

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

ANDREW L. COLBORN,

Plaintiff,

vs.

**NETFLIX, INC.; CHROME MEDIA LLC,
F/K/A SYNTHESIS FILMS, LLC;
LAURA RICCIARDI; AND MOIRA
DEMOS,**

Defendants.

Civil No.: 19-CV-484-BHL

DECLARATION OF LEITA WALKER

I, Leita Walker, under penalty of perjury and subject to 28 U.S.C. § 1746, declare as follows:

1. I am one of the attorneys for Defendant Netflix, Inc. in the above-captioned action. I have personal knowledge of the matters set forth herein. I make this declaration in support of Netflix's Motion to Compel Production of Documents Responsive to Subpoena to Michael Griesbach.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action to Michael C. Griesbach as served on Mr. Griesbach on February 10, 2022.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Objection to Defendant Netflix, Inc.'s Subpoena to Attorney Michael Griesbach as served by counsel for Mr. Griesbach on Netflix, Inc. on February 24, 2022.

4. Attached hereto as Exhibit 3 is a true and correct copy of a March 8, 2022 letter sent by me to John F. Mayer, counsel for Mr. Griesbach in this matter, regarding Mr. Griesbach's objections to the Subpoena and seeking an opportunity to meet and confer regarding Mr. Griesbach's objections.

5. Attached hereto as Exhibit 4 is a true and correct copy of email correspondence between myself and Mr. Mayer regarding the scheduling of counsels' meet-and-confer, as well as correspondence exchanged after counsel's meet-and-confer.

6. Attached hereto as Exhibit 5 is a true and correct copy of email correspondence produced by the Manitowoc County Sheriff's Department in response to a subpoena served by Netflix, Inc., bates stamped Manitowoc-016498.

7. Attached hereto as Exhibit 6 is a true and correct copy of a document produced by the Manitowoc County Sheriff's Department in response to a subpoena served by Netflix, Inc., bates stamped Manitowoc-000065-068.

8. Attached hereto as Exhibit 7 is a true and correct copy of email correspondence sent by Mr. Griesbach to Producer Defendants Laura Ricciardi and Moira Demos, which I obtained from counsel for the Producer Defendants.

9. Attached hereto as Exhibit 8 is a true and correct copy of excerpts from the deposition transcript of September 22, 2005 Mr. Griesbach, in *Avery v. Manitowoc Cty.*, No. 04 C 986.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 22, 2022

/s/ Leita Walker
Leita Walker

Exhibit 1

UNITED STATES DISTRICT COURT

for the

Eastern District of Wisconsin

Andrew L. Colborn

Plaintiff

v.

Netflix, Inc., et al

Defendant

Civil Action No. 19-CV-484-BHL

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Michael C. Griesbach

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Please see attached Exhibit A

Table with 2 columns: Place (Godfrey & Kahn, S.C., Attn: James Friedman, 833 East Michigan Street, Suite 1800, Milwaukee, WI 53202-5615) and Date and Time (March 11, 2022 at 10:00 a.m.)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 02/09/2022

GINA M. COLLETTI
CLERK OF COURT

OR s/ James A. Friedman

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Defendant Netflix, Inc., who issues or requests this subpoena, are: James Friedman, see address above, jfriedman@gklaw.com, (608) 284-2617

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 19-CV-484-BHL

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

EXHIBIT A

EXHIBIT A

Pursuant to the attached Subpoena, you are commanded to produce the following documents, electronically stored information, or tangible things in your possession, custody, or control:

Definitions & Instructions

The following definitions and instructions shall apply to the Document Requests herein. Notwithstanding any definition below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure.

Instructions

1. You are obligated to produce all responsive documents in your possession, custody or control. This means that you are obligated not only to conduct an adequate search for responsive documents that you currently possess, but also to make the same fulsome search for all responsive documents that are in your custody or control. This obligation requires you to search for all responsive documents that you have a legal right to obtain from any source, including documents that are currently in the possession of third parties, such as bankers, accountants, physicians, attorneys, agents, representatives, employees, or government agencies.

2. If you cannot respond to any document request in full, after exercising due diligence to secure the requested information, so state and answer to the extent possible, specifying the reasons for your inability to answer the remainder, and stating whatever information or knowledge you have concerning the unanswered portions.

3. If any document or portion thereof which falls within the scope of the requested documents is withheld from inspection or production, the document or portion thereof shall be identified and the reasons for withholding such documents or portion thereof shall be stated.

This identification of the document or portion thereof shall include (1) the date of the document; (2) the author or originator of the document; (3) the person or entity to whom the document was addressed; (4) the name of each person or entity who was provided with a copy of, had access to or examined the document; (5) the type or title of the document; (6) the general subject matter of the document; and (7) the present location of the document and the name of the custodian thereof. For any document which is the subject of a claim of the attorney-client privilege or attorney work product, the grounds upon which the claim of privilege or attorney work product is made shall also be stated.

4. In accordance with the provisions of Fed. R. Civ. P. Rule 45(e)(1)(A), the requested documents shall be produced as they are kept in the usual course of business, or shall be organized to correspond with the categories in the requests.

5. In accordance with the provisions of Fed. R. Civ. P. Rule 45(a)(1)(C), when a document request calls for the production of electronically stored information, you should produce the material in both a .pdf or .tiff image format with a document-control number associated with each page of such images, as well as in the native format of the material so that all associated metadata is also produced with the electronic file.

6. Unless otherwise specified, each request calls for production of documents created on or after January 1, 2002 and before October 1, 2018.

7. Attached hereto as Exhibit B is a true and correct copy of the protective order entered by the Court in this action for your reference.

Definitions

1. The use of the singular form of any word includes the plural and vice versa.

2. The words “and,” “or,” and “and/or” should be construed conjunctively or disjunctively as necessary to make the discovery requests inclusive rather than exclusive.

3. The terms “each,” “any,” and “all” mean “any and all” or “each and every,” and should be construed to make the discovery requests inclusive rather than exclusive.

4. The term “including” should be construed to make the discovery requests inclusive rather than exclusive.

5. The term “communication” means any form of communication, including in-person oral communications, meetings and/or witness consultations, telephone conferences, transcripts of such meetings or telephone conferences, e-mails, text messages, letters, notes, memoranda, or any transcript of information, inquiries, ideas, facts, opinions or thoughts by any means, at any time or place, under any circumstance.

6. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), including, without limitation, all communications (as defined above), e-mails, text messages, letters, correspondence, memoranda, papers, records, notes, diaries, reports, phone logs, calendars, day-timer and appointment book entries, information contained on computer or other electronic storage, metadata, compilations, ledgers, tape recordings, telegrams, summaries, electronic or computerized data compilations, and any other documents as that term is used in Fed. R. Civ. P. 34 and Rule 1001 of the Federal Rules of Evidence. All original documents, file copies, and all other copies, drafts or non-identical copies of such documents or prepared in connection with such documents, no matter how or by whom prepared, and whether used or not, are separate documents within the meaning of this term.

7. The term “concerning” means relating to, referring to, describing, evidencing or constituting.

8. The terms “regarding,” “relating to,” “related to,” and/or “referring to,” mean constituting, containing, embodying, reflecting, identifying, incorporating, summarizing, mentioning, dealing with, supporting, or in any way pertaining to the particular request.

9. The term “person” means a natural person, firm, association, organization, partnership, business, trust, corporation, public entity or any other kind of business or legal entity.

10. The phrase “any person or persons acting on your behalf” includes, but is not limited to, agents, contractors, subcontractors, attorneys, employees, expert witnesses, and investigators, whether hired or appointed by you, your attorneys or their representatives, or by a court of law.

11. The term “identify,” when referring to documents, means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

12. The term “Making a Murderer” means the documentary television series first released by Netflix on December 18, 2015.

13. The term “Producer Defendants” refers to Laura Ricciardi, Moira Demos, and Chrome Media, LLC f/k/a Synthesis Film, LLC.

14. The terms “Plaintiff” or “Colborn” refer to the Plaintiff in this matter, Andrew L. Colborn.

15. The term “books” refer to the books *Unreasonable Inferences: The True Story of a Wrongful Conviction and Its Astonishing Aftermath* (2010), *The Innocent Killer: A True*

Story of a Wrongful Conviction and its Astonishing Aftermath (2014), and *Indefensible: The Missing Truth about Steven Avery, Teresa Halbach, and Making a Murderer* (2016).

16. The terms “you,” “your,” “yours,” mean you and any and all of your agents, employees, contractors, subcontractors, or any persons acting on your behalf.

Document Requests

1. All documents drafted in connection with the books, whether formal or informal, including outlines, treatments, and draft and final manuscripts.

2. All documents and communications which you consulted, relied upon, sent, received, or used in writing the books.

3. All documents and communications regarding, related to, including or consisting of any drafting, editing or fact-checking of the books.

4. All documents and communications regarding, related to, including or consisting of marketing and promotion of your books.

5. All documents and communications regarding, related to, including or consisting of your opinions regarding and reaction to *Making a Murderer*.

6. All communications between, among or involving Ronald Goldfarb regarding your books, *Making a Murderer*, Netflix, or the Producer Defendants.

7. All documents and communications regarding or related to *Making a Murderer* including but not limited to all communications with the Producer Defendants.

8. All documents and communications regarding, related to, consulted, or drafted as part of the Attorney General and Department of Criminal Investigation review of the prosecution of Steven Avery for the rape of Penny Beerntsen, including the 2003 exoneration of Steven Avery.

9. All documents and communications consulted in preparation for your September 22, 2005 deposition in the civil lawsuit *Avery v. Manitowoc County*, 04-C-986 (E.D. Wisc.).

10. All documents and communications consulted in your preparation of the initial search warrant for the Avery property, as described in *Innocent Killer* at 221.

11. All correspondence between, among or involving James Bolger, Jerry Buting, Lisa Callif, Reesa Evans, Norm Gahn, Stephen Glynn, Robert Henack, Len Kachinsky, Walter Kelly, Tom Kocourek, Ken Kratz, Peg Lautenschlager, Kenneth Petersen, Dean Strang, or Denis Vogel regarding Penny Beerntsen, Teresa Halbach, Steven Avery, your books, *Making a Murderer*, Netflix, or the Producer Defendants.

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

ANDREW L. COLBORN,

Plaintiff,

vs.

Civil No.: 19-CV-0484-BHL

**NETFLIX, INC.; CHROME MEDIA
LLC, F/K/A SYNTHESIS FILMS,
LLC; LAURA RICCIARDI; AND
MOIRA DEMOS,**

Defendants.

PROTECTIVE ORDER

Based on the Stipulation of the parties and the factual representations set forth therein, the Court finds that exchange of sensitive information between or among the parties and/or third parties other than in accordance with this Order may cause unnecessary damage and injury to the parties or to others. The Court further finds that the terms of this Order are fair and just and that good cause has been shown for entry of a protective order governing the confidentiality of documents produced in discovery, answers to interrogatories, answers to requests for admission, and deposition testimony.

IT IS THEREFORE ORDERED THAT, pursuant to Fed. R. Civ. P. 26(c) and Civil L. R. 26(e):

(A) DESIGNATION OF CONFIDENTIAL OR ATTORNEYS' EYES ONLY INFORMATION. Designation of information under this Order must be made by placing or affixing on the document or material, in a manner that will not interfere with its legibility, the words "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

(1) One who produces information, documents, or other material may designate them as "CONFIDENTIAL" when the person in good faith believes they contain trade secrets or nonpublic confidential technical, commercial, financial, personal, or business information.

(2) One who produces information, documents, or other material may designate them as “ATTORNEYS’ EYES ONLY” when the person in good faith believes that they contain particularly sensitive trade secrets or other nonpublic confidential technical, commercial, financial, personal, or business information that requires protection beyond that afforded by a CONFIDENTIAL designation.

(3) Except for information, documents, or other materials produced for inspection at the party’s facilities, the designation of confidential information as CONFIDENTIAL or ATTORNEYS’ EYES ONLY must be made prior to, or contemporaneously with, their production or disclosure. In the event that information, documents, or other materials are produced for inspection at the party’s facilities, such information, documents, or other materials may be produced for inspection before being marked confidential. Once specific information, documents, or other materials have been designated for copying, any information, documents, or other materials containing confidential information will then be marked confidential after copying but before delivery to the party who inspected and designated them. There will be no waiver of confidentiality by the inspection of confidential information, documents, or other materials before they are copied and marked confidential pursuant to this procedure.

(4) Portions of depositions of a party’s present and former officers, directors, employees, agents, experts, and representatives will be deemed confidential only if designated as such when the deposition is taken or within 30 days of receipt of the deposition transcript.

(5) If a party inadvertently produces information, documents, or other material containing CONFIDENTIAL or ATTORNEYS’ EYES ONLY information without marking or labeling it as such, the information, documents, or other material shall not lose its protected status through such production and the parties shall take all steps reasonably required to assure its continued confidentiality if the producing party provides written notice to the receiving party within 10 days of the discovery of the inadvertent production, identifying the information, document or other material in question and of the corrected confidential designation.

(B) DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION.

Information, documents, or other material designated as CONFIDENTIAL OR ATTORNEYS’ EYES ONLY under this Order must not be used or disclosed by the parties or counsel for the parties or any persons identified in subparagraphs (B)(1) and (2) below for any purposes whatsoever other than preparing for and conducting the litigation in which the information, documents, or other material were disclosed (including appeals). The parties must not disclose information, documents, or other material designated as confidential to putative class members not named as plaintiffs

in putative class litigation unless and until one or more classes have been certified. Nothing in this Order prohibits a receiving party that is a government agency from following its routine uses and sharing such information, documents or other material with other government agencies or self-regulatory organizations as allowed by law.

(1) **CONFIDENTIAL INFORMATION.** The parties and counsel for the parties must not disclose or permit the disclosure of any information, documents or other material designated as “CONFIDENTIAL” by any other party or third party under this Order, except that disclosures may be made in the following circumstances:

(a) Disclosure may be made to employees of counsel for the parties or, when the party is a government entity, employees of the government, who have direct functional responsibility for the preparation and trial of the lawsuit. Any such employee to whom counsel for the parties makes a disclosure must be advised of, and become subject to, the provisions of this Order requiring that the information, documents, or other material be held in confidence.

(b) Disclosure may be made only to employees of a party required in good faith to provide assistance in the conduct of the litigation in which the information was disclosed who are identified as such in writing to counsel for the other parties in advance of the disclosure of the confidential information, documents or other material.

(c) Disclosure may be made to court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making copies of documents or other material. Before disclosure to any such court reporter or person engaged in making copies, such reporter or person must agree to be bound by the terms of this Order.

(d) Disclosure may be made to consultants, investigators, or experts (collectively “experts”) employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit. Before disclosure to any expert, the expert must be informed of and agree to be subject to the provisions of this Order requiring that the information, documents, or other material be held in confidence.

(e) Disclosure may be made to deposition and trial witnesses in connection with their testimony in the lawsuit and to the Court and the Court’s staff.

(f) Disclosure may be made to persons already in lawful and legitimate possession of such CONFIDENTIAL information.

(2) **ATTORNEYS' EYES ONLY INFORMATION.** The parties and counsel for the parties must not disclose or permit the disclosure of any information, documents, or other material designated as "ATTORNEYS' EYES ONLY" by any other party or third party under this Order to any other person or entity, except that disclosures may be made in the following circumstances:

(a) Disclosure may be made to counsel and employees of counsel for the parties who have direct functional responsibility for the preparation and trial of the lawsuit. Any such employee to whom counsel for the parties makes a disclosure must be advised of, and become subject to, the provisions of this Order requiring that the information, documents, or other material be held in confidence.

(b) Disclosure may be made to court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making copies of documents or other material. Before disclosure to any such court reporter or person engaged in making copies, such reporter or person must agree to be bound by the terms of this Order.

(c) Disclosure may be made to consultants, investigators, or experts (collectively "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit. Before disclosure to any expert, the expert must be informed of and agree to be subject to the provisions of this Order requiring that the information, documents, or other material be held in confidence.

(d) Disclosure may be made to deposition and trial witnesses in connection with their testimony in the lawsuit and to the Court and the Court's staff.

(e) Disclosure may be made to persons already in lawful and legitimate possession of such ATTORNEYS' EYES ONLY information.

(C) MAINTENANCE OF CONFIDENTIALITY. Except as provided in subparagraph (B), counsel for the parties must keep all information, documents, or other material designated as confidential that are received under this Order secure within their exclusive possession and must place such information, documents, or other material in a secure area.

(1) All copies, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as "copies") of information, documents, or other material designated as confidential under this Order, or any portion thereof, must be immediately affixed with the words "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" if not already containing that designation.

(2) To the extent that any answers to interrogatories, transcripts of depositions, responses to requests for admissions, or any other papers filed or to be filed with the Court reveal or tend to reveal information claimed to be confidential, these papers or any portion thereof must be filed under seal by the filing party with the Clerk of Court utilizing the procedures set forth in General L. R. 79(d). If a Court filing contains information, documents, or other materials that were designated “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” by a third party, the party making the filing shall provide notice of the filing to the third party.

(D) CHALLENGES TO CONFIDENTIALITY DESIGNATION. A party may challenge the designation of confidentiality by motion. The movant must accompany such a motion with the statement required by Civil L. R. 37. The designating party bears the burden of proving that the information, documents, or other material at issue are properly designated as confidential. The Court may award the party prevailing on any such motion actual attorney fees and costs attributable to the motion.

(E) CONCLUSION OF LITIGATION. At the conclusion of the litigation, a party may request that all information, documents, or other material not filed with the Court or received into evidence and designated as CONFIDENTIAL or ATTORNEYS’ EYES ONLY under this Order must be returned to the originating party or, if the parties so stipulate, destroyed, unless otherwise provided by law. Notwithstanding the requirements of this paragraph, a party may retain a complete set of all documents filed with the Court, subject to all other restrictions of this Order.

Dated at Milwaukee, Wisconsin on August 19, 2021.

s/ Brett H. Ludwig

BRETT H. LUDWIG

United States District Judge

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

ANDREW L. COLBORN,

Plaintiff,

v.

Case No. 19-CV-484

NETFLIX, INC.,
CHROME MEDIA, LLC, f/k/a
SYNTHESIS FILMS, LLC,
LAURA RICCIARDI, and
MOIRA DEMOS,

Defendants.

OBJECTION TO DEFENDANT NETFLIX, INC.'S SUPBOENA TO ATTORNEY
MICHAEL GRIESBACH

Michael Griesbach by his attorneys, Mayer, Graff & Wallace, LLP, hereby objects to Defendant Netflix, Inc.'s subpoena for the production of documents pursuant to Fed. R. Civ. P. 45.

The objections include, but are not limited to:

1. Mr. Griesbach is counsel of record for plaintiff Andrew L. Colborn. Defendant Netflix, Inc. ("Netflix") has served a subpoena pursuant to Rule 45 on Michael Griesbach ("Griesbach") for a barrage of information related to a number of books that Mr. Griesbach wrote about his impressions of the Netflix Series *Making a Murderer* and the subjects discussed within the series. See generally Subpoena. Mr. Griesbach is not a witness in this matter, nor should he be permitted to become one as it simply would not further this matter. Mr. Griesbach's books are simply his own impression of the issues and have no bearing on this case.

2. The evidence is not relevant pursuant to Fed. R. Civ. P. 401. Mr. Griesbach's books are based entirely on his own impressions of publicly available records. There is nothing which Mr. Griesbach could provide in this matter that would further this matter and nothing which is original evidence. Fed. R. Civ. P. 401 provides that evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact of consequence in determining the action." The evidence which Netflix seeks is not relevant per this standard. Mr. Griesbach relied exclusively on publicly available records, the same records that the Netflix series is based on. There is simply nothing which Mr. Griesbach could provide which is not already available to Netflix, and thus nothing that would have any tendency to make a fact more or less probable.

3. The requested information is protected because of its proprietary nature.

4. These requests seek evidence that is otherwise available.

5. These requests seek information and material that could never be admitted into evidence.

6. These requests are over-broad and unduly burdensome.

7. Mr. Griesbach has no special knowledge concerning the evidence in the Halbach investigation. He relied on publicly available documents including court filings, the Court's written decisions and orders, hearing transcripts from court proceedings including the transcripts from the 6-week long jury trial, and the transcripts from Netflix's *Making a Murderer*.

8. All the evidence is available to the defendants without the obvious effort to turn a plaintiff's attorney into a witness for its prejudicial effect.

Dated 24th day of February, 2022.

MAYER, GRAFF & WALLACE LLP

/s/ John F. Mayer

By: _____

John F. Mayer
State Bar No. 1017384
Attorneys for Michael Griesbach

Mailing Address:

1425 Memorial Drive, Suite B
Manitowoc, WI 54220
(920) 683-5800 Telephone
(800) 465-1031 Facsimile
jmayer@mgwlawwi.com

Exhibit 3

2000 IDS Center
80 South 8th Street
Minneapolis, MN 55402-2119
TEL 612.371.3211
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www.ballardspahr.com

Leita Walker
Tel: 612.371.6222
Fax: 612.371.3207
walkerl@ballardspahr.com

March 8, 2022

VIA E-MAIL
(jmayer@mgwlawwi.com)

John F. Mayer
Mayer, Graff & Wallace, LLP
1425 Memorial Drive, Suite B
Manitowoc, WI 54220
Tel: (920) 683-5800

Re: Colborn v. Netflix, Inc. et al., 19-cv-484 (E.D. Wis.)

Dear Counsel:

As you know, this firm represents defendant Netflix in the above-captioned litigation (the “Litigation”). On February 10, 2022, Netflix served on your client, Michael Griesbach, a subpoena for the production of documents pursuant to Federal Rule of Civil Procedure 45 (the “Subpoena”). The Subpoena sought 11 categories of documents and communications, all of which relate to matters central to this Litigation: namely, the extent to which *Making a Murderer* is a substantially accurate depiction of the events underlying it; how viewers (including Mr. Griesbach) reacted to *Making a Murderer*; and how *Making a Murderer* impacted the reputation of Plaintiff Andrew Colborn, if at all. On February 24, you submitted objections to the Subpoena on Mr. Griesbach’s behalf (the “Objections”), and on that basis, Mr. Griesbach has withheld all documents responsive to the Subpoena.

Mr. Griesbach’s Objections can be categorized as follows:

- (1) the Subpoena seeks information that is inadmissible and not relevant to this case according to the standard set by Federal Rule of Evidence 401;
- (2) the Subpoena is overly broad and unduly burdensome;
- (3) the Subpoena seeks information that is both public or otherwise available to Netflix, but at the same time, protected because of its proprietary nature; and
- (4) because Mr. Griesbach is now counsel of record, his first-hand knowledge of the events which underlie *Making a Murderer* and which predates his notice of appearance in this case is suddenly beyond reach of discovery.

For the reasons explained below, however, these Objections lack merit. We therefore write to request that you withdraw the Objections and promptly disclose all documents responsive to the Subpoena so that Netflix is not forced to bring a motion to compel.

I. The Objections Are Waived In Light of Their Reliance on Boilerplate Language.

The objections consist of boilerplate language without specific factual or legal authority. *None* of the Objections address the Subpoena requests individually to explain why a particular request is improper. *See generally* Objections ¶¶ 1-8. Such rote, facially deficient Objections are “tantamount to no objections at all.” *Ezell v. City of Chicago*, 2021 U.S. Dist. LEXIS 99624, at *17 (N.D. Ill. May 26, 2021) (collecting cases).

“The burden rests upon the objecting party to show why a particular discovery request is improper.” *Gingerich v. City of Elkhart Prob. Dep’t*, 273 F.R.D. 532, 536 (N.D. Ind. 2011) (internal quotation marks omitted). That burden is only met where the objections “state with specificity the grounds for objecting to the request, including reasons.” *Fralish v. Digital Media Solutions*, 2021 U.S. Dist. LEXIS 225281, at *11 (N.D. Ind. Nov. 17, 2021). “[G]eneral objections that recite boilerplate language without explanation of how they apply to *specific discovery requests* do not meet this burden” and are “routinely overrule[d]” by the Seventh Circuit. *Id.* (emphasis added).

II. The Objections Ignore the Scope of Discovery Under the Federal Rules of Civil Procedure.

Mr. Griesbach objects to the Subpoena on the ground that “[t]he evidence is not relevant pursuant to Fed. R. [Evid.] 401.” Objection ¶ 2. He also objects that the Subpoena “seek[s] information and material that could never be admitted into evidence.” Objections ¶ 5. Neither objection is valid.

“Information within th[e] scope of discovery need not be admissible in evidence to be discoverable.” Fed. R. Civ. P. 26(b)(1); *Fralish v. Digital Media Solutions*, 2021 U.S. Dist. LEXIS 225281, at *7 (N.D. Ind. Nov. 17, 2021) (“In discovery, what is relevant includes more than what is admissible at trial.”). Moreover, “[a]s expansive as is the definition of relevancy under Rule 401 of the Federal Rules of Evidence, the standard under Rule 26 is even broader.” *Hodgdon v. Northwestern Univ.*, 245 F.R.D. 337, 341 (N.D. Ill. 2007) (internal citations omitted). Indeed, relevancy is construed so broadly in discovery that it encompasses not just information which itself directly bears on an issue in the case but also “that [which] could lead to *other* matter that could bear on[] any issue that is or may be in the case.” *Chavez v. Daimler Chrysler Corp.*, 206 F.R.D. 615, 619 (S.D. Ind. 2002) (emphasis added).

The Subpoena easily clears this low bar, as shown by even a cursory comparison of Mr. Colborn’s Second Amended Complaint and Mr. Griesbach’s books. For example, Mr. Griesbach writes of conversations he had with Mr. Colborn regarding the telephone call Mr. Colborn received while working at the Manitowoc County Jail. He also writes about drafting the initial search warrant for the Avery property and about the strange “coincidence of the timing” of Mr. Colborn’s and Jim Lenk’s depositions in Mr. Avery’s civil lawsuit and their finding Ms. Halbach’s car key in Mr. Avery’s bedroom. He also writes about public reaction to Mr. Avery’s exoneration and subsequent arrest and trial for Ms. Halbach’s murder and how people’s opinions toward Mr. Avery “didn’t evolve.”

These are but a few examples of many demonstrating why Netflix's requests are reasonable, relevant, and proportionate to the needs of this case. As such, there is no basis for a relevance objection, and Mr. Griesbach is obligated to promptly produce all responsive material.

III. The Subpoena Is Neither Overly Broad Nor Unduly Burdensome.

Mr. Griesbach states his entire overbreadth and undue burden objection in a single, conclusory sentence: "Th[e] requests are over-broad and unduly burdensome." Objections ¶ 6. "But, rote, unamplified, conclusory recitals *such as unduly burdensome, overbroad, vague and ambiguous* are ineffectual as every court in the country has held." *Ezell*, 2021 U.S. Dist. LEXIS 99624, at *17 (collecting cases) (emphasis added). If Netflix is forced to compel production of documents responsive to the Subpoena, Mr. Griesbach will have to do more—he will have to "adequately demonstrate the nature and extent of the claimed burden by making a *specific showing* as to how disclosure of the requested documents and information would be particularly burdensome." *Perry v. City of Gary*, 2009 U.S. Dist. LEXIS 65103, at *11 (N.D. Ind. July 27, 2009) (internal quotation marks omitted) (emphasis added). "This showing typically requires affidavits or other [affirmative] evidence supporting a party's assertions of burden." *Avenatti v. Gree USA, Inc.*, 2021 U.S. Dist. LEXIS 52969, at *7 (S.D. Ind. March 17, 2021) (quoting *Whole Woman's Health All. v. Hill*, 2019 U.S. Dist. LEXIS 234048 (S.D. Ind. Oct. 7, 2019) (collecting cases)).

Here, Mr. Griesbach made *no* showing—specific or otherwise—as to how the Subpoena would burden him.

IV. Mr. Griesbach's Conflicting Objection That the Subpoena Seeks Information That Is Both Public and Proprietary Itself Demonstrates That This Objection Is Invalid.

Next, the Objections claim that "[t]he[] requests seek evidence that is otherwise available," but fail to identify with any specificity which requests seek only "publicly available records." See Objections ¶¶ 2, 4. Nor could they. The Subpoena seeks documents uniquely in Mr. Griesbach's custody and control. For example, Document Request 7 seeks "[a]ll documents and communications regarding or related to Making a Murderer." Clearly, documents responsive to this request, such as e-mails Mr. Griesbach sent from a private address, are not necessarily public records *and* may not be available to Netflix through another source. Similarly, Document Request 11 seeks "[a]ll correspondence between, among or involving . . . Ken Kratz . . . [regarding] Teresa Halbach [or] Steven Avery." We know that in November 2005, Mr. Griesbach had a private meeting with Ken Kratz, Mark Rohrer, and Detective Wiegert, resulting in the decision to draft a search warrant for the Avery Salvage Yard. See Manitowoc-000066. It is thus apparent that Mr. Griesbach has non-public information that is relevant to this case.

What's more, Mr. Griesbach simultaneously claims that he "relied exclusively on publicly available records, the same records that the Netflix series is based on," and that "[t]he requested information is protected because of its proprietary nature." Compare Objections ¶¶ 2, 4, 7, *with id.* ¶ 3. These Objections are mutually exclusive, and your failure to specify which requests you believe seek publicly-available information and which seek purportedly proprietary information is sufficient to find waiver of both.

In any event, the purportedly proprietary nature of the information is insufficient ground to withhold discoverable material. Attached as Exhibit B to the Subpoena was the Protective

Order entered in this case. That Protective Order contemplates that a producing party may designate responsive material either “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” when that material “contain[s] trade secrets or nonpublic confidential technical, commercial, financial, personal, or business information” (*i.e.*, information that is proprietary in nature). *See* Subpoena Ex. B ¶¶ (A)(1), (2). In other words, it is *not* permissible for Mr. Griesbach to withhold relevant, responsive material because of its of allegedly proprietary nature.

And to the extent Mr. Griesbach is withholding documents based on the (incorrect) notion that “[t]here is simply nothing which [he] could provide which is not already available to Netflix,” *see* Objections ¶ 2, “[i]t is no objection to discovery that the moving party may already have” the documents sought. *Cf. Burton Mechanical Contractors, Inc. v. Foreman*, 148 F.R.D. 230, 236 (N.D. Ill. Dec. 11, 1992) (“To the extent that Mr. Foreman has declined to produce requested documents in his possession or under his control on the ground that they are in Burton’s possession as the result of separate litigation, his response is insufficient. Burton is entitled to production of the documents in this action, without regard to whether they may have been provided to Burton in other litigation.”).

V. Mr. Griesbach Is—And Always Has Been—A Material Fact Witness In This Case.

The Objections make several claims that “Mr. Griesbach is not a witness in this matter, nor should he be permitted to become one.” Objections ¶ 1. Notably, Netflix has not yet served a deposition or trial subpoena upon Mr. Griesbach; it has simply requested he produce various documents. But respectfully, assertions that Mr. Griesbach is not a witness in this matter are patently false. Mr. Griesbach’s role in the underlying events long predates his representation of Mr. Colborn in this Litigation,¹ and any suggestion to the contrary is but a feeble attempt by Mr. Griesbach to avoid his obligations as a fact witness. That he has personal knowledge of—and relevant, discoverable material related to—matters at the very heart of this Litigation is readily apparent throughout his books.

Beyond those examples already provided above, in *The Innocent Killer* (which was originally published in 2014, more than a year before the release of *Making a Murderer*), Mr. Griesbach details that he was the first person to discover information about Gregory Allen in the Steven Avery files of the Manitowoc County District Attorney’s Office (*id.* at 128); that he directly communicated with the Wisconsin Innocence Project which was representing Mr. Avery; that he was one of only two people in the room when the DNA analyst at the crime lab delivered the news that Mr. Avery was excluded as a match for the pubic hair recovered from Penny Beerntsen (*id.* at 128-35); and that he was subpoenaed *and actually deposed* in Steven Avery’s lawsuit against Manitowoc County (*id.* at 180-81)—the same lawsuit in which Mr. Colborn was deposed for his role in Mr. Avery’s wrongful conviction. All of these monumental points in the Steven Avery exoneration were depicted in *Making a Murderer*, and go directly to whether the series is, in fact, a truthful depiction of these events. Indeed, Mr. Griesbach himself appears in *Making a Murderer* and angled for a more substantial role in the series.

All of these examples highlight that any characterization of the Subpoena as an “obvious effort to turn a plaintiff’s attorney into a witness for its prejudicial effect,” *see* Objections ¶ 8,

¹ “If only I had not been involved in the Avery story myself, perhaps then I could have simply enjoyed the craftsmanship” of *Making a Murderer*. Michael Griesbach, *Indefensible* at 9.

blatantly ignores the central role Mr. Griesbach has played in the saga that is the subject of *Making a Murderer*.

* * *

Please advise when you are available this week to discuss this matter by phone. We remain open to your input on whether there are ways to narrow the scope of the Subpoena so as to avoid the need for formal motion practice. At this point, however, we see no legal basis for Mr. Griesbach to refuse to comply with the Subpoena, and we trust that prior to our meet-and-confer you will endeavor to determine which, if not all, of the Objections your client will withdraw.

Sincerely,

A handwritten signature in black ink, appearing to read "Leita Walker", with a long horizontal flourish extending to the right.

Leita Walker

cc: April Rockstead Barker
George Burnett
Kevin Vick

Exhibit 4

Parsons, Emmy (DC)

From: John F. Mayer <jmayer@mgwlawwi.com>
Sent: Friday, March 11, 2022 5:24 PM
To: Walker, Leita (Minn)
Cc: April Barker; George Burnett; Jean-Paul Jassy; Kevin Vick; Meghan Fenzel; Salomao Nascimento, Isabella (Minn); Kelley, Matthew E. (DC); Parsons, Emmy (DC); Friedman, James; Sarah Endries
Subject: RE: Colborn v. Netflix -- Deficiency Letter re Griesbach Objections

⚠ EXTERNAL

Ms Walker ; Ouch , I have no interest in raising the temperature by making threats or accusations ! I have no interest in arguing about what your silence or my silence means . More to the point I had no intention of authoring an email . It was not until I received your email which included a “summary” which I did not agree with that I felt compelled to respond . I think both of us are better than this .

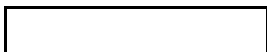
Setting aside the above may I suggest that the conclusion you draw should be reconsidered : It is our job to understand and explain the law , court rules and professional responsibility if doing so would resolve a dispute and preclude involvement of the Court . I am available and would welcome such an opportunity . I don’t see how it hurts you to share your views on the issues I raised . Afterall , you have to do this to prepare a motion , right ? thanks again for your time and have a great weekend . I will make myself available ! john

From: Walker, Leita <WalkerL@ballardspahr.com>
Sent: Friday, March 11, 2022 1:43 PM
To: John F. Mayer <jmayer@mgwlawwi.com>
Cc: April Barker <abarker@sbe-law.com>; George Burnett <GB@lcojlaw.com>; Kevin Vick <kvick@jassyvick.com>; Jean-Paul Jassy <jpjassy@jassyvick.com>; Meghan Fenzel <mfenzel@jassyvick.com>; Salomao Nascimento, Isabella <salomaonascimento@ballardspahr.com>; Kelley, Matthew E. <KelleyM@ballardspahr.com>; Parsons, Emmy <parsonse@ballardspahr.com>; Friedman, James <JFriedman@gklaw.com>
Subject: RE: Colborn v. Netflix -- Deficiency Letter re Griesbach Objections

Mr. Mayer, my use of the word “[upshot](#)” was intentional because I did not believe it would be productive to further engage with you by providing a play-by-play of our call. I would note that you have not actually pointed out anything inaccurate in my bullet points below. With regard to your to your email, I disagree with everything you say and I would have articulated my reasons to you over the phone had you given me a meaningful opportunity to speak, which you did not. It is not my job to explain to you federal law, court rules, or the rules of professional responsibility. Your behavior on the phone suggests you will insist on the last word in this email exchange. You can have it. Let me preemptively state, however, that you should not interpret my silence as agreement with anything you say. Again, I do not believe it is productive to further engage with you. Having met and conferred, it is clear to me that we need the Court’s involvement and we are preparing a motion to compel.

Sincerely,

Leita Walker





2000 IDS Center, 80 South 8th Street
Minneapolis, MN 55402-2119
612.371.6222 DIRECT
612.371.3207 FAX

walkerl@ballardspahr.com

www.ballardspahr.com

From: John F. Mayer <jmayer@mgwlawwi.com>

Sent: Friday, March 11, 2022 12:20 PM

To: Walker, Leita (Minn) <WalkerL@ballardspahr.com>

Cc: April Barker <abarker@sbe-law.com>; George Burnett <GB@lcojlaw.com>; Kevin Vick <kvick@jassyvick.com>; Jean-Paul Jassy <jpjassy@jassyvick.com>; Meghan Fenzel <mfenzel@jassyvick.com>; Salomao Nascimento, Isabella (Minn) <salomaonascimento@ballardspahr.com>; Kelley, Matthew E. (DC) <KelleyM@ballardspahr.com>; Parsons, Emmy (DC) <parsonse@ballardspahr.com>; Friedman, James <JFriedman@gklaw.com>

Subject: RE: Colborn v. Netflix -- Deficiency Letter re Griesbach Objections

⚠ EXTERNAL

Ms Walker – this looks to me like a very selective summary ; some of which is just basically factually incorrect ; Im not sure its helpful to explain other than to indicate the more obvious omissions ; I asked you how you get around Wisconsin law that protects persons like my client . You had no response and in fact stated that you knew nothing about it and therefore did not consider this . Of course it is a very fundamental concern which is directly connected to the other issue which consumed the bulk of the conversation . That of course is where I began the discussion by pointing out that your requests are designed to do exactly what the federal law prohibits , which is turning a lawyer on the matter into a witness . Indeed this is where I left the matter by asking you to address this issue . Specifically what I stated is that my suspicion is that via the subpoena you were trying purposely to interfere with Mr Colburn’s choice of counsel by trying to make counsel a witness . You ignored this , just as the Wisconsin law issue . I asked you specifically whether a production of ANY document would end up violating this prohibition . You told me something along the lines of “I never thought of that “ much like the concern about the absolute privilege under Wisconsin law . Per this email I am asking you why you believe these two bodies of law are not absolute prohibitions . I did explain that I would like to speak about the concerns I had with my client , but to do this I wanted your thoughts on the federal law . So the question to restate it is whether any production – including a response that says we do not have any responsive documents – could be construed as a violation of the attorney/witness prohibition under federal law . I need your thoughts on this because obviously I cannot take any step that could be used by you to support the position that my client has chosen to be a witness and therefore is disqualified as counsel . Please address this so we can consider the same .

Also from my perspective I indicated I had serious problems with the idea that anything my client had could be considered evidence because his opinions and ruminations about the publicly available evidence could not possibly be relevant to any issue in the case . I advised that under your definition of evidence any person , whether they be a court clerk , a juror ,a judge , or anyone that viewed the Netflix production would be a witness with evidence . Even more fundamentally , using your understanding of the law anyone that at anytime looked at any of the publically available evidence in any way ,shape or form would be considered a witness with relevant evidence . You did not address this concern other than to ask me if I read my clients books . You further told me that you felt my client had a special relationship with the evidence but when pressed you refused to explain this. So we want to know how observations , interpretations and thoughts about evidence could possibly be considered to make an issue of fact in the lawsuit against Netflix more or less true. Again , this is fundamental to our consideration of the subpoena .

Obviously from our standpoint getting to some agreement on the above issues is a pre requisite to a substantive response . share your thoughts on how these issues can be addressed . I indicated I could not provide you a response until these questions , particularly the federal prohibition on lawyers being witnesses are addressed .

Thanks very much , I enjoyed getting to know you and your team . We would like to move the discussion forward so please respond at your earliest – john

From: Walker, Leita <WalkerL@ballardspahr.com>

Sent: Friday, March 11, 2022 11:29 AM

To: John F. Mayer <jmayer@mgwlawwi.com>

Cc: April Barker <abarker@sbe-law.com>; George Burnett <GB@lcojlaw.com>; Kevin Vick <kvick@jassyvick.com>; Jean-Paul Jassy <jpjassy@jassyvick.com>; Meghan Fenzel <mfenzel@jassyvick.com>; Salomao Nascimento, Isabella <salomaonascimento@ballardspahr.com>; Kelley, Matthew E. <KelleyM@ballardspahr.com>; Parsons, Emmy <parsonse@ballardspahr.com>; Friedman, James <JFriedman@gklaw.com>

Subject: RE: Colborn v. Netflix -- Deficiency Letter re Griesbach Objections

Counsel, to memorialize the upshot of our call this morning:

- Your client presently does not plan to produce any documents responsive to the subpoena though he does have responsive documents to at least some requests in his possession, custody, and control.
- You said that he might not have documents responsive to certain requests. I asked for you to confirm that in writing.
- I told you Netflix would be bringing a motion to compel but that if you thought your client might, upon further consideration, provide some documents, we would consider his position before bringing said motion.
- You said you would take the issue “under advisement” and needed to talk to your client.
- We asked for a date by which we could expect a substantive response to our letter.
- You declined to provide a date.

Sincerely,

Leita Walker

[Redacted]

[Redacted]

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612.371.6222 DIRECT
612.371.3207 FAX

walkerl@ballardspahr.com

[Redacted]

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From: Walker, Leita (Minn)

Sent: Tuesday, March 8, 2022 12:00 PM

To: 'John F. Mayer' <jmayer@mgwlawwi.com>

Cc: April Barker <abarker@sbe-law.com>; George Burnett <GB@lcojlaw.com>; Kevin Vick <kvick@jassyvick.com>; Jean-Paul Jassy <jpjassy@jassyvick.com>; Meghan Fenzel <mfenzel@jassyvick.com>; Salomao Nascimento, Isabella (Minn) <salomaonascimento@ballardspahr.com>; Kelley, Matthew E. (DC) <KelleyM@ballardspahr.com>; Parsons, Emmy (DC) <parsonse@ballardspahr.com>; Friedman, James <JFriedman@gklaw.com>

Subject: RE: Colborn v. Netflix -- Deficiency Letter re Griesbach Objections

There are instructions in the invitation to simply call in, if you prefer. Or folks are welcome to keep their cameras off.
Leita

From: John F. Mayer <jmayer@mgwlawwi.com>

Sent: Tuesday, March 8, 2022 11:59 AM

To: Walker, Leita (Minn) <WalkerL@ballardspahr.com>

Cc: April Barker <abarker@sbe-law.com>; George Burnett <GB@lcojlaw.com>; Kevin Vick <kvick@jassyvick.com>; Jean-Paul Jassy <jpjassy@jassyvick.com>; Meghan Fenzel <mfenzel@jassyvick.com>; Salomao Nascimento, Isabella (Minn) <salomaonascimento@ballardspahr.com>; Kelley, Matthew E. (DC) <KelleyM@ballardspahr.com>; Parsons, Emmy (DC) <parsonse@ballardspahr.com>; Friedman, James <JFriedman@gklaw.com>

Subject: RE: Colborn v. Netflix -- Deficiency Letter re Griesbach Objections

 **EXTERNAL**

Leita – that’s fine . I am not sure I am familiar with Webex . I have used a number of web based platforms extensively but I do not recall this one so I offer no guarantees on a successful connection on my end . Is there a reason we need a video connection ? john

From: Walker, Leita <WalkerL@ballardspahr.com>

Sent: Tuesday, March 08, 2022 11:53 AM

To: John F. Mayer <jmayer@mgwlawwi.com>

Cc: April Barker <abarker@sbe-law.com>; George Burnett <GB@lcojlaw.com>; Kevin Vick <kvick@jassyvick.com>; Jean-Paul Jassy <jpjassy@jassyvick.com>; Meghan Fenzel <mfenzel@jassyvick.com>; Salomao Nascimento, Isabella <salomaonascimento@ballardspahr.com>; Kelley, Matthew E. <KelleyM@ballardspahr.com>; Parsons, Emmy <parsonse@ballardspahr.com>; Friedman, James <JFriedman@gklaw.com>

Subject: RE: Colborn v. Netflix -- Deficiency Letter re Griesbach Objections

Mr. Mayer, Friday at 10 works for me. I will send a Webex. I understand you need time to review the letter, so thanks for making time for the meet and confer this week. Depositions are six weeks away at most, so we want to make sure we can get things resolved in time for those and the potential need for the court’s involvement and the time that will take is something we’re trying to account for.

Leita

From: John F. Mayer <jmayer@mgwlawwi.com>

Sent: Tuesday, March 8, 2022 11:50 AM

To: Walker, Leita (Minn) <WalkerL@ballardspahr.com>

Cc: April Barker <abarker@sbe-law.com>; George Burnett <GB@lcojlaw.com>; Kevin Vick <kvick@jassyvick.com>; Jean-Paul Jassy <jpjassy@jassyvick.com>; Meghan Fenzel <mfenzel@jassyvick.com>; Salomao Nascimento, Isabella (Minn) <salomaonascimento@ballardspahr.com>; Kelley, Matthew E. (DC) <KelleyM@ballardspahr.com>; Parsons, Emmy (DC) <parsonse@ballardspahr.com>; Friedman, James <JFriedman@gklaw.com>

Subject: RE: Colborn v. Netflix -- Deficiency Letter re Griesbach Objections

 **EXTERNAL**

Counsel – I have no availability on Wednesday or Thursday . I think the most appropriate time would be Friday at 10 am or thereafter or Monday between 10 and 3 or Tuesday . I suspect you did not provide me your response to the

objections because like myself you needed time just as I will need time to consult with my client in response to the material you just provided . Advise as to your availability . Thank You

From: Walker, Leita <WalkerL@ballardspahr.com>

Sent: Tuesday, March 08, 2022 10:54 AM

To: John F. Mayer <jmayer@mgwlawwi.com>

Cc: April Barker <abarker@sbe-law.com>; George Burnett <GB@lcojlaw.com>; Kevin Vick <kvick@jassyvick.com>; Jean-Paul Jassy <jpjassy@jassyvick.com>; Meghan Fenzel <mfenzel@jassyvick.com>; Salomao Nascimento, Isabella <salomaonascimento@ballardspahr.com>; Kelley, Matthew E. <KelleyM@ballardspahr.com>; Parsons, Emmy <parsonse@ballardspahr.com>; Friedman, James <JFriedman@gklaw.com>

Subject: Colborn v. Netflix -- Deficiency Letter re Griesbach Objections

Dear Attorney Mayer,

Please see the attached letter, which responds to the objections of your client Michael Griesbach in the above-referenced matter. We would like to meet and confer on the topics set forth in the letter as soon as possible. Here is my availability over the next couple of days:

Tomorrow (Wednesday) before 9:30 am and after 2 pm.

Thursday except from 11:30 am to 2 pm.

Please advise if you are free in those windows. I have copied all counsel of record on this email, except Mr. Griesbach, since he is a represented party. I will direct communications about the Subpoena to you but, given Mr. Griesbach is counsel of record, I plan to communicate directly with him on all other matters related to this case. Please advise if you disagree with that approach.

Sincerely,

Leita Walker

[Redacted]

[Redacted]

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612.371.6222 DIRECT
612.371.3207 FAX

walkerl@ballardspahr.com

[Redacted]

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Exhibit 5

To: Larry Ledvina[LarryLedvina@co.manitowoc.wi.us]; Robert Hermann[RobertHermann@co.manitowoc.wi.us]; Gregg Schetter[GreggSchetter@co.manitowoc.wi.us]; Todd Hermann[ToddHermann@co.manitowoc.wi.us]; Andrew Colborn[AndrewColborn@co.manitowoc.wi.us]
From: Michael Riddle
Sent: Tue 1/5/2016 11:53:26 AM
Subject: FW: Sykes interview re Netflix doc, save at home
010516 Attorney Author Michael Griesbach.mp3

I received this from ADA Griesbach. I do not know if you heard this live broadcast, or perhaps have already had it forwarded to you. Thought it may be of interest to you.

Mike

Deputy Mike Riddle
Manitowoc County Sheriff's Department
Bailiff / Courthouse Security
1025 S.9th St.
Manitowoc, WI 54220
920-683-4201 Dispatch
920-323-9053 Cell
920-683-4946 Fax
920-683-5000 ext.2457 Voice Mail
MichaelRiddle@co.manitowoc.wi.us

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From: Griesbach, Mike [mailto:Mike.Griesbach@da.wi.gov]
Sent: Tuesday, January 05, 2016 1:42 PM
To: Michael Riddle <MichaelRiddle@co.manitowoc.wi.us>
Subject: FW: Sykes interview re Netflix doc, save at home

From: Griesbach, Mike
Sent: Tuesday, January 05, 2016 12:29 PM
To: 'mjgriesbach@gmail.com'
Subject: Sykes interview re Netflix doc, save at home

Exhibit 6

1. "In spite of the internal recognition awards, Lenk and Colborn both came under fire at the time of Avery's 2007 murder trial. Avery's lawyers Dean Strang and Jerry Buting accused the pair of planting a spare key for Halbach's vehicle inside of Avery's bedroom and planting Avery's blood inside the victim's Toyota sports utility vehicle."

Myth: In 2002, Lenk handled a box of unsecured evidence stored next door in the county courthouse building. The contents contained a vial of Steven Avery's blood.

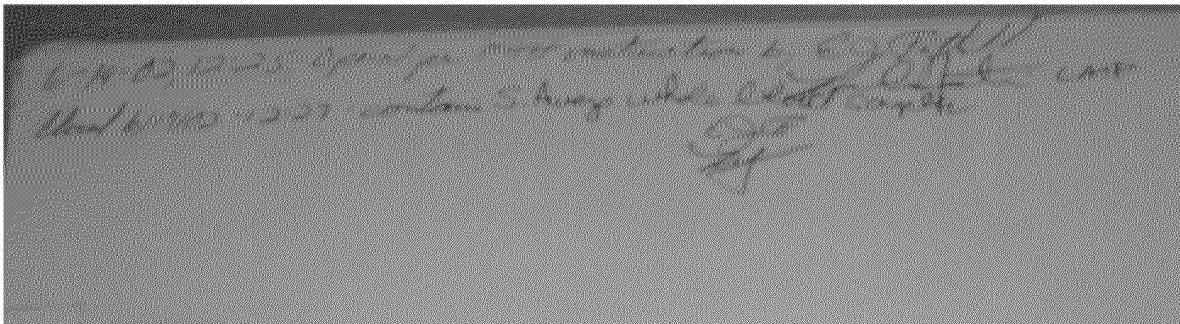
Facts: 4/30/2002: Judge grants the motion to test fingernail clippings and hair.

"6/19/2002, 12:25, Opened per (Hazlewood's) instruction by E.J. Fitzgerald

Closed 6/19/2002 12:27pm- contains S. Avery's whole blood sample"

Nail clippings/scrapings and hair was removed per above (see pic below) to be sent out to lab for testing. The blood vial was returned in the same box to storage at Manitowoc County Courthouse.

Reference: (Jan 19, 2007 page 134 Motion-Gahn)



9/16/2002: Fitzgerald presents an amended order to transport the evidence (nail clippings/hair). Was held up for 4 months due to issues with the exhibit stickers.

9/19/2002: A "Transmittal of Criminal Evidence" form is completed by Sgt. Lenk for the nail clippings and hair. Another document "Receipt of Physical Evidence" also dated 9/19/2002, and 15:47 hours is completed and noted that Mike Shallue from MTSO took those items to the State Crime Lab. The Crime Lab designated the items (C1-C5 hair, D10-D13 hair and pubic hair, F1-fingernail scrapings and V-hair sample from Avery). Receipt of physical evidence form is signed by Delores Larson on 9/19/02.

Bottom line: Lt. Lenk completed the form above for only the nail clippings/hair. The blood vial was NEVER in his hands as you state in your article.

Update: I see that you've recently edited your online version of this article to change it from:

"In 2002, Lenk handled a box of unsecured evidence.." to "~~In 2002, Lenk handled~~ had access to a box of unsecured evidence..."

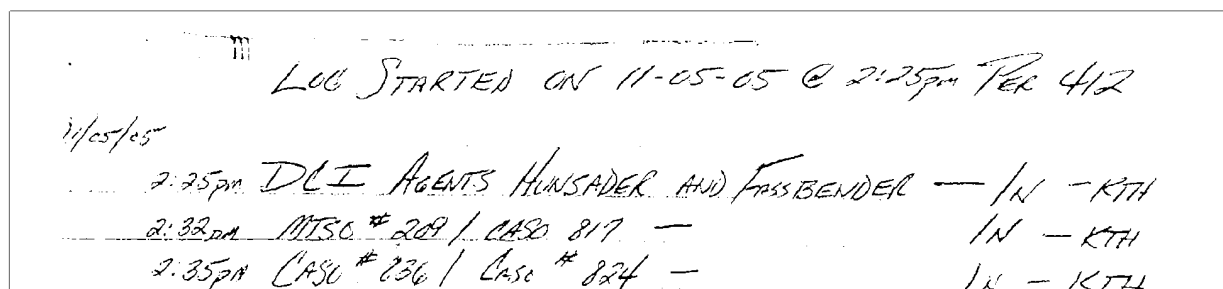
Thanks for that online correction, although I'm certain you won't be publishing a correction to the readers of the physical newspaper.

2. MYTH: "Lenk, Colborn and Remiker remained on the Avery property for several hours that day, but, unlike his comrades, Lenk never signed the police log documenting when he arrived that day. He only signed his name when he left."

Fact: This is accurate except you're doing the same thing MaM loves to do. OMIT the rest of the story.

Lenk didn't sign in when he got there, because it was before the log was even implemented. No one else did either if they prior to 2:25PM when the log was put in place. If you look at the log, I included the link, you'll see lots of names missing. Case in point: Remiker originally arrived at 10:59 that AM and left. Neither his sign in or sign out is showing until he returns again from obtaining a search warrant at 3:26PM that day. Why? Because it wasn't started until 2:25PM

<http://www.stevenaverycase.org/wp-content/uploads/2016/02/Trial-Exhibit-142-Sign-in-Sign-out-Log-2005Nov05-at-Car-Crusher.pdf>



3. Myth: "Prior to Avery's arrest, all three sheriff's detectives conducted repeated searches of Avery's trailer and detached garage even though special prosecutor Ken Kratz had announced to the media that Manitowoc County would not be involved."

Fact: Manitowoc was never excluded from this investigation. It was decided that Calumet County would lead the investigation. They were the ones initially investigating it as a missing person case because Teresa (THE VICTIM by the way) was from their county. However, upon finding the RAV4 in Manitowoc County, it was discussed and decided to have Calumet lead it and Manitowoc provide resources which includes manpower and equipment. Pagel even stated in a local newspaper after Brendan's full confession on 3/1/06, that resources included manpower. MaM omits again.

11/5/2005 (11:45AM)

WIEGERT is advised by Sheriff PAGEL that the scene (Salvage Yard) would be turned over to their department under **the mutual aid pact for Manitowoc County.**

11/5/2005 (1:04PM)

WIEGERT meets with District Attorney MARK ROHRER, ADA MICHAEL GRIESBACH and Calumet County DA KENNETH KRATZ. It is decided that they need to apply for a Search Warrant for the property (Salvage yard)

- TERESA is from Calumet County so decision is made to let CASO continue to lead the investigation.
- Even though victim's vehicle is located on a property in Manitowoc County, decision to have CASO continue to lead the investigation due to maybe a conflict of interest. (Deputy Inspector GREG SCHETTER)

- IN NO WAY is this done because anyone suspects or worries that LEO are trying to frame AVERY or potentially plant evidence. It is a proactive approach and why there is always a Cal county LE with Manitowoc LE's.

4. Myth: *Then, on Nov. 3, 2005, the family of Halbach reported her missing to Calumet County Sheriff's officials. "And nobody has called for Lieutenant Lenk," Strang argued during Avery's 2007 murder trial. "And nobody's called looking for him. But the chief detective of Manitowoc County takes it upon himself, that night, to call Calumet and offer to get involved in the missing person investigation where one of the appointments that was to be kept was Steven Avery."*

FACT:

11/3/05 (after speaking with STEVEN that evening)

Sgt. COLBORN contacts GREG SCHETTER, the Deputy Inspector of the Operations Division and lets him know that CASO is investigating a missing person case and that one of the places that CASO mentioned that the party (TERESA) was at was the AVERY Salvage Yard. He informs SCHETTER that he had just left there and was unable to locate the missing person.

- SCHETTER suggests that Sgt. COLBORN contact Lt. Lt. LENK to see if he wants any of Manitowoc county LE's to assist CASO in searching.

Note: Lt. LENK didn't integrate himself into this as MaM implied- he was contacted per SCHETTER's recommendation AFTER they had checked out the AVERY Salvage yard.

- Sgt. COLBORN contacts Lt. LENK by phone per above suggestion.

11/3/05 (after speaking to Sgt. COLBORN)

Lt. LENK contacts WIEGERT by phone to get additional information per call from Sgt. COLBORN. WIEGERT updates Lt. LENK on the situation. Lt. LENK informs WIEGERT that he would call some people in and assist CASO with the investigation. They decide to meet that evening at MTSD and discuss.

5. Myth: *"And the next morning, Lt. Lenk does one better than that, he goes out himself to Steven Avery's trailer with another officer from Manitowoc," Strang continued. "And he knocks on the door again, just as Sgt. Colborn had done the night before, inquiring after Teresa Halbach. Again, Steven Avery is cooperative."*

Fact:

Wiegert from Calumet County contacted REMIKER the next morning to go to Avery's.

11/4/2005 (10:20 to 10:35AM)

WIEGERT contacts Det. REMIKER and requests that MTSD try to make contact with STEVEN AVERY since it was too late the night before. He requests that they try to obtain more info and possibly get consent to search his residence.

Det. REMIKER and Lt. LENK went there but neither had ever been there and did not know where they were going. They did eventually find his trailer and knocked, but no answer. They then went next door, and found out later, that was BARB Janda's residence but no one there either.

They began to leave and were driving down the driveway and STEVEN was in the passenger of a golf cart being driven by his mother, Delores AVERY, so they stopped and identified themselves.

They requested consent from STEVEN to search his trailer and he agreed so they turned around and went back to his trailer.

REMIKER requested that STEVEN come inside with them and Lt. Lt. LENK stayed in the living room with STEVEN while REMIKER went and looked around the residence, starting in the back bedroom and was looking for TERESA, a body, a human being, etc. They were in the residence 5 minutes approximately.

Lt. Lenk never just went there on his own as the Defense tries to spin it.

So, again I ask you John, if you're not willing to print a rebuttal, at the very least going forward, maybe try to get a fair evaluation of what occurred from both sides. Sometimes going against the grain and taking the unpopular stance is the right thing to do for those innocent people you are so easily throwing under the bus. You know, the ones that protect us?

Exhibit 7

No Subject

From: Michael Griesbach <mjgriesbach@gmail.com>

Date: 12/23/2015 05:24AM

To: Laura Ricciardi <lauraricciardi@synthesisfilms.com>, moirademos@synthesisfilms.com

Congratulations! I binged my way through all 10 episodes by Saturday afternoon and enjoyed it immensely. I'd be happy to share with you some of the local reaction beyond what has been reported if you are interested. I imagine you're swamped with media inquiries and other matters, but if you could email me your number and times you are available, I'll give you a call. I'm in the office til about 10:30 CST [today](#) but then on the road to UW Madison to pick up our daughter for the Christmas break.

By the way, I share most of the views you expressed below in your recent interview with the Post-Crescent. In the end, the CJS must be about process, not results.

All Best.

Mike

"Every question just led to more questions," said Moira Demos, who produced the series titled, "Making a Murderer," with Laura Ricciardi. "In the end we are not trying to provide any answers. We don't have a conclusion. We are really raising questions and our goal is to promote a dialogue about these things."

The series became available on Netflix on Friday but the [first episode is available on YouTube](#).

The filmmakers, who were interviewed Tuesday by Post-Crescent Media, don't presume to know what happened.

"This is such a complex case and, you know, I think our takeaway through all of this is that one needs to be careful not to be too certain about any of this," Ricciardi said. "It's an imperfect system, it's a human system and there's lots of room for ambiguity. And there are lots of questions here."

Among the questions: Was the truth revealed in these cases and is the system working as it should?

--
Michael Griesbach

Author of award winning true crime thriller, *The Innocent Killer: a True Story of a Wrongful Conviction and its Astonishing Aftermath*

theinnocentkiller.com

<http://www.amazon.com/dp/1627223630>

Exhibit 8

United States District Court
Eastern District of Wisconsin

Avery v. Manitowoc County

04 C 986



Videotape Deposition of

Michael Griesbach

Recorded 09/22/2005 in Manitowoc, WI
11:43 a.m. - 1:06 p.m., 84 mins. elapsed

Magne-Script

(414) 352-5450

- (1) Witness
- (2) Michael Griesbach
- (3)
- (4) Thursday 09/22/2005 at 08:30 by: Barbara Cohen Joseph
- (5)
- (6) Nash, Spindler, Grimstad & McCracken
- (7) 201 East Waldo Boulevard
- (8) Manitowoc, WI
- (9)
- (10) Caption: Avery v. Manitowoc County
- (11) Case No.: 04 C 986
- (12) Venue: United States District Court
- (13) Eastern District of Wisconsin
- (14)
- (15)
- (16)
- (17)
- (18)
- (19)
- (20)
- (21)
- (22)
- (23)
- (24)
- (25)

- (1) APPEARANCES
- (2) Walter F. Kelly
- (3) Walter F. Kelly, S.C.
- (4) 700 W. Michigan St. #400
- (5) Milwaukee, WI 53233
- (6) On behalf of the Plaintiff
- (7)
- (8) Claude J. Covelli
- (9) Boardman, Suhr, Curry & Field
- (10) 1 S. Pinckney St. #410, PO Box 927
- (11) Madison, WI 53701-0927
- (12) On behalf of Denis Vogel and Manitowoc County
- (13)
- (14) Timothy A. Bascom
- (15) Bascom, Budish & Ceman, S.C.
- (16) 2600 N. Mayfair Rd. #1140
- (17) Wauwatosa, WI 53226-1308
- (18) On behalf of Manitowoc County
- (19)
- (20) Raymond J. Pollen
- (21) Crivello, Carlson & Mentkowski, S.C.
- (22) 710 N. Plankinton Ave. #500
- (23) Milwaukee, WI 53203
- (24) On behalf of Tom Kocourek and Manitowoc County
- (25)

00:01:15:00

- (1) John F. Mayer
- (2) Nash, Spindler, Grimstad & McCracken
- (3) 201 East Waldo Boulevard
- (4) Manitowoc, WI 54220
- (5) On behalf of Tom Kocourek
- (6)
- (7) James E. McCambridge
- (8) Wisconsin Department of Justice
- (9) 17 W. Main St., PO Box 7857
- (10) Madison, WI 53707-7857
- (11) On behalf of Michael Griesbach
- (12)
- (13) Also Present: Steven Avery
- (14)
- (15)
- (16)
- (17)
- (18)
- (19)
- (20)
- (21)
- (22)
- (23)
- (24)
- (25)

- (1) INDEX
- (2) EXAMINATION BY PAGE NO.
- (3) Mr. Kelly 4, 54
- (4) Mr. Covelli 53
- (5) (The sealed original transcript was sent to Mr. Kelly)
- (6) =====
- (7) EXAMINATION
- (8) BY MR. KELLY:
- (9) Q Mr. Griesbach, would you tell me your date of birth
- (10) and your age, please?
- (11) A Sure. February 13th, 1961, and I'm 44 years old.
- (12) Q Okay. And you're currently an assistant district
- (13) attorney in the Manitowoc County D.A.'s office?
- (14) A That is correct.
- (15) Q Okay. How long have you been in the Manitowoc County
- (16) D.A.'s office?
- (17) A I believe it would be 14 years. 1991 to now, so 14
- (18) years.
- (19) Q Okay. And I understand - we had some testimony by
- (20) Mark Rohrer just a little while ago that there was a
- (21) brief period of time during which you were the
- (22) district attorney of Manitowoc County?
- (23) A It's kind of a complicated matter. I had been elected
- (24) as the district attorney in 2002 after running for
- (25) election. I chose, for basically personal reasons,

- (1) Jill Mertens, former secretary in the district
- (2) attorney's office during Mr. Vogel's administration,
- (3) was probably mentioned, her name. 00:31:15;00
- (4) Q All right. Anybody else who was mentioned, to your
- (5) knowledge?
- (6) A Not that I recall.
- (7) Q How about the identification by Mr. Rohrer to
- (8) representatives of the attorney general of any persons
- (9) within the sheriff's department?
- (10) A I really don't recall.
- (11) Q Do you have any recollection of attending a meeting
- (12) with Sheriff Peterson in his office in which the 00:28:15;00
- (13) matter of the Avery prosecution and Gregory Allen was
- (14) discussed?
- (15) A Yes, I do.
- (16) Q Can you tell me your best recollection of who was at
- (17) that meeting? 00:32:15;00
- (18) A I believe that Deputy Inspector Beck was present, Mr.
- (19) Rohrer, myself, Sheriff Peterson, and perhaps Deputy
- (20) Inspector Mike Bushman. Not certain of the last one.
- (21) Q All right. Do you recall whether or not Steve
- (22) Rollins, the county's corporation counsel, was there?
- (23) A I don't believe he was at that particular meeting.
- (24) Q Okay. Do you remember how it came to be that that
- (25) meeting was set up?

- (1) MR. COVELLI: Form.
- (2) A I don't remember.
- (3) BY MR. KELLY:
- (4) Q All right. Was it called for by you and Mr. Rohrer?
- (5) A I really don't know.
- (6) Q All right. Do you have any recollection about whether 00:29:15;00
- (7) Sheriff Peterson produced any files and records
- (8) concerning Steven Avery and/or Gregory Allen at that
- (9) meeting? 00:33:15;00
- (10) A He may have had the Allen information regarding the
- (11) record checks that we had requested of the dispatch
- (12) earlier. Perhaps the photo array in the assault case
- (13) in 1985.
- (14) Q What was the subject matter of the meeting?
- (15) A I think the subject matter was basically a recognition
- (16) that, you know, that Mr. Allen was very likely the
- (17) assailant here, that Mr. Avery was not, that there 00:30:15;00
- (18) will be press inquiries regarding that, that it is
- (19) what it is, that we are confident, the D.A.'s office,
- (20) that Mr. Avery should be released from prison as soon
- (21) as possible. There may have been, you know, some 00:34:15;00
- (22) discussion about the photo array, that we would like
- (23) to see it, that Mr. Rohrer and I would like to see it
- (24) and that Sheriff Peterson thought we should look at,
- (25) too, just to see how it was conducted. And I believe

- (1) part of the focus was on Mr. Allen in how similar or
- (2) not similar to the description by the victim, and Mr.
- (3) Avery, was Mr. Allen and whether he was in the photo
- (4) array or not.
- (5) Q What did you find out about that?
- (6) A Mr. Allen was not in the photo array. His physical
- (7) appearance and height and weight and such were pretty
- (8) consistent with the victim's description of the
- (9) assailant at the time.
- (10) Q Did you ever find out whether or not there was a
- (11) booking photograph of Gregory Allen that was available
- (12) on the evening of July 29th, 1985, when Mrs. Beerntsen
- (13) had been attacked and the sheriff called for some
- (14) photos to be brought over, whether there was an actual
- (15) photo, booking photo of Gregory Allen from the 1983
- (16) offense that you've already told us about that was
- (17) available?
- (18) A My best recollection is that there was not a photo, a
- (19) booking photo of Mr. Allen. I could be mistaken. But
- (20) that's my best recollection.
- (21) Q When you say that, do you mean not available when you
- (22) went to the meeting or not available on the evening of
- (23) July 29th?
- (24) A I guess I mean when we were at the dispatch center. I
- (25) don't know about what was or was not available on the

- (1) date of the original assault in 1985.
- (2) Q Do you have any recollection, throughout the course of
- (3) these events since you found out about them on
- (4) September 3rd, as to whether or not there was at one
- (5) time a booking photograph of Gregory Allen that was
- (6) made in connection with the 1983 offense that
- (7) subsequently was either lost or destroyed or for some
- (8) reason disposed of?
- (9) A I have no information about that.
- (10) Q All right. Do you recall whether at the meeting with
- (11) Sheriff Peterson there was any discussion about the
- (12) matter of Gregory Allen as being identified in 1995 as
- (13) having been Penny Beerntsen's assailant and then there
- (14) was some discussion with Sheriff Kocourek about that?
- (15) A If you could re-- I think I lost you. Probably my
- (16) losing more than your saying. But I lost it.
- (17) Q At the meeting that took place in Sheriff Peterson's
- (18) office with the people that you've described to us,
- (19) was there any discussion about the fact that it had
- (20) come to light in 1995 from some source or sources that
- (21) it was actually Gregory Allen who had attacked Mrs.
- (22) Beerntsen and not Steven Avery?
- (23) MR. BASCOM: Object to the form of that
- (24) question.
- (25) A I don't recall that information discussed at that time

- (1) during that meeting. Might have been, might not have
- (2) been.
- (3) BY MR. KELLY:
- (4) Q Okay. I'm going to show you what's been marked as
- (5) Exhibit 124 and ask you if you'd take a moment and
- (6) examine that.
- (7) A Yeah, I've taken a look at it.
- (8) Q Okay. And, first of all, is this a document that
- (9) you've seen before today?
- (10) A I think I have.
- (11) Q It's dated September 18th of '03. Doug Jones was an
- (12) attorney in the D.A.'s office at that time, right?
- (13) A Still is, yes.
- (14) Q Okay. A colleague of yours?
- (15) A Yes.
- (16) Q And was this information that's in 124 made available
- (17) to you at the time that this memo was prepared?
- (18) A Yeah. I think by the time that memo was prepared, I
- (19) was aware of the contents of that memo. My earlier, I
- (20) guess, hesitation was I don't recall that the contents
- (21) of that memo was discussed at the meeting with Sheriff
- (22) Peterson sometime earlier.
- (23) Q All right.
- (24) A It may have been, may not have been.
- (25) Q Okay. Was any further investigation, to your

00:38:15;00

00:39:15;00

- (1) knowledge, of the statements that are made in this
- (2) memorandum about the information that was provided to
- (3) Sheriff Kocourek and how he responded, was there any
- (4) further investigation of that by you or Mr. Rohrer as
- (5) far as you know?
- (6) A No, I don't know.
- (7) Q Okay. So was there any further discussion, to your
- (8) knowledge, of the information that's stated in here
- (9) about Mr. Allen by you or Mr. Rohrer with either
- (10) Colburn or Lenk?
- (11) A There very well may have been. It was likely from Mr.
- (12) Rohrer. I, you know, vaguely remember this topic, the
- (13) contents of that memo being discussed here and there
- (14) over the - you know, the following weeks. I was more
- (15) of a receiver of information. I was not directing
- (16) anybody to look into anything. But I do recall this
- (17) same topic coming up once or twice more.
- (18) Q And what further information, if any, that you recall,
- (19) did you receive about that?
- (20) A My recollection is just that it was confirmed that
- (21) indeed that Sheriff Kocourek had said, upon hearing
- (22) that somebody else did this, that we've got the right
- (23) guy and that he should not concern himself. My
- (24) impression is that that was what people were saying
- (25) was the case. I don't have personal knowledge that he

00:36:15;00

00:37:15;00

00:40:15;00

- (1) said that, but...
- (2) Q Okay. And when you say "what people were saying was
- (3) the case," can you identify the people that you're
- (4) talking about?
- (5) A I believe it would be Officer Colburn, and he's the
- (6) only one I can say with any level of certainty that
- (7) confirmed that. Now, you know, what one reads into "I
- (8) think we have the right guy" is another story. I'm
- (9) not speaking to that issue. But as far as that having
- (10) been said by - allegedly said by Sheriff Kocourek,
- (11) that is my understanding of Deputy Colburn's
- (12) recollection of what was said.
- (13) Q All right. And do you have any understanding of what
- (14) Mr. Lenk says about that?
- (15) A I don't.
- (16) Q Okay. And who was your source of information as to
- (17) what Colburn was saying?
- (18) A Probably Mark, Mr. Rohrer.
- (19) Q All right. To your knowledge, was the information
- (20) concerning what Colburn said and how Kocourek
- (21) responded provided by Rohrer to the attorney general's
- (22) office?
- (23) A I believe it probably was.
- (24) Q And what's the basis for that belief?
- (25) A Just from the general way in which Mark, the district

- (1) attorney, and I, for whatever it's worth, were
- (2) handling this case. All information we had was
- (3) provided to the attorney general.
- (4) Q To your knowledge, did Mark Rohrer make any notes of
- (5) any of the interviews he had with Brenda Petersen or
- (6) Beverly Badker or Colburn or Sheriff Peterson?
- (7) A I don't know whether he did or not.
- (8) Q Did you?
- (9) A No.
- (10) Q Is there some reason you didn't?
- (11) MR. COVELLI: Well, objection. He didn't -
- (12) lack of foundation. He never said he interviewed
- (13) these people.
- (14) BY MR. KELLY:
- (15) Q You can answer.
- (16) A I don't - I didn't make any notes of whatever
- (17) conversations I heard. My main focus was on whether
- (18) or not Mr. Avery should be released, and quickly. And
- (19) after that, I think I memoed up a few things: a call
- (20) from Mr. Vogel that I'm sure you're aware of.
- (21) Q I am.
- (22) A And some conversations that I think I had with Penny
- (23) Beerntsen, the alleged victim, and I think with Janine
- (24) Geske as well. But I did not memo up much in the
- (25) office. Frankly, there wasn't a lot discussed in the