have you worked on in the last
20 three years?

21 A. I don't know. I don't keep track of it.

22 Q. Can you estimate?

23 A. Well, I've done -- well, I've testified on
24 interrogation a total of a hundred and ninety-four times
25 in fifteen years at least. I've worked on lots of cases
26 in addition to that. More than half the cases that are
27 presented to me, when I kept exact track of the record,
28 more than half the cases presented to me, I've rejected

1 because there was no reason for me to be there.

2 Q. Did you understand my question?

3 A. Yes.

4 MR. HOOD: Can I have it read back, Your Honor?

5 THE COURT: Certainly.

6 (Whereupon the record was read.)

7 THE COURT: How about the question before that.

8 (Whereupon the record was read.)

9 THE WITNESS: I'm estimating.

10 BY MR. HOOD: Q. How many?

11 A. I'm estimating that in fifteen years, I've
12 testified a hundred and ninety-four times. And I know
13 that when I used to keep track of what happened with
14 every file that was presented to me, I rejected more than
15 half the files that I was presented with. So
16 therefore --

17 Q. Excuse me, Professor. My question was not how
18 many you rejected or how many you didn't. I asked
19 nothing about that.

20 My question was, how many cases have you worked
21 on in the last three years? Do you understand the
22 question?

23 A. I'm trying to estimate it and explain how I'm
24 trying to estimate it.

25 Q. Can you just estimate?

26 A. Maybe fifty, maybe more.

27 Q. If you testified a hundred and ninety-four
28 times, you've had to work on more than fifty cases.

1 A. You said the last three years, I believe.

2 Q. Right. So you've only worked on about fifty
3 cases in the last three years?

4 A. That's an estimate based on the principals I was
5 trying to lay out.

6 Q. You get paid when you work on cases, for the
7 most part?

8 A. Yes.

9 Q. You have to pay taxes on your income, correct?

10 A. Yes.

11 Q. You look at your tax return, correct?

12 A. Wrong.

13 Q. You sign, under penalty of perjury, your tax
14 return without looking at it?

15 A. That's right.

16 Q. Do you know how much money you make?

17 A. Nope.

18 Q. You don't know how much you get paid from
19 Berkeley?

20 A. I know how much salary I get paid from Berkeley.

21 Q. Then you have income from your testifying in
22 cases like this; correct?

23 A. Correct.

24 Q. You Don't know how much money you made last
25 year?

26 A. I have income from this. I have income from
27 various businesses that I own. I have income from
28 substantial amounts of property that I own. I have

1 numerous sources of income, including fees for consulting
2 for movies and this and that, all sorts of stuff. So I
3 have multiple sources of income; that's why I don't pay
4 any attention to it; that's why I turn it over to an
5 accountant, and that's why I sign my tax returns. I've
6 tried to look at it. It's so complicated, I don't
7 understand it.

8 Q. You have no idea how much money you made from
9 this side business of yours?

10 A. Correct.

11 MR. CRAVENS: Objection. Vague. You know,
12 vague, and characterization of side business.

13 THE COURT: The objection is overruled.

14 Next question, please.

15 BY MR. HOOD: Q. Approximately how many hours
16 did you work on these cases?

17 A. I don't know.

18 Q. Five to ten hours each time?

19 A. I have no idea because sometimes I get a file, I
20 look at it, I review what's in the file, and I
21 immediately report back to the attorney that I have no
22 interest in being involved in it, and you don't need
23 this, or you don't want this, and that ends it.
24 Sometimes I put a great deal of work into something.
25 Sometimes I do it for very little pay. So all of those
26 variables are changing constantly.

27 Q. Of the hundred and '94 cases that you testified
28 in, how many of them were for the defense?

1 A. Almost all of them.

2 Q. How much do you get paid an hour?

3 A. Depends on where I'm working.

4 Q. This case.

5 A. This case? \$250 an hour.

6 Q. Travel time --

7 A. That's right.

8 Q. -- At \$250 an hour?

9 A. Correct.

10 Q. Driving down from Berkeley, you get paid roughly

11 \$400 just to drive down here?

12 A. Depends on how much traffic there is.

13 Q. Prep time --

14 A. Correct.

15 Q. -- \$250 an hour?

16 A. Correct.

17 Q. How much is your bill gonna be in this case?

18 A. I've already been paid, I believe, about

19 \$10,000.

20 Q. How much is still owing up to this point?

21 Obviously we don't know how long you're gonna be on the

22 stand.

23 A. Probably another \$2000.

24 Q. Profitable?

25 A. Profitable?

26 Q. It's good money.

27 A. And I'm worth every penny of it. Of course it's

28 profitable. I have expenses, but they're not great.

1 It's not a manufacturing operation.

2 Q. Of all the times you testified, or almost all
3 the times you testified, profitably, it was for the
4 defense?

5 A. Almost all the time I've been asked to go into
6 court has been for the defense. When I am asked to go
7 into court for the prosecution, I'm happy to do that as
8 well.

9 Q. You haven't been asked?

10 A. I have.

11 Q. Have you testified in court --

12 A. For the prosecution?

13 Q. -- Of the hundred and ninety-four times, less
14 than five?

15 A. Probably. It's a hundred percent of the times
16 I've been asked.

17 Q. So you get thousands and thousands and thousands
18 and thousands from the defense?

19 A. I get thousands and thousands --

20 MR. CRAVENS: Objection, Your Honor.

21 THE WITNESS: -- and thousands of dollars
22 from --

23 THE COURT: Excuse me for a minute, when there's
24 an objection made that needs to be ruled upon.

25 MR. CRAVENS: Objection. Irrelevant.

26 THE COURT: Overruled.

27 THE WITNESS: I get thousands and thousands and
28 thousands of dollars. I put my time where I want to be

1 involved in. I reject cases where I don't think I should
2 be, and I've never been in front of a jury for the
3 purpose of deceiving them about anything.

4 BY MR. HOOD: Q. So you do get thousands and
5 thousands and thousands of dollars from the defense?

6 A. Correct. No, actually I get it from courts and
7 occasionally from a private client. Almost everything
8 that I do is court appointed.

9 Q. Now, you do agree that confessions are useful
10 tools?

11 A. Yes.

12 Q. And evidence ploys are appropriate?

13 A. Absolutely, in this country.

14 Q. I'm asking for your opinion.

15 A. My opinion?

16 Q. Yes.

17 A. I think evidence ploys are a very valuable tool.
18 I think there's a viable debate about whether or not
19 police should be permitted to lie, but I recognize that
20 evidence ploys are absolutely a powerful tool. And
21 properly controlled, I don't think they would be
22 dangerous.

23 Q. Okay. And I notice some of the articles you've
24 written. I've looked at your CV, which is eighteen pages
25 long, your resume. I think on the Web, I noticed some of
26 the articles you've written have been responding to your
27 critics.

28 A. One.

1 Q. You do have critics who disagree with your
2 methodology or conclusions?

3 A. One. One critic.

4 Q. Just one?

5 A. Yeah.

6 Q. Was your article, I don't remember the full
7 title, Forest Through the Trees, or something like that?

8 A. Yeah. That was a response to Paul Casell, the
9 one critic.

10 Q. Only one person has ever disagreed with you?

11 A. Only one person has ever published anything that
12 attempted to be critical. That was Paul Casell who is
13 not an academic but who is just a former prosecutor.

14 Q. Just a prosecutor?

15 A. Just a former prosecutor.

16 Q. You don't like prosecutors either?

17 A. I don't like persecutors. I have no problems
18 with prosecutors.

19 Q. What is a persecutor?

20 A. Someone who attempts to railroad someone who is
21 innocent in a situation in which anyone looking at the
22 evidence should recognize that this person is innocent,
23 as in the Central Park jogger case where the DNA did not
24 match to any of the kids who were convicted 13 years ago,
25 and the prosecutors knew it, and the interrogations were
26 coerced, and the kids were reporting that they were
27 beaten by the police in order to get them to confess, and
28 the prosecutors turned a blind eye to that. Now the New

1 York D.A.'s office, in reviewing everything, is
2 indicating they never should have prosecuted these
3 people. That's the kind of questionable prosecutor I'm
4 concerned about.

5 Q. Do you have a bias towards me?

6 A. I don't know you. I don't know what you know
7 about this case.

8 Q. Do you have a bias towards me?

9 A. No.

10 Q. Do you have an agenda here?

11 A. No.

12 Q. Let's take a look at your chart. Can you see
13 that from where you're sitting, or do you need to get up?

14 A. Tell me what you want to ask about, and I can
15 probably remember what's on the chart.

16 Q. I'm going to be pointing to the chart. So
17 again, can you see the chart?

18 A. No, I can't see the chart.

19 Q. Let me see if I can move it so all will be able
20 to see.

21 THE COURT: I apologize for the crummy
22 courtroom. That's the best we've got.

23 BY MR. HOOD: Q. I think you're going to have
24 to stand up, I'm afraid. Okay. This is your -- would
25 matrix be a good way to describe this diagram?

26 A. I don't think so.

27 Q. Okay. Give me a word, please.

28 A. Diagram.

1 Q. In this diagram, you have this arch here.

2 A. Correct.

3 Q. Okay. What is going on up here?

4 A. The interrogator is starting out dealing with
5 someone who is confident, that they can allow the
6 interrogation to go forward and is beginning to introduce
7 alleged evidence that supposedly links them to the crime,
8 what I call evidence ploys.

9 Q. You indicated that on occasion, that at this
10 point, some people confess. Just at the introduction of
11 you're accused of a crime, I think you mentioned earlier
12 some people confess.

13 A. If someone confesses before they're
14 interrogated, they confess to the mere accusation, that
15 happens.

16 Q. In your review of interrogations, it doesn't
17 happen that often?

18 A. I don't know about how often. The cases I see
19 would be ones that didn't happen. They involve the
20 full-blown interrogation; otherwise, the attorney
21 wouldn't take the trouble to contact me.

22 Q. I'm going to ask you to listen to my questions.
23 If you don't understand my questions, please tell me you
24 don't understand the question. Please respond only to my
25 questions. Is that okay?

26 A. Sure.

27 Q. Okay. Now, in confessions you reviewed, and
28 you've reviewed some that you have accepted and some

1 you've rejected, very few confess early on; correct?

2 A. Correct.

3 Q. Thank you. Now, what is going on here? The
4 people are denying the crime? That's common?

5 A. Yeah. That's true.

6 Q. People who are guilty and people who are
7 innocent deny the crime?

8 A. Sure.

9 Q. In fact, they can go on denying the crime, both
10 true and false confessions, for a period of time through
11 evidence ploys, through motivators, correct?

12 A. Not every interrogation produces a confession.

13 Q. Is that correct?

14 A. Correct.

15 Q. In these confessions that you have reviewed,
16 when we start to get down here to the crossing point, you
17 start to see admissions. Do you often see mitigation
18 where the confessor -- let me back up.

19 Do interrogators often themselves use a ploy of
20 mitigating the crime? I think you talked about
21 self-defense or --

22 A. The interrogators? Part of interrogation
23 training is often to introduce a theme. The theme is
24 intended to either offer a somewhat more acceptable
25 motivation for having committed the crime, such as the
26 reason you stole the food was your family is starving.
27 Doesn't change the fact the person stole the food, but
28 explains why the person did it, and --

1 Q. And interrogators?

2 A. Can I finish?

3 -- whereas other themes are intended to change
4 the facts of the crime or change the seriousness of the
5 crime. So by taking what is apparently and obviously a
6 premeditated murder scene with all the trappings of that,
7 looks like someone broke in, looks like there was an
8 attempted robbery, looks like someone woke up in the
9 household, looks like the person smashed that person to
10 death in the course of the burglary, that looks like a
11 premeditated murder scene.

12 Interrogator might take, for one reason or
13 another, the premeditated murder scene and impose on it a
14 scenario for the crime which changes the legal meaning of
15 the crime from premeditated murder to an act of
16 self-defense, the object being as they're taught to do
17 this, to elicit from someone an admission to a crime or
18 elicit from someone the admission of yes, I pulled the
19 trigger. But under the circumstances, that would make
20 pulling the trigger far less legally serious.

21 And then if the interrogator is carrying out the
22 strategy entirely, after having gained the admission,
23 turning around and attacking the various story that they
24 just told, because it doesn't fit the facts of the crime,
25 and they're trying to get a true confession. But the
26 object is to elicit an admission by offering a story that
27 if the interrogator were to accept that, as the
28 interrogate suggested he will, will result in very

1 little, if any, punishment.

2 Q. Why don't you take a seat. I don't think I'll
3 be using the diagram anymore.

4 So from what you just said, let's see if I can
5 summarize it briefly. An interrogator in premeditated
6 murder, he knows it's premeditated, will use a ploy and
7 give it a lesser crime to make the person comfortable in
8 confessing to a lesser crime, like self-defense or no
9 premeditation.

10 A. If the interrogator is willing to introduce
11 psychologically coercive motivators, they'll elect to
12 threaten maximum harm and offer leniency in one form or
13 another. One way to communicate the leniency is by
14 suggesting a scenario for the crime which, if the person
15 admits to it, naturally leads to little or no punishment.

16 Q. Again, to summarize, one of the ploys used is to
17 indicate a lesser crime to get the person to accept that
18 lesser; correct?

19 A. That's not an evidence ploy.

20 Q. What is that?

21 A. That's a motivational tactic.

22 Q. Okay. One motivational tactic is to use a
23 lesser crime than what the investigator believes, to get
24 the person to start to accept -- to start to admit to it;
25 correct?

26 A. To recharacterize the crime in a way that
27 carries a less serious punishment in order to get the
28 person to believe they can confess to this crime and

1 receive little or no punishment; that is correct.

2 Q. And you see in the cases you've reviewed where
3 the person will accept that reduction, in other words oh
4 you're right it, was self-defense or you're right, it
5 wasn't premeditated or you're right, it was because my
6 family needed food; correct?

7 A. People will often accept scenarios for the crime
8 as part of their confession.

9 Q. So the answer is yes?

10 A. The answer is people will often accept scenarios
11 for the crime as part of their confession.

12 Q. Will people often blame others?

13 A. Not in my experience.

14 Q. Would you agree that frequently truthful
15 confessions the confessor does not confess to every fact
16 that occurred?

17 A. That can happen.

18 Q. Okay. In fact, those are your words.

19 A. You're probably talking about the example of
20 Richard Allen Davis being willing to confess to
21 kidnapping and killing Polly Klaas but resisting
22 confessing to having raped her before he killed her as an
23 example of the kind of particularly -- particularly
24 heinous element to a crime that people will be unwilling
25 to confess to, even though they'll confess to other
26 parts.

27 Q. Actually, I was referring to your testimony in
28 the State versus Adams.

1 A. Which case?

2 Q. State versus Adams.

3 A. Which Adams?

4 Q. I just have the cite for you. I don't have the
5 first name. You were being questioned by, I assume, a
6 assistant district attorney, Mr. Traverso (phonetic).
7 Ring a bell?

8 A. I think that Adams is a case in. --

9 Q. I don't need the facts of the case. I'm just
10 asking you.

11 A. You have the facts wrong. I'm just trying to
12 help you. Adams is a case in Alaska, in Berel, Alaska.
13 And Mr. Traverso was the defense attorney.

14 Q. Did Mr. Traverso ask you, Doctor Ofshe: Are you
15 aware of any truthful confessions in criminal cases where
16 the person did not confess to every fact that occurred?
17 And you answered: That happens with some frequency.

18 A. Okay. I'll adopt that. Doesn't contradict what
19 I said.

20 Q. Okay. So it happens with some frequency that a
21 true confessor does not admit to all the facts, correct?

22 A. Could be.

23 Q. Correct?

24 A. Correct. It happens with some frequency.

25 Q. How many interrogations have you yourself
26 conducted?

27 A. One.

28 Q. One?

1 A. Correct.

2 Q. How many officers have you trained on how to
3 conduct interrogations?

4 A. I've lectured to a couple of hundred police.

5 Q. How many have you trained?

6 A. Trained? I don't do training.

7 Q. You're on a mission regarding false confessions,
8 and you don't train officers how to do it properly?

9 THE COURT: I'll sustain my own objection of
10 argumentative.

11 BY MR. HOOD: Q. You do not train officers how
12 to conduct what you would consider proper interrogations?

13 A. I'm perfectly willing to do that, agreed to do
14 that with ATF, but they never followed up on it. Anytime
15 anyone wants me to do that, I would be happy to do it.
16 If you would like me to do it for the Santa Clara County
17 police, I would be happy to do it.

18 Q. You've never done it?

19 A. No, because no one has ever asked me, except the
20 ATF guy, and he never followed through.

21 Q. You yourself have never received training on how
22 to conduct interrogation?

23 A. That's correct. I study the methods. I have no
24 interest in becoming an interrogator.

25 Q. Of the cases you've studied, the vast majority
26 involve murder suspects?

27 A. That's probably fair to say.

28 Q. In fact, of the three studies you've cited

1 earlier, two were studies only of murder suspects?

2 A. I don't know the range of crimes that produce a
3 capital punishment in the Biddot and Ratliff study, but
4 probably most were murders in that study.

5 Q. And your own article, Missing the Forest for the
6 Trees -- is that enough of a title for you to remember
7 which one I'm talking about?

8 A. I know what you're talking about.

9 Q. You wrote that with your colleague, Richard Leo?

10 A. Correct.

11 Q. He was your graduate student?

12 A. He was. Not at the time we wrote article, but
13 at one time in his life.

14 Q. And your own studies have affected your own
15 opinion, correct, in testifying about false confessions?

16 A. My studies are the basis for having an opinion.

17 Q. Okay. You indicated three principal studies,
18 but your own studies as well?

19 A. Sure.

20 Q. Okay. And then isn't it true that in virtually
21 all the cases that you have looked at, they involve
22 murder?

23 A. No, not virtually all.

24 Q. Isn't it true that in virtually all, there was
25 pressure on the police to solve the crime?

26 A. No.

27 Q. Isn't it true that in virtually all the cases
28 you've looked at, you were unable to -- police were

1 unable to identify suspects with physical evidence?

2 MR. CRAVENS: Objection. Vague as to "virtually
3 all".

4 THE COURT: The objection is overruled.

5 Professor, do you remember the question?

6 THE WITNESS: No.

7 THE COURT: Could we have that read back?

8 MR. HOOD: I'll restate it, your Honor.

9 THE COURT: Very well.

10 BY MR. HOOD: Q. In virtually all the cases you
11 looked at, wasn't it true that the police were unable to
12 identify suspects with physical evidence?

13 A. Virtually all? I don't understand. Is that
14 ninety percent? Ninety-five percent? Ninety-nine
15 percent? What are you talking about?

16 Q. Let's use a majority.

17 A. Majority? That might be true.

18 Q. Okay. And isn't it true in the majority of
19 cases you've studied that the officers were relying on
20 hunches and gut instincts and not actual evidence from
21 the crime?

22 A. Oh, yeah.

23 Q. Isn't it true that in --

24 A. In the innocent person false confession cases,
25 yes. I've studied lots of cases involving interrogations
26 of someone who committed the crime. It wouldn't be true
27 in those.

28 Q. Isn't it true in the majority of cases, there

1 was little to no credible evidence against the suspect
2 who confessed?

3 A. In innocent person false confession cases,
4 that's true. In cases of true confession, it's not true.

5 Q. Is this a correct statement of your opinion: In
6 virtually all of the cases we have studied, the crime
7 under investigation was murder; the police were under
8 enormous pressure to solve it; they had not been able to
9 identify a suspect based on solid detective work or
10 forensic evidence, but instead relied on pseudo
11 scientific interpretations of behavior, gut hunches
12 and/or the suspect's relationship to the victim; there
13 existed little or no credible evidence against the
14 suspect either before or after the confession; and police
15 resorted to inappropriate and illegal interrogation
16 methods such as the maximization, minimization techniques
17 to elicit the false statement?

18 A. That would be true because we would be talking
19 about false confession cases as opposed to mere
20 interrogations.

21 Q. So that's the common theme you found in false
22 confession statements?

23 A. That's what we found.

24 Q. The statement I read is the third sentence from
25 your article, Missing the Forest for the Trees?

26 A. It could very well be.

27 Q. It is, isn't it?

28 A. I don't remember every sentence I've written.

1 It sounds appropriate. It would refer to false
2 confession cases. And in that context, I have no problem
3 with it.

4 Q. Okay. And Mr. Leo conducted a study regarding
5 confessions and interrogations in California?

6 A. Did his doctoral dissertation on that.

7 Q. He was your grad student?

8 A. Correct.

9 Q. And in that, he went and observed -- is it a
10 hundred and eighty-nine or a hundred and ninety-four?

11 A. Eighty-four.

12 Q. A hundred and eighty-four interrogations. Isn't
13 it true in not one of those did he find a false
14 confession?

15 A. He wasn't looking for false confessions. He was
16 coding the tactics present. He never inquired as to
17 whether or not a particular confession, if obtained,
18 turned out to be true or false. It wasn't his study on
19 that subject.

20 Q. Isn't it true that he did not find a single one
21 of those confessions?

22 A. He didn't find anything that he wasn't looking
23 for. He didn't find evidence of space aliens. He didn't
24 find evidence or trait of someone being a traitor or a
25 terrorist, either. He wasn't looking for any of those
26 things.

27 THE COURT: Mr. Hood, would this be an
28 appropriate time for our morning recess?

1 MR. HOOD: Yes, it would, Your Honor.

2 THE COURT: Ladies and gentlemen, please
3 remember the admonition. With that, it will be about 15
4 minutes. I'll call for you at just about five of the
5 hour in the jury is assembly room. Thank you. We're in
6 recess.

7 (Whereupon a recess was taken.)

8 THE COURT: All right. The 12 jurors and the
9 alternate have rejoined us. Still present are the
10 defendant, all three attorneys.

11 I think we were partially through
12 cross-examination of Doctor Ofshe who is still on the
13 stand. Mr. Hood, you may continue.

14 MR. HOOD: Thank you, Your Honor.

15 BY MR. HOOD: Q. Now, you've indicated that
16 interrogators have to be accomplished liars; is that
17 accurate?

18 A. Correct.

19 Q. And they have to be able to deliver bold-face
20 lies?

21 A. Correct.

22 Q. And you referred to -- I was gonna say correct
23 me if I'm wrong, but I'm sure you will. Is evidence
24 ploys where the bold-face lies come in?

25 A. Correct.

26 Q. And you --

27 A. At least -- at least at that point.

28 Q. Okay. I just want to understand your

1 terminology.

2 When do the -- lying about the evidence, what
3 are those called?

4 A. Evidence ploys.

5 Q. Okay, evidence ploys.

6 A. Which can be either true or false.

7 Q. Okay. And in reviewing confessions, I mean, you
8 talked quite a bit about these lies about the evidence;
9 correct?

10 A. I talked about the fact that in this country,
11 police can lie about evidence.

12 Q. Okay. In fact, when you review -- these
13 bold-faced lies about the evidence can be very coercive?

14 A. No.

15 Q. Okay. What effect does a bold-faced lie have on
16 a confession?

17 A. It contributes to leading the person to believe
18 their situation is hopeless.

19 Q. So in reviewing confessions, you looked to see
20 if there were any bold-faced lies?

21 A. No.

22 Q. Do they concern you?

23 A. No.

24 Q. Are they relevant?

25 A. Yes.

26 Q. How are they relevant?

27 A. They're relevant because they contribute to
28 convincing someone their situation is hopeless, that in

1 the actual analysis of whether or not somebody committed
2 the crime or not, they're extremely important. But in
3 terms of analyzing the tactics of the interrogation, I
4 often don't know whether the claims to evidence are
5 factually accurate or entirely invented when I read the
6 transcript.

7 Q. So it's not relevant to you to consider whether
8 the evidence ploys are based upon bold-faced lies or, in
9 fact, accurate?

10 A. Not for the purpose of analyzing what got a
11 person to say I did it. The evidence ploys can be very
12 important in terms of trying to assess, to weigh the
13 confession and classify it as either true or false
14 confession. Then knowing what the real evidence is quite
15 important.

16 Q. Okay. Now, these evidence ploys are used every
17 day, every city, every county, every jurisdiction, every
18 state?

19 A. To the best of my knowledge, they are.

20 Q. Common, appropriate tactic to use?

21 A. Appropriate in this country.

22 Q. Do you think they're appropriate?

23 A. I think they are a useful tool in interrogation.
24 I can easily see why they contribute to getting
25 confessions and, without proper safeguards, they can set
26 up a circumstance under which they can elicit a false
27 confession. Properly -- properly used, I don't think
28 they're dangerous at all.

1 Q. In fact, you would, if you had ever been asked
2 to train officers, you would train officers on how to use
3 evidence ploy?

4 A. It's perfectly legal. As far as I'm concerned,
5 police officers can do whatever is legal.

6 Q. You agree that interrogations are an appropriate
7 useful tool?

8 A. Yes.

9 Q. And getting confessions is an appropriate
10 endeavor?

11 A. Absolutely.

12 Q. And using an evidence ploy to get that
13 confession would, in fact, be appropriate?

14 A. Correct.

15 Q. And if that evidence ploy is false, that may
16 contribute more likely than not to a false confession as
17 opposed to when the evidence ploy is true?

18 A. I don't know if I agree with the "more likely
19 than not." The whole process of making someone feel
20 hopeless sets up the circumstances under which a deal
21 offer may be accepted by someone who is innocent.

22 Q. Let me ask you this: In the majority of cases
23 that you reviewed, cases you determined were false
24 confessions by however means, did you find that the
25 evidence ploys in them, in those that were used, were in
26 fact false?

27 A. In the false confessions cases?

28 Q. Yes.

1 A. I cannot specifically think of one example in
2 which the evidence ploys were even mistaken. It's
3 possible to be mistaken. One can say I have eyewitness
4 testimony, but the police actually have it, but the
5 eyewitness in fact is wrong. So that's mistaken. I
6 can't think of a particular example of even a mistaken
7 use of evidence ploys. By and large, or my recollection
8 is that the evidence ploys that I've tended to see have
9 been misinterpretations of evidence or boldly false in
10 false confession cases.

11 Q. So the evidence ploys used in the majority of
12 your false confession cases are either mistaken
13 assumptions by the officers or actually bold-face lies?

14 A. That's been my experience.

15 Q. Now what -- you indicated factors you're looking
16 for. One of the things you look at to see if there's a
17 false confession is if the confessor relates things that
18 the investigator didn't know. Is that accurate?

19 A. That would be evidence that you should weigh the
20 confession strongly in the direction of the person's
21 guilt.

22 Q. So if the confessor --

23 A. Accurate things that the interrogator didn't
24 know.

25 Q. So for example, if the person's -- there's a
26 dead body, the confessor says the weapon's over under
27 that rock. Officers go find it, the weapon is under the
28 rock and --

1 A. That's a big one.

2 Q. -- the officers didn't know about it?

3 A. Correct.

4 Q. Okay. The type of weapon used: I used a hammer.

5 The officers didn't know it was --

6 A. Could be very important, sure.

7 Q. I worked with somebody else. I had an

8 accomplice that the officers didn't know about: Again,

9 these are --

10 A. That's not objective proof. That's a claim

11 which needs to be evaluated. So if they're -- if the

12 officers don't know, you've analyzed the crime scene and

13 there was no evidence there were two people, there's

14 nothing objective that allows anyone to say whether it

15 was one or two people present except if the other

16 person's identified and can tell a story of the crime

17 that matches the evidence of the crime and proved that

18 they were there. But not based on the physical facts of

19 the crime by your -- by the very question you asked.

20 Q. What about if the officers don't know why the

21 crime occurred, and the confessor tells the motive?

22 A. Again, it's not objectively provable,

23 necessarily. It's not the same thing as looking at crime

24 scene facts and being able to tell the interrogator

25 something about the physical facts of the crime that they

26 didn't know. It's -- two people are in a room, they're

27 having a discussion. There's a fight. One of them winds

28 up dead. The survivor says, We were talking about the --

1 in Chicago, we were talking about last night's baseball
2 game, and we got into a fight, and I killed him. The
3 people think they were discussing the distribution of
4 poppy seeds. How can you tell? It's a story. May be
5 true. May not be true. It's not capable of objectivity.

6 Q. It's a -- so motive is nothing in a confession?

7 A. Motive? It can be a component. It might be a
8 component you could eventually evaluate in terms of
9 whether it makes sense or not. Someone talks about
10 having stolen to feed their family, and they have no
11 family, that tells you something about the validity of
12 the motive that they've offered. It's just another fact,
13 but it's not the same thing as telling someone something
14 that's objectively provable based on the crime scene
15 evidence. It's just a different sort of thing.

16 Q. In the interrogation, is it proper for the
17 interrogator to be highly confident, present that image?

18 A. That's what they're trained to do.

19 Q. Proper to wear down the confidence of the
20 person?

21 A. That's what they're permitted to do.

22 Q. My question is -- you have answered with what
23 they're trained to do. My question is, in your opinion,
24 is it proper?

25 A. In my opinion, it is proper to do whatever the
26 law permits.

27 Q. Each item, I'd like to know your opinion.

28 Is it proper for the interrogator, in your

1 opinion, to present very outwardly confident demeanor in
2 the interrogation?

3 A. In my opinion, that is a permissible thing to do
4 and, therefore, I think it's proper.

5 Q. Proper to, in your opinion, wear down their
6 confidence?

7 A. My opinion, that is permissible to do and,
8 therefore, I think it's proper.

9 Q. Proper to use evidence ploys?

10 A. In my opinion, it is proper to use evidence
11 ploys because it's permissible.

12 Q. Proper to explain the consequences of the crime?

13 A. Possibly, but also very possibly not proper.

14 Q. Proper to use low-end motivators?

15 A. My opinion, it's legally permissible and,
16 therefore, it's proper.

17 Q. Examples: It's the right thing for you to do to
18 confess. Is that is a proper low-end motivator?

19 A. As far as can I tell, it is.

20 Q. We have evidence against you. Proper low-end
21 motivator?

22 A. It's not a low-end motivator.

23 Q. What is it?

24 A. It's an evidence ploy.

25 Q. We've already indicated that those are proper to
26 use.

27 A. Correct.

28 Q. Now, you indicated when they reach this edge

1 where the two lines intersect, you've used the
2 expression, if I can adopt it, they've gone over the
3 edge.

4 A. I don't believe I said gone over the edge in
5 relation to that.

6 Q. Okay.

7 A. If they're going up the scale is where I might
8 have used the term over the edge.

9 Q. Okay. I would like a term that talks to the
10 point where it's time -- which they've reached the
11 conclusion to either truly confess truly or confess
12 falsely.

13 A. The point at which they make the admission "I
14 did it."

15 Q. There's two reasons why they reach that point,
16 in your opinion?

17 A. There are two variables that contribute to it, I
18 believe.

19 Q. Okay. Well, I'm not talking about the
20 variables. Let me see if I can give you a question.

21 They reach that point and at that point, they
22 either confess falsely or they, I believe I'm using your
23 words, realize that I am caught, and they confess
24 truthfully. Is that accurate?

25 A. The process is different for someone who knows
26 they committed the crime versus someone who knows they
27 did not commit the crime. For a person who knows they
28 committed the crime, believing that they're caught,

1 believing that it makes no difference that they committed
2 the crime, that person can be motivated to say, Okay, I
3 did it through the introduction of permissible and
4 trivial motivators such as common, to do the right thing.
5 I know you did it. Be a man about it. Admit you did it,
6 and so on. It's the presentation itself.

7 As I said previously, those kinds of inducements
8 are not gonna produce a false confession. In order to
9 get a false confession, it's my belief, based on the work
10 I've done, it's necessary for a normal individual to
11 introduce a psychologically coercive motivator, one that
12 connects increased punishment with denial and offers
13 leniency if you confess, even though you didn't do it.

14 MR. HOOD: Your Honor, may I have the question
15 read back?

16 THE COURT: Yes.

17 (Whereupon the record was read.)

18 THE COURT: Next question, please.

19 BY MR. HOOD: Q. Now, whether it's a truthful
20 confession or a false confession, they reach a point and
21 start confessing?

22 A. When there's a confession, there's a point that
23 precedes giving of the confession. That will be true
24 when it's a true confession or a false confession.

25 Q. And it is a build up of everything that's
26 happened before; correct?

27 A. All of it contributes to it.

28 Q. Okay. And would you agree that what immediately

1 precedes the confession is an important, relevant factor
2 for you to look at: what did the officer do right before
3 this person reached that point?

4 A. Not necessarily.

5 Q. Did the officer hit them, use a false evidence
6 ploy?

7 A. No. In fact, I wouldn't agree to that because
8 it often happens that a deal offer is put on the table
9 early on, or at some point the innocent person still
10 doesn't want to confess to something they didn't do.
11 They still persist in trying to get the interrogator to
12 understand they didn't commit the crime.

13 When they realize that's hopeless, they may then
14 decide to accept the deal, and that may be separated in
15 time from the point at which the deal is first put on the
16 table. As long as the deal is still on the table, it's
17 there. It's sitting there. But they don't necessarily
18 want to take it because they know they're innocent. So
19 they may resist for a while and then decide, I guess I
20 better do that because I'm never gonna convince him I
21 didn't do the crime. If I don't confess, dire
22 consequences will follow. That can be separated in time
23 by ten minutes, fifteen minutes, a half hour, an hour.
24 Once the deal's on the table, it sits there.

25 Q. Okay. So you're indicating that what happens
26 immediately preceding where the person reaches that point
27 is not relevant?

28 A. I'm not saying that. I'm saying it varies. You

1 have to look at the particular interrogation. You have
2 to look at when the deal is put on the table. You have
3 to look at this. You have to look at that. I would be
4 happy to do it for you.

5 Q. When you review confessions, you always pay
6 close attention to what immediately preceded the
7 confession?

8 A. Sometimes what immediately precedes the
9 confession and a direct deal offer. Sometimes it's
10 separated in time.

11 Q. But you do look at what immediately preceded the
12 confession?

13 A. I look at everything.

14 Q. Now, you indicated that it was easy to detect
15 false confessions.

16 A. I think so.

17 Q. Okay. And the factors you would consider is
18 does the defendant's confession fit the crime?

19 A. Does the defendant describe things about the
20 crime that have not been introduced by the interrogator,
21 which indicate that they have actual knowledge of the
22 crime. So, for example, if one were to say, How did you
23 accomplish this crime, and the person goes, I really
24 don't know how; I'll say I did it, but I don't know how
25 it happened, you got a problem.

26 If, on the other hand, you say, How did you
27 accomplish this crime, and the person says, Well, I made
28 sure to put some tape over the lock on the door to the

1 store so that I could get back into the store, and I
2 disabled the burglar alarm system in anticipation of
3 that, and then tape is found over the door lock, and the
4 burglar alarm system connected to that door has been
5 short-wired so that it won't show an opening, and the
6 person volunteers all that about the method, that's very
7 powerful.

8 But if the person committed the burglary, they
9 should know that, and an interrogator is actually getting
10 a good confession, is going to get that information.

11 Q. Would you agree that laying out the evidence,
12 the actual evidence against the person right in front of
13 their face can be a very effective interrogation tool?

14 A. In making someone feel hopeless, absolutely.
15 Whether the evidence is true or false, that experience
16 can make somebody feel hopeless.

17 Q. Is it an effective tool in interrogation?

18 A. In doing what? I don't understand your
19 question.

20 Q. Would you agree that laying out the evidence in
21 front of the person is an effective tool in interrogation
22 to reach a confession?

23 A. If properly done, it is a significant component.
24 It can contribute to getting a confession. Improperly
25 done, it can actually damage the outcome.

26 Q. Okay. In fact, wouldn't you even agree that
27 laying out the evidence is, per se, not an interrogation?

28 A. I don't understand your context. I'm accustomed

1 to seeing that as part of interrogation. Maybe it
2 happens other places, but that's not part of my
3 experience.

4 Q. Is laying out the physical evidence what you
5 would consider an overly coercive tactic?

6 A. I wouldn't consider it coercive in the least.

7 Q. Would you agree with this statement: You don't
8 have to interrogate him. Sometimes you can just lay out
9 the evidence and say, This is what we know, and that
10 person may at that point confess. If the evidence is
11 really strong, that can be a very effective tactic, and
12 it's really not an interrogation.

13 Do you agree with that statement?

14 A. Sure. That's the example that I give. If you
15 accuse somebody, and they immediately -- they never say I
16 didn't do it, you don't have an interrogation.
17 Interrogation, as I said, begins when the person denies
18 that they committed it. So if someone has committed the
19 crime, and they know they're caught, it doesn't
20 necessarily take a big interrogation.

21 Q. So laying out the evidence. That's exactly what
22 I'm talking about. Laying out the physical evidence in
23 front of the person is a very effective tactic, and it's
24 really not an interrogation. Would you agree with that
25 statement?

26 A. If that's all that's done, and no motivational
27 tactic is introduced, and no promises of leniency are
28 introduced, and no threats of harm are introduced, and

1 all you're doing is saying, Hey, we have a videotape of
2 you leaving the bank, your mask fell off, that's your
3 face, bingo, you're caught, if that's all that's done,
4 then it's really not much of an interrogation.

5 If in the particular session that you're looking
6 at there's also the use of a complicated motivator,
7 particularly one that introduces psychological coercion,
8 now you're talking about a real interrogation and not the
9 example you gave.

10 So are we talking about one in which that and
11 only that is done, or are we talking about one in which
12 that plus other things are done?

13 Q. Regardless. Regardless of what you just said,
14 wouldn't you agree that laying out the physical evidence
15 in front of the person accused of a crime is an effective
16 interrogation tactic?

17 A. It is an effective tactic in getting someone to
18 feel helpless.

19 Q. Which leads to their confession?

20 A. If someone has committed the crime and they are
21 convinced that they're caught, it sometimes takes very
22 little in addition to get them to say okay, I did it. If
23 someone is confronted with evidence that appears to link
24 them to the crime, or so it's maintained, and they're
25 made to feel hopeless, it's been my experience that you
26 also have to experience a psychologically coercive
27 motivator in order to get them to confess.

28 Q. Confess truly or falsely?

1 A. Falsely.

2 Q. But for the true confession?

3 A. The true confession? If someone knows they
4 committed the crime, if they know that the evidence that
5 you have got links them to the crime, as I said, it often
6 doesn't take very much more than that to get them to
7 confess.

8 MR. HOOD: Nothing further.

9 THE COURT: Is there to be redirect?

10 MR. CRAVENS: Moment, Your Honor.

11 REDIRECT EXAMINATION BY MR. CRAVENS

12 Q. Doctor Ofshe, for the present, does anybody owe
13 you money on cases you've already completed?

14 A. Oh, sure.

15 Q. And Doctor Ofshe, do any -- as far as your
16 government -- you do work for public defenders' offices?

17 A. All over the country.

18 Q. And do any of those type entities owe you money
19 on their cases?

20 A. Oh, yeah.

21 Q. And what -- what do you -- what do you typically
22 charge a public defender's office to take a case?

23 MR. HOOD: Objection. Relevance.

24 THE COURT: Sustained.

25 BY MR. CRAVENS: Q. Would you take a case for
26 free?

27 A. Sure.

28 Q. Have you ever taken a case for free?

1 MR. HOOD: Objection. Relevance.

2 THE COURT: Sustained.

3 BY MR. CRAVENS: Q. Have you reviewed the
4 material that's put out by the WZ people?

5 MR. HOOD: Objection. Exceeds the scope of
6 cross.

7 THE COURT: Sustained.

8 BY MR. CRAVENS: Q. Doctor Ofshe, you made a
9 lot of testimony about interrogations. Is there any
10 difference on how an interrogation would work between a
11 murder than it would work, say, for a theft crime?

12 A. My experience --

13 MR. HOOD: Objection. This has been asked and
14 answered on direct.

15 THE COURT: Overruled.

16 THE WITNESS: My experience, the model that I
17 laid out is the model that's used to interrogate, to
18 overcome resistance from someone. So I've seen that used
19 for murders. I've seen it used for thefts. I've seen it
20 used on children, and I've seen it used on witnesses who
21 won't say what the particular detective wants them to
22 say. That is the model that I see for overcoming
23 resistance and gaining compliance, gaining agreement,
24 gaining admissions, gaining confessions, and sometimes
25 gaining testimony.

26 MR. CRAVENS: No further questions.

27 THE COURT: Anything further?

28 MR. HOOD: Nothing further.

1 THE COURT: Ladies and gentlemen, do you have
2 any questions for Doctor Ofshe? None noted.

3 Thank you, Doctor. You're free to go.

4 THE WITNESS: Thank you, Your Honor.

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1 STATE OF CALIFORNIA)
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2 COUNTY OF SANTA CLARA)

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6 I, Michelle Caldwell, CSR 9045, in and for the State
7 of California, County of Santa Clara, do hereby certify
8 that I was appointed by the Court to act as court
9 reporter in the above-entitled action; that I reported
10 the same into typewriting as appears by the foregoing
11 partial transcription; that said transcript is a full,
12 true and correct statement of the proceedings to the best
13 of my ability.

14

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16 Dated this 28th day of November, 2003.

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Michelle Caldwell
Certified Shorthand Reporter No. 9045

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