

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

ANDREW L. COLBORN,
Plaintiff

v.

NETFLIX, INC., et al.,
Defendants.

Case No. 19-CV-484

DECLARATION OF MICHAEL GRIESBACH

STATE OF WISCONSIN)
) SS
COUNTY OF MANITOWOC)

MICHAEL C GRIESBACH, being first duly sworn on oath, deposes and says:

1. My name is Michael Griesbach. I am an attorney practicing in Manitowoc County and I was previously one of the attorneys representing Andrew Colborn in this action.
2. In 2010 I self-published a book entitled *Unreasonable Inferences* concerning the Steven Avery saga, focusing on his 1985 wrongful conviction. The book was re-published by the American Bar Association in 2014 under the title, *The Innocent Killer*.
3. I did send the email to Moira Demos and Laura Ricciardi (Dkt. # 290-34) dated 12-23-2015 congratulating them on Making a Murderer.
4. My comments in the email were in reference to the criminal justice system in general; not on Avery's guilt or innocence or his evidence-planting defense.

5. I did send an email to my book agent on January 5, 2016 (Dkt. # 289-30) shortly after watching *Making a Murderer*, stating that I was convinced Avery was guilty “but I’m nowhere near as certain that the cops did not plant evidence to bolster their case.”

6. In late January 2016, I entered into a contract with Kensington Publishing to write a second book concerning the Steven Avery saga, this time focusing on the Halbach murder investigation and the assertions made about it in *Making a Murderer*. I began research for the book in February, 2016. My second book, *Indefensible*, was published and released in the fall of 2016.

7. Prior to writing *Indefensible* in 2016, I had not thoroughly researched the Halbach murder case and was not part of the investigation or the prosecution of Steven Avery and Brendan Dassey.

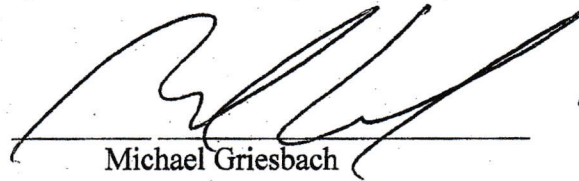
8. After comparing the assertions of *Making a Murderer* with police reports and trial transcripts, it became apparent that the series had badly misrepresented the facts. I publicly expressed my opinions concerning the falsehoods in various media interviews and an OP/ED.

9. I was to some extent taken in by the falsehoods of *Making a Murderer*. The series strongly suggests that James Lenk and Andy Colborn planted evidence to frame Mr. Avery. Upon conducting my own research, it became abundantly clear that this assertion was false.

10. Attached as exhibit 1 are excerpts from my book, *Indefensible*, that clearly state my opinion of *Making a Murderer*. As stated in my book “I thought I knew that truth, but it was to some extent fractured by *Making a Murderer*. As I delved deeper into the circumstances surrounding Teresa Halbach’s murder, the truth became whole again.”

11. I have reviewed Dkt. 289-1. When I made the notation, “whitewash” on the document in 2010, I was referring to what I considered to be the failure of the Wisconsin

Attorney General to hold accountable the then-sheriff and then-DA in her independent review of Avery's 1985 wrongful conviction. My notation had nothing to do with the Halbach murder investigation.


Michael Griesbach

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INDEFENSIBLE

INDEFENSIBLE

The MISSING TRUTH
about STEVEN AVERY,
TERESA HALBACH, and
MAKING A MURDERER

MICHAEL GRIESBACH



FOREWORD

sixteen-year-old learning disabled nephew and accomplice in Teresa Halbach's murder.

So I decided to journey through the trial again, but this time more carefully—as if my life depended on it—because it might. Half the country, it seemed, was convinced the police had set up Avery again, that lightning had struck twice and that he had been wrongly convicted a second time. Many people were angry. Some made threats on my life and the lives of others because we were part of Manitowoc County law enforcement and had spoken out publicly of Avery's guilt in the wake of *Making a Murderer*.

Indefensible recounts my independent search for the truth about the Steven Avery case. I thought I knew that truth, but it was to some extent fractured by *Making a Murderer*. As I delved deeper into the circumstances surrounding Teresa Halbach's murder, the truth became whole again.

As in any issue as complicated and as controversial as this one, the truth is elusive in the Avery case. Peruse the Reddit pages on the topic of Steven Avery for an hour and you will see what I mean. I tried to be as careful and unbiased as possible when I conducted my research for this book, but in the end perfect objectivity is only something we can strive for.

I'm still a prosecutor in Manitowoc County, Wisconsin. This is the background I come from. I'm not "pro prosecution" in the usual sense. I have believed for a long time that the criminal justice system is broken to some degree, and needs to be reformed. I have given presentations about wrongful convictions and police and prosecutor misconduct. I have written about these issues as well and about what can go wrong if prosecutors lose sight of their calling and seek convictions instead of justice.

I share with the creators of *Making a Murderer* a desire to draw attention to broken aspects of the criminal justice system so that it can be reformed where needed. I also serve on the advisory board at the Wisconsin Innocence Project, a role that should not be—but is—a rarity among prosecutors. That's not to say my

judgment is free from you read as you will ar

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Second, you should in this book. Some of i trial. The rules of evid vant and not unduly pr But these rules only ag the forum where a defe ing of a book. As they s tion in order to protec crime. But neither Steve stake through the writir because when consider have a bearing on whet der. To ignore them w bring us closer to the book. It is worth notin thing, with regard to e Dassey.

Nonetheless, caution weight to assign to this e

of law enforcement, and combined with the resurgence of true crime in the popular media and a rapidly expanding effort of Internet giants, such as Netflix, to produce original programming, *Making a Murderer* rode a perfect storm to the screens of tens of millions of viewers across the globe.

For months it was the most common fodder for watercooler and coffee break discussions across the land. It made it onto the front page of the *Beijing News*, and Al Jazeera devoted a piece on its website to a topic close to its heart—coercive interrogation techniques of U.S. law enforcement agencies—although it's hard to imagine a wider chasm than that which exists between county sheriff's department detectives in rural Wisconsin and the CIA.

By its skillful use of film and sound techniques and omission of facts that belied its conclusion, *Making a Murderer* has all but convicted two intelligent, honest, and well-respected police officers of planting evidence to frame Avery a second time. This is a narrative now widely accepted by legions of Netflix viewers whose only familiarity with the Avery case is the documentary itself.

Transformed into would-be jurors, who are cleverly manipulated by an all-knowing judge in the form of the documentarians, viewers are shown only one side of the evidence. The prosecution's refutation of evidence-planting claims during cross-examination and rebuttal—the “truth-seeking machinery” of jury trials, as one legal scholar put it—is minimal. Avery's criminal history is deconstructed beyond credulity. His lighting a cat afire after dousing it with gasoline when he was twenty years old is passed off as an accident while horsing around with friends. He didn't intend to cause any harm to his neighbor after he ran her off the road and held her at gunpoint. As *Making a Murderer* would have it, he did so because the woman was spreading rumors about him. Never mind that he had been using a pair of binoculars to watch her for weeks, sexually gratifying himself as she drove by. I had to admit, though, I was impressed. The skill with which the documentarians made light of Avery's criminal history rivaled that of

seasoned criminal defenders into saints countles

Nor are viewers informed by police in Avery's trial evidence he used the appeared, but they were in on his mind in the days was his sketch of a “tort inmates about using it to when he got out, foretelling victim's final hour.

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seasoned criminal defense attorneys whom I have seen turn sin-
ners into saints countless times at sentencing.

Nor are viewers informed of the handcuffs and leg irons found
by police in Avery's trailer home after the murder. There was no
evidence he used the items on the day Teresa Halbach disap-
peared, but they were in keeping with what appears to have been
on his mind in the days leading up to her murder. Left out, too,
was his sketch of a "torture chamber" and his fantasizing to fellow
inmates about using it to sexually assault and murder young women
when he got out, foretelling the atmosphere surrounding his real
victim's final hour.

Clinging to claims of objectivity, the documentarians have
pointed out that truth is elusive in the Steven Avery case, which is
true enough. However, by excluding facts that don't fit their aim
and manipulating others, they have distorted the truth beyond
recognition and have decided for the rest of us what we are to
believe. "High-brow vigilante justice" is how columnist Kathryn
Schulz put it in her column about the documentary in *The New
Yorker* ("Dead Certainty"). To which I respond, "Right on."

Aiming to draw attention to the shortcomings of a criminal
justice system badly in need of reform, the producers set out with
a laudable goal, and the fruits of their labor are already con-
tributing mightily to the ongoing discussion concerning criminal
justice reform. The unwarranted certainty that some police and
prosecutors have in their interpretation of equivocal facts, along
with the overzealousness of some in our ranks and our tendency
toward a self-righteous belief that we are always in the right, when
combined with our awesome and often unchecked authority, has
too often led to the abuse of power. The system's inability or un-
willingness to treat with dignity and respect those on the bottom
rung of the economic and social ladder has caused unnecessary
suffering for many who faced long odds of making it even before
they drew the attention of the police and the courts by engaging
in crime.