

Dassey interrogation tactics draw scorn



Duke Behnke, USA TODAY NETWORK-Wisconsin 5:05 p.m. CST January 12, 2016



(Photo: Photo courtesy of Gimbel, Reilly, Guerin & Brown)

Tactics used by police to interrogate 16-year-old Brendan Dassey, who was convicted of participating in the 2005 killing of Teresa Halbach, have come under intense scrutiny since the release of the Netflix series "Making a Murderer."

The 10-part documentary shows excerpts of interrogations in which detectives appear to influence or shape Dassey's responses to match evidence. After a lengthy interrogation on May 13, 2006, Dassey tells his mother he was guessing at the answers the detectives wanted to hear, much like he did on his homework assignments. Dassey has a low IQ and was not accompanied by his court-appointed attorney during the interrogation.

Criminal defense attorneys say U.S. courts have given police plenty of freedom in the ways they can extract information from suspects. Police can interview minors without parental consent. They can imply they have evidence they don't have, a technique called baiting. They can employ the "good cop, bad cop" routine to gain cooperation.

They also can use "strategic deception," according to the 1990 U.S. Supreme Court decision in Illinois vs. Perkins.

"The cops can lie," said Rob Bellin, a Neenah attorney with more than 20 years of experience in criminal defense and personal injury litigation. "Absolutely they're allowed to lie."

Though trickery is permissible, police can go too far. Bellin argued a case in which his client gave consent to search a property after police lied by saying they had a warrant to search the property. An appellate court overturned the conviction.

The difficulty, Bellin said, is determining what tactics cross the line.

"The courts have said we can't really draw a bright line, but we'll know it when we see it," Bellin said.

Lawyers for Dassey, now 26, recently filed a petition in U.S. District Court asking a federal judge to determine whether Dassey's arrest and conviction were legal. His attorneys claim — as in previous state court appeals — that his constitutional rights were violated due to ineffective assistance of counsel and an involuntary confession.

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Milwaukee criminal defense attorney Raymond Dall'Osto, who served on the Wisconsin Legislature's Wrongful Conviction Task Force, said police interrogation tactics are a controversial subject, particularly when they rise to the level of lying.

"It shouldn't be (legal) in my opinion," Dall'Osto said, "but all too often it is done, and way too often it is either allowed or given the wink-wink by the courts, trial level and appellate."

In Dassey's case, Manitowoc County Circuit Judge Jerome Fox ruled that although police mislead the teen in a March 1, 2006, interrogation, the confession was given voluntarily and was admissible as evidence. Dassey later denied involvement in the crime.



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A jury found Dassey guilty of killing Halbach, a 25-year-old photographer, when she visited Avery Auto Salvage near Mishicot to take pictures for a car magazine. Steven Avery, Dassey's uncle, was tried and convicted separately. Both men were sentenced to life in prison for being a party to first-degree intentional homicide.

Bellin served as a legal analyst for a local TV station during the Avery trial and has watched the "Making a Murderer" series. He said there's a difference between whether a confession is voluntary and whether it is reliable.



Neenah attorney Rob Bellin says police trickery is permissible in interrogations but can go too far. (Photo: Photo courtesy of Hammett, Bellin & Oswald)

"The only evidence they have to link Dassey to the crime are his own statements," Bellin said, "and his own statements are so unreliable, that how anybody could say he is guilty of anything beyond a reasonable doubt is really sad."

Bellin was particularly troubled by how Michael O'Kelly, an investigator hired by Dassey's court-appointed attorney Len Kachinsky, coerced the teen into a confession. O'Kelly then arranged for Dassey to meet with police. Kachinsky was not present for the police interrogation.

"The courts don't agree with me, but I believe they should have said that went too far because that investigator (O'Kelly) was basically acting as an agent of the state," he said. "That's where I would argue the trickery went too far and this kid was set up."

TIMELINE: [History of the Steven Avery case \(http://content.postcrescent.com/appleton/avery_timeline/\)](http://content.postcrescent.com/appleton/avery_timeline/)

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Dall'Osto was appalled that Kachinsky was not present when Dassey was interrogated.

"That's done as a matter of course," he said. "To not do that is ineffective assistance of counsel. You're letting your client put the head in the mouth of the lion."

Dall'Osto compared police interrogations to a vocabulary worksheet in which a student must fill in the blank from a given list of answers. All other answers will be rejected.

"It's not something that is unplanned or off the cuff," he said. "They have a good idea of what they want to get out of this, and they have a limited universe of vocabulary words or the right answers."

Dassey doesn't appear to understand the seriousness of the crime in the March 1, 2006, interrogation, which was videotaped. While being questioned about Halbach's killing, he asks whether he will be done in time to return to school.

"It appears that he'll say whatever he thinks he needs to say, just to be done with it," Bellin said. "That's not reliable at all."

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