



Thomas F. Geraghty, Associate Dean and Director

ASSISTANT DEAN
Steven A. Drizin

DIRECTOR, ADMINISTRATION & FINANCE
Shericka Pringle

APPELLATE ADVOCACY CENTER
Sarah O'Rourke Schrup, Director

BARTLIT CENTER FOR TRIAL ADVOCACY
Steven Lubet, Director
Robert P. Burns

CENTER FOR CRIMINAL DEFENSE
Jeffrey Urdangen, Director
Maria E. Hawilo

CENTER FOR DEATH PENALTY DEFENSE
Robert C. Owen, Director

CENTER FOR EXTERNSHIPS
Cynthia Wilson, Director

CENTER FOR INTERNATIONAL
HUMAN RIGHTS
David J. Scheffer, Director
Bridget Arimond, Director, LLM Program
Stephen Sawyer
Juliet Sorensen

CENTER ON NEGOTIATION
AND MEDIATION
Lynn P. Cohn, Director
Alyson Carrel
Daniel Gandert

CENTER ON WRONGFUL CONVICTIONS
Karen L. Daniel, Co-Director
Jane E. Raley, Co-Director
Laura Nirider
Judy Royal
Gregory Swygert
Joshua Tepfer

CHILDREN AND FAMILY JUSTICE CENTER
Julie Biehl, Director
Alison Flaum, Legal Director
Carolyn E. Frazier
Shobha Mahadev
Marjorie Moss
Uzoamaka Emeka Nzelibe

CIVIL LITIGATION CENTER
John S. Elson, Director
Laurie Mikva

ENTREPRENEURSHIP LAW CENTER
Esther Barron, Director
Stephen Reed

ENVIRONMENTAL ADVOCACY CENTER
Nancy Loeb, Director

INVESTOR PROTECTION CENTER
J. Samuel Tenenbaum, Director

RODERICK AND SOLANGE MACARTHUR
JUSTICE CENTER
Locke E. Bowman, Director
Sheila Bedi
David M. Shapiro
Alexa Van Brunt

January 12, 2017

Gino J. Agnello
Clerk for the U.S. Court of Appeals for the Seventh Circuit
Room 2722
219 S. Dearborn Street
Chicago, IL 60604

Re: *Dassey v. Dittmann*, No. 16-3397

Dear Mr. Agnello:

Under Federal Rule of Appellate Procedure 28(j), Petitioner-Appellee submits this response to Respondent's letter addressing *Murdock v. Dorethy*, No. 15-1660, 2017 WL 25477 (7th Cir. Jan. 3, 2017). Doc. 34.

In *Murdock*, Petitioner's voluntariness argument boiled down to one factor: his youthfulness. 2017 WL 25477 at *5. This Court rejected that argument because the state court considered *Murdock's* age as well as, relatedly, the absence of an adult during the interrogation as part of the totality of the circumstances test. *Id.* at *13-14. Limited by AEDPA, this Court explained that it would not reweigh this factor to determine reasonableness. *Id.*

The Respondent's reliance on *Murdock* is entirely misplaced. In granting Petitioner *Dassey* relief, the district court did not simply assign a different weight to a voluntariness factor that had already been considered by the state court. Rather, it found the Wisconsin Court of Appeals' fact-finding and application of the totality test unreasonable because the state court had erroneously concluded that no promises of leniency had been made when, in fact, such promises were made over and over. This error prevented the state court from weighing this factor at all. Indeed, the Wisconsin Court of Appeals unreasonably ignored the videotaped evidence showing not only the making of such promises, but also Brendan's subsequent, specific understanding that he would return to school after confessing.

Murdock does not address, moreover, the law regarding false promises of leniency or coercion, much less when such tactics are used on vulnerable suspects like sixteen-year old, intellectually disabled *Dassey*. This law underscored the district court's grant of relief and the

question presented for this Court's review. Indeed, both law and practice demonstrate that any reasonable court would have objected to the promises at issue: even *Amicus Curiae* Wicklander-Zulawski & Associates, one of the leading police interrogation training firms in the country, uses footage of Brendan's interrogation as a classic example of "what not to do" during interrogation when it trains officers. Doc. 26-2:5-6. The state court's decision to turn a blind eye to such tactics cannot be deemed reasonable, nor does *Murdock* excuse it.

Sincerely,

s/Laura H. Nirider

Counsel for Petitioner-Appellee Brendan Dassey

LAURA H. NIRIDER
STEVEN A. DRIZIN
Bluhm Legal Clinic (IL Bar No. 15245)
Northwestern University School of Law
375 East Chicago Avenue, 8th Floor
Chicago, IL 60611
Telephone: 312-503-8576
Facsimile: 312-503-8977
E-mail: l-nirider@law.northwestern.edu
s-drizin@law.northwestern.edu

ROBERT J. DVORAK
WI Bar No. 1017212
Halling & Cayo, S.C.
320 E. Buffalo St., #700
Milwaukee, WI 53202
Telephone: 414-271-3400
Facsimile: 414-271-3841
E-mail: rjd@hallingcayo.com

cc: All counsel of record via ECF

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2017, I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all registered CM/ECF users.

Dated: January 12, 2017

s/Laura H. Nirider

Counsel for Petitioner-Appellee Brendan Dassey