

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

ANDREW L. COLBORN,
Plaintiff,

vs.

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

Case No. 19-CV-484

Defendants.

**PLAINTIFF ANDREW L. COLBORN'S RESPONSE TO
DEFENDANT NETFLIX, INC.'S STATEMENT OF PROPOSED
MATERIAL FACTS IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Plaintiff, Andrew L. Colborn, by his attorneys, the Law Firm of Conway, Olejniczak & Jerry, S.C., responds to Defendant Netflix, Inc.'s Statement of Proposed Material Facts as follows:

**I. AVERY'S CIVIL CASE FOR WRONGFUL IMPRISONMENT AND THE
MANITOWOC COUNTY SHERIFF'S OFFICE'S CONFLICT OF INTEREST**

1. After Avery was exonerated for the rape of Penny Bernsteen in 2003, the Wisconsin Department of Justice conducted an independent review of the case and concluded that then-Manitowoc County Sheriff Tom Kocourek and then-District Attorney Denis Vogel, as well as their subordinates, had strong reasons to believe that another man assaulted Bernsteen and that Avery was innocent, but went ahead with the case against Avery anyway. *See* Dkt. 120-11 at 2, 6-12; Dkt. 120-12 at 73:16-74:11; Dkt. 120-13 at 7:3-12; *see also* Ep. 1 at 53:18-55:09, 56:31-58:10.

RESPONSE: Plaintiff objects to this Proposed Fact as relying on hearsay to the extent that they purport to be submitted for the truth of the matters asserted. Plaintiff further objects to all references to MAM episodes in the proposed Findings of Fact to the extent they are intended to provide "evidence" of what is depicted. They are hearsay and were substantially edited, even as to purported trial "footage," as conceded by Moira

Demos at her deposition. Barker Decl., Ex. 10 pp. 180-207. Defendants have refused in discovery to provide access to unedited source material with the exception of Plaintiff's own trial testimony. Barker Decl., Ex. 21.

This objection is referenced hereafter in these responses as the "MAM objection." Subject to the objections, and to the extent that the report is considered for any purpose, Plaintiff further disputes Netflix's characterization of The Wisconsin Department of Justice report. The report states that there "was no basis to bring criminal charges or assert ethics violations against anyone involved in the investigation and prosecution of this case. At worst, the sheriff's department failed to investigate a viable suspect, Gregory Allen...". Dkt. 120-11 p. 14.

2. Also following his exoneration, Avery filed a civil rights lawsuit for \$36 million in this Court in 2004, asserting claims against Manitowoc County, Kocourek, and Vogel for violating his constitutional right to due process by targeting him and failing to investigate the actual rapist; focusing the investigation on Avery because of personal hostility against him; failing to provide exculpatory information to his defense counsel; and continuing to withhold exculpatory evidence during his incarceration. *See* Decl. of Leita Walker ("Walker Decl.") Ex. 1 (Compl., *Avery v. Manitowoc Cnty.*, 1:04-cv-00986-LA (E.D. Wis. Oct. 12, 2004), Dkt. 1); *see also* Ep. 2 at 9:43-10:24.

RESPONSE: Plaintiff asserts the MAM objection described in his response to Proposed Fact No. 1 as to the reference to Episode 2 of MAM. Subject to his objection, Plaintiff does not dispute the substance of the proposed fact.

3. Discovery in Avery's civil suit was underway in the fall of 2005: then-Lt. James Lenk was deposed on October 11, 2005, *see* Dkt. 120-17; then-Sgt. Andrew Colborn and then-Manitowoc County Sheriff Ken Petersen were deposed two days later, *see* Dkts. 120-14, 120-16; and former Manitowoc County Sheriff's Office Chief Investigator Eugene Kusche was deposed on the 26th, *see* Dkt. 120-19; *see also* Ep. 2 at 31:05-16.

RESPONSE: Plaintiff does not dispute this proposed Finding of Fact.

4. During Colborn's deposition in Avery's civil lawsuit, he testified that, immediately after Avery's 2003 release from prison, Colborn recalled an unusual phone call he received in 1994 or 1995 when he was a corrections officer at the Manitowoc County Jail (hereafter referred to as the "jail call"). Dkt. 120-14 at 16:4-13; Ep. 7 at 17:36-19:04.

RESPONSE: Plaintiff asserts the MAM objection described in his response to Proposed Fact No. 1 as to the reference to Episode 7 of MAM. Subject to his objection, Plaintiff agrees that Colborn testified in his October 2003 deposition that he received a phone call in 1994 or 1995 and was then wondering if the caller was speaking about Mr. Avery, but disputes the proposed fact to the extent that it suggests that the words “unusual” or “recall” or “recalled” were used in his testimony. The following is an excerpt of how Mr. Colborn in fact testified at Dkt. 120-14 16:4-13.

Page 16

1 A No, the call --
2 Q I'm sorry. That's what's going on in '94/'95.
3 A Yes, sir.
4 Q You then, in 2003, following the publicity that we've
5 already discussed relating to Mr. Allen and Mr. Avery,
6 and you're concerned that perhaps the caller that was
7 calling was speaking about Mr. Allen and Mr. Avery,
8 true?
9 A I was wondering about that, yes.
10 Q Sure. You brought that up to someone else, correct?
11 A Yes, sir.
12 Q And to whom did you bring that up?
13 A To Lieutenant Lenk.

Barker Decl., Ex 19.

5. Colborn further testified that, during the jail call, the caller identified himself as a detective from another jurisdiction, and said an inmate there had claimed he was responsible for an assault in Manitowoc County for which another man was imprisoned. Dkt. 120-14 at 10:22-11:8; SAC ¶ 24; *see also* Ep. 7 at 17:36-18:30.

RESPONSE: Plaintiff asserts the MAM objection described in his response to Proposed Fact No. 1 as to the reference to Episode 7 of MAM. Subject to his objection, Plaintiff disputes the summary of his testimony as stated in the proposed fact. Mr. Colborn testified that the caller had claimed another man was in “jail”. The words “prison” or “imprisoned” were not used. Dkt. 120-14 at 11:1-6 and Dkt 120-15 p. 2.

6. Colborn also testified that he tried to transfer the call to a Manitowoc County detective and provided that phone number to the caller in case the call did not go through. Dkt. 120-14 at 14:13-15:15.

RESPONSE: Plaintiff does not dispute this proposed fact.

7. Colborn did not document his recollection of the jail call in a written statement until September 12, 2003, in which he wrote that he “supplied the [caller] with a telephone number to one of [Manitowoc County]’s detectives” and that he did not recall the detective mentioning any names. Dkt. 120-15.

RESPONSE: Plaintiff agrees that Mr. Colborn supplied a written statement regarding the jail call on September 12, 2003, in response to a request from a superior.

Dkt. 290-27 pp. 17-18. He wrote that he “supplied the ‘detective’ with a telephone number to one of MTSO’s detectives”. Dkt. #120-15. The pertinent excerpt of the Statement is copied below:

of what case this detective was referring to, I supplied the detective with a telephone number to one of MTSO's detectives. I do not specifically recall but I may have tried

8. Both Colborn and Lenk testified in Avery’s civil rights case that they provided their written reports on the jail call to the sheriff. Dkt. 120-17 at 33:4-8; Dkt. 120-14 at 17:20-18:5.

RESPONSE: Plaintiff does not dispute this proposed Finding of Fact.

9. Colborn testified in this case that his statement was kept in the sheriff’s safe. Walker Decl. Ex. 2 (Colborn Tr.) at 404:4-11.

RESPONSE: Plaintiff does not dispute this Proposed Finding of Fact.

10. Avery was arrested for killing Teresa Halbach in the midst of discovery in his civil case. In jail and facing a costly criminal trial, he settled his lawsuit against Manitowoc County for \$400,000, from which his attorneys were paid \$160,000. *Avery v. Manitowoc Cnty.*, 428 F. Supp. 2d 891, 893 (E.D. Wis. 2006); Ep. 3 at 15:39-15:52.

RESPONSE:

Plaintiff asserts the MAM objection described in his response to Proposed Fact No. 1 as to the reference to Episode 3 of MAM. Subject to his objection, Plaintiff does not dispute the proposed Finding of Fact except the portion that states, “In jail and facing a costly criminal trial,” as that appears to represent an attempt to summarize Mr. Avery’s

motivations and there is no foundation for its content apart from any objectionable material that may appear in MAM and which may be product of Defendants' edits to source material that they did not disclose.

11. Meanwhile, because of the conflict of interest presented by Avery's pending lawsuit against Manitowoc County, authorities decided that Calumet County would take the lead in the investigation. Dkt. 120-30 at 143:2-25.

RESPONSE:

9	A	Um, obviously, uh, there were Calumet County people
10		there. There were, um, Manitowoc County, uh,
11		investigators, administrative staff there. In fact,
12		um, at one point, uh, Deputy Inspector Schetter
13		arrived, and, um, he had, obviously, more knowledge
14		or -- or understanding of what was going -- his
15		perception of maybe a conflict of inter -- interest
16		in some ongoing litigation between, uh, Steven Avery
17		and Manitowoc County.
18		And there was a decision made and a
19		discussion made amongst Manitowoc County
20		individuals, Calumet County individuals, and
21		individuals from each District Attorney's Office
22		that it was probably in the best interest to have
23		Calumet County officers, um, work on the
24		investigation, and, uh, they would even also, uh,
25		ask the State of Wisconsin or DCI to assist also.

143

.Plaintiff objects to the substance of the cited testimony as hearsay, but does not dispute that a detective testified as shown above at Avery's trial and that lead investigators for the Halbach investigation were Mr. Weigert and Mr. Fassbender. Also this contradicts what Sheriff Peterson said in deposition that only he was conflicted out. Barker Decl. Ex. 12, depo. pp. 149-150.

12. While under the supervision of Calumet County Deputy Dan Kucharski, Colborn and fellow Manitowoc County Sheriff's Office ("MCSO") employee James Lenk purported to find the key to Halbach's SUV, which appeared on the floor of Avery's bedroom after Colborn

had roughly handled a small bookshelf in the room. Dkt. 120-29 at 125:10-126:10, 127:9-12, 130:8-14; Dkt. 120-30 at 12:9-17; Dkt. 120-31 at 35:12-37:22; *see also* Ep. 3 at 6:21-7:14.

RESPONSE: Plaintiff asserts the MAM objection described in his response to Proposed Fact No. 1 as to the reference to Episode 3 of MAM. Subject to his objection, Plaintiff disputes that Colborn and Lenk were “under the supervision” of Calumet County Deputy Kucharski. The words “supervision” and “purported” are Defendants’ comments and additions, and are not contained in the cited materials. .

II. AVERY’S TRIAL FOR HALBACH’S MURDER

13. Accusations that Colborn and others planted evidence were a central part of Avery’s defense at his trial. SAC ¶ 33; *see also, e.g.*, Dkt. 120-28 at 117:23-120:11; Dkt. 120-24.

RESPONSE: Plaintiff disputes this Proposed Fact to the extent that Defendants are attempting to use it to claim that Avery’s attorneys made direct statements during the trial that identified Mr. Colborn as positively having planted evidence or as having conspired to plant evidence. Attorneys Buting and Strang, in their closing arguments, disclaimed any burden to prove any facts, instead limiting their argument to an attempt to persuade the jury that if the jurors believed that any officers could have planted evidence, then there was reasonable doubt as to whether Mr. Avery was guilty and the jury should return a verdict of not guilty. Barker Decl., Ex.17 transcript p. 18, Barker Decl., Ex.18 transcript p. 46 – 48.

14. The prosecution moved to exclude such “frame-up” evidence, but Judge Patrick Willis denied that motion. He specifically identified Lenk and Colborn as the only two officers the defense could attempt to implicate as participants in this alleged conspiracy and explained that “[t]he jurors are entitled to some explanation as to why the prosecution of this matter is being handled by Calumet County and why they are being transported to Calumet County to hear the case,” and “Avery’s charges against Lenk and Colborn in the federal lawsuit could have provided such motive, whether or not Lenk and Colborn were actually parties to the lawsuit.” Walker Decl. Ex. 3 (CHRM034924) at 034925, 034927; Dkt. 120-24 at 3.

RESPONSE: Plaintiff denies the words “frame-up evidence” were used by Judge Patrick Willis as the motion filed was “seeking to preclude the introduction of any evidence pertaining to the Avery’s wrongful conviction on charges of sexual assault and attempted homicide in Case no. 85 FE 118.” See Dkt. 279-3 p. 2. Also deny that Judge Willis specifically identified Lenk and Colborn as the only two officers the defense could attempt to implicate as participants in this alleged conspiracy as the Decision reads at Dkt. 279-3 p. 4:

The defendant seeks to introduce evidence relating to the defendant’s wrongful conviction in the 1985 case and subsequent lawsuit against Manitowoc County because he asserts it is relevant to show bias on the part of two members of the Manitowoc County Sheriff’s Department, James Lenk and Andrew Colborn.

Plaintiff does not dispute the quotations noted in Statement 14 above appear in the Judge’s decision at Dkt. 279-3 pp. 3 and 5. However, Judge Willis’ decision also contained the following statement, which should be considered in context with the portions identified by

Defendants:

[as] pointed out by the State at oral argument: How could Lenk or Colborn have known that Teresa Halbach was dead at the time they are alleged to have planted the defendant’s blood in her vehicle? Under the defendant’s theory, either Lenk, Colborn, or both would have had to have formulated a plan involving their own commission of serious felonies and executed that plan within a very short period of time, motivated apparently only by their embarrassment for not allegedly having acted more responsibly on information that could have led to Mr. Avery’s exoneration back in 1995 or 1996.

15. Because Avery’s defense centered on the contention that law enforcement officials, in particular Colborn and Lenk, had framed him, both prosecutors and Avery’s counsel questioned the officers about the underlying events, including their depositions in the civil case and the jail call. Dkt. 120-29 at 138:20-140:13, 158:5-163:22, 231:16-233:17; Dkt. 120-30 at 54:24-58:3, 103:16-107:11.

RESPONSE: Plaintiff objects to this Proposed Finding of Fact to the extent that it claims without supporting citations to factual material the reasons why Avery’s counsel

allegedly questioned officers at his trial. Subject to his objection, Plaintiff further disputes this proposed Finding Fact to the extent it claims that “Avery’s defense centered on the contention that law enforcement officials, in particular Colborn and Lenk, had framed him.” Attorneys Buting and Strang, in their closing arguments, disclaimed any burden to prove any facts, instead limiting their argument to an attempt to persuade the jury that if the jurors believed that any officers could have planted evidence, then there was reasonable doubt as to whether Mr. Avery was guilty and the jury should return a verdict of not guilty. Barker Decl., Ex.17 transcript p. 18, Barker Decl., Ex.18 transcript p. 46 – 48. In addition, the cited material identifies only testimony pertaining to the 1994 / 1995 jail call.

16. Avery’s counsel also argued to the jury that a call Colborn made to dispatch regarding the RAV4’s license plate number (hereafter, the “dispatch call”) indicated Colborn had located the SUV before it was discovered in the salvage yard. Dkt. 120-35 at 32:21-34:3.

RESPONSE: Plaintiff disputes this Proposed Finding of Fact as inconsistent with arguments made by Avery’s counsel to the jury. What was argued by Avery’s counsel at Dkt. 120-35 p. 5 is below:

20	This sounds a lot like what road patrol
21	officers do when they come across a stalled car,
22	an abandoned car, a car where it shouldn't be.
23	That's what this sounds like. Draw your own
24	conclusions, obviously look at it like from any
25	other piece of evidence. But what's important is

33

Case 1:19-cv-00484-PP Filed 03/03/20 Page 5 of 36 Document 120-35

17. In his rebuttal closing, defense counsel Dean Strang recounted the dispatch call and said “[t]his sounds a lot like what road patrol officers do when they come across a stalled car, an abandoned car, a car where it shouldn’t be.” Dkt. 120-35 at 32:21-34:3.

RESPONSE: Plaintiff does not dispute this proposed Finding of Fact.

18. To account for Avery's blood found in Halbach's SUV, Avery's counsel also argued that it could have been planted there by law enforcement, along with the RAV4 key in Avery's bedroom. *See* Dkt. 120-24 at 1-2.

RESPONSE: Plaintiff disputes that the proposed Finding of Fact accurately describes the arguments made by Avery's counsel, who argued that the blood in the vial was "a possible source" of the blood in the SUV and, with respect to the RAV4 key, that the jury would have to consider the circumstances of the searches of Avery's property "in deciding whether Lieutenant Lenk dropped the key on the floor" and argued as follows:

14 And then they are in there again, very
15 briefly the next day, again, with Tyson. Note
16 that each entry they are -- they are -- each time
17 they go in there, they were with Tyson, except
18 for November 8th and they go in with Deputy
19 Kucharski, who tried to make light of it by
20 saying that, you know, the possibility of
21 planting is about as likely as aliens coming down
22 and planting it.
23 But he had to admit, he was not told to
24 watch those officers. He was there with Lenk and
25 Colborn. He's told to search and that's what he's doing, he's
1 doing his job. And he's sitting
2 on the bed, after one hour. In fact, I think he
3 said he was getting almost done and took off his
4 gloves. He's sitting here, going through this
5 drawer.
6 Lieutenant Lenk is right here with his
7 back to him, like this, crouched down on the
8 floor, so he's not going see what's going on.
9 Lenk gets up, walks out the door, comes back in a
10 minute later, oh, my gosh, look at that, there's
11 a key. Low and behold, it's in plain view.
12 And so they come up with this theory,
13 this absolutely preposterous theory on how this
14 magic key, that no one ever finds before,
15 suddenly appears in plain view, out of this
16 bookcase. They find it right there, where those
17 slippers are. Right like that.
18 And how does it happen, well, they
19 decide, maybe they help the back of this cabinet
20 a little bit, but they decide that somehow this
21 key must be secreted in this cabinet, by Mr.

22 Avery, in his own bedroom, with everybody looking
23 at him, and that it somehow magically fell out
24 this -- this gap, bounces off the wall. And by
25 the way, we're talking about key, fob, and plastic clip.
1 Somehow bounces off the wall,
2 turns around the corner and lands, what is it 90
3 degrees from where it should be, where it would
4 have fallen.

Barker Decl., Ex. 17 pp. 165 – 166. The RAV4 key is not mentioned in the materials cited by Defendants in the proposed Finding of Fact.

19. Both Colborn and Lenk testified at trial that the Avery civil lawsuit did not cause them to plant evidence or otherwise try to frame Avery. Dkt. 120-29 at 140:14-141:7, 233:3-17.

RESPONSE: Plaintiff does not dispute this proposed Finding of Fact.

20. Colborn, Lenk, and Kucharski testified that they believed the RAV4 key fell out of a gap in the back of the bookcase Colborn had searched and then wrestled back into place. Dkt. 120-29 at 125:10-126:10, 127:9-12, 130:8-14; Dkt. 120-30 at 12:9-17; Dkt. 120-31 at 35:12-37:22.

RESPONSE: Plaintiff disputes this proposed Finding of Fact as described by Defendants; only Kucharski theorized where they key came from. The materials cited by Defendants mention locating the key but do not speculate on where the key came from. The term “wrestled” was not used in the cited passages

21. Colborn’s former counsel of record, Michael Griesbach, would later write in a January 2016 email that while he was “convinced [Avery] is guilty . . . I’m nowhere near as certain that the cops did not plant evidence to bolster their case.” Walker Decl. Ex. 4 (Griesbach0026044).

RESPONSE: Plaintiff objects to this proposed Finding of Fact as relying on hearsay, as an improper attempt to rely upon lay opinion evidence, and as relying on material that is irrelevant as Mr. Griesbach was not Mr. Colborn’s counsel when he made the statements in question. Dkt #73 at ¶7. Subject to these objections, Mr. Griesbach later changed his mind regarding the statements that he made. Decl. of Michael Griesbach ¶¶3-10.

22. In another email from January 2016, Griesbach wrote, “Dean as much as admitted that he knows his guy did it . . . which is not to say that the cops did not plant evidence to make their case.” Walker Decl. Ex. 5 (Griesbach0015978).

RESPONSE: Plaintiff objects to this proposed Finding of Fact as relying on hearsay, as an improper attempt to rely upon lay opinion evidence, and as relying on material that is irrelevant as Mr. Griesbach was not Mr. Colborn’s counsel when he made the statements in question. Dkt. 73 at ¶7. Subject to these objections, Mr. Griesbach later changed his mind regarding the statements that he made. Declaration of Michael Griesbach ¶¶ 3-10.

23. After the jury returned its guilty verdict, Colborn issued a statement that was featured on the local nightly news, in which he said, “I hope and pray that this verdict helps put to rest any suspicion or loss of confidence that this community may have felt towards our department, because I assure everyone that this agency has some of the finest law enforcement officers in the country in its employ.” Ep. 8 at 33:58-34:19.

RESPONSE: Plaintiff responds that this is what is shown in MAM but deny as Plaintiff does not have the actual statement or raw news feed to know if what they portrayed is accurate. At his deposition in this case, Colborn testified that Judge Willis permitted Avery and his defense team to “point [the] finger at deputies” and attempt to prove Avery was “framed.” Walker Decl. Ex. 2 (Colborn Tr.) at 31:19-33:15

24. At his deposition in this case, Colborn testified that Judge Willis permitted Avery and his defense team to “point [the] finger at deputies” and attempt to prove Avery was “framed.” Walker Decl. Ex. 2 (Colborn Tr.) at 31:19-33:15.

RESPONSE: Plaintiff objects to this proposed Finding of Fact as relying on testimony for which proper foundation was not laid, as noted by objection at Mr. Colborn’s deposition, DKT 279-2 Walker Decl., Ex. 2 at 31:19-33:15; and as relying on improper lay opinion testimony; and testimony that is not relevant because it does not tend to make a fact in evidence more or less likely because the Avery criminal trial

transcripts, which are in the record, reveal that Avery and his defense team disavowed any attempt to “prove” any facts; instead, they argued that if jurors believed that officers could have framed Avery, then there was reasonable doubt as to his guilt and a “not guilty” verdict should be returned. Barker Decl., Ex.17 transcript p. 18, Barker Decl., Ex.18 transcript p. 46 – 48.

Subject to the objections, Mr. Colborn further disputes the proposed Finding of Fact as an inaccurate summary of the testimony cited. In deposition, Mr. Colborn was asked if he agreed with the newspaper articles (the apparent source of the quoted statements in the proposed finding). Upon questioning merely agreed that his understating was consistent with the articles and that and that he did not dispute the headline.

III. MAM’S PORTRAYAL OF EVENTS

25. MaM, a ten-part documentary series, chronicles the story of Avery’s experiences in the criminal justice system through the words and actions of its participants, including through footage of actual events such as Avery’s murder trial and related press conferences, interviews of those with first-hand knowledge, trial and deposition transcripts and exhibits, other documents and photos, and third-party news coverage. *See generally* Eps. 1-10.

RESPONSE: Plaintiff asserts the MAM objection described in his response to Proposed Fact No. 1 as to the reference to what episodes of MAM allegedly included. Subject to his objection, Plaintiff asserts that the description of MAM is inadequate and fails to reflect the actual content of the series, which is more accurately summarized in the Addendum hereto. In addition, MAM did not show footage of “actual events” but rather footage taken at actual events which was then extensively edited by Defendants, as acknowledged by Moira Demos at her deposition. Barker Decl., Ex. 11 at p. 180-207; Ex. 19.

26. Colborn testified at his deposition that MaM presented “Avery’s evidence,” not “something [Defendants] made up out of whole cloth.” Walker Decl. Ex. 2 (Colborn Tr.) at 228:18-21.

RESPONSE: Plaintiff objects to the proposed Finding of Fact as relying on improper lay opinion testimony; and testimony that is not relevant because it does not tend to make a fact in evidence more or less likely because the Avery criminal trial transcripts, which are in the record, reveal that Avery and his defense team disavowed any attempt to “prove” any facts; instead, they argued that if jurors believed that officers could have framed Avery, then there was reasonable doubt as to his guilt and a “not guilty” verdict should be returned. Barker Decl., Ex.17 transcript p. 18, Barker Decl., Ex.18 transcript p. 46 – 48. Subject to the objections, Mr. Colborn further disputes the proposed Finding of Fact as an inaccurate summary of the testimony cited. In deposition, Mr. Colborn was questioned about “instances” in MaM, not the entirety of the series.

27. Prior to filing suit, he also acknowledged: “The claims by the Netflix documentary mirror those claimed by the defense during the trial.” Walker Decl. Ex. 6 (Manitowoc-000158).

RESPONSE: Plaintiff objects to the proposed Finding of Fact as relying upon improper lay opinion testimony; and testimony that is not relevant because it does not tend to make a fact in evidence more or less likely because the Avery criminal trial transcripts, which are in the record, reveal that Avery and his defense team disavowed any attempt to “prove” any facts; instead, they argued that if jurors believed that officers could have framed Avery, then there was reasonable doubt as to his guilt and a “not guilty” verdict should be returned. Barker Decl., Ex.17 transcript p. 18, Barker Decl., Ex.18 transcript p. 46 – 48. In contrast, in MAM, the following changes are made and materials included that are not in the Avery trial, including edits to Plaintiff’s testimony, see Barker Decl., Ex. 11 at p. 180-207; Ex. 19. and numerous out-of-court statements,

see Addendum hereto. Plaintiff further responds that Plaintiff wrote an email message on January 12, 2016 that contains the quote above but Plaintiff's summary in 2016, at a time when Plaintiff had not watched MAM, as Netflix acknowledges, is contradicted by an examination of the actual content of MAM. Mr. Colborn later discovered that there was more portrayed in MAM than he realized in 2016. Andrew Colborn Decl. ¶26.

28. Colborn's friend, confidante, and advocate, Brenda Schuler, wrote in an email that "[t]here is nothing new in Making a Murderer," Walker Decl. Ex.7 (Manitowoc-000063), a statement with which Colborn agreed at his deposition, *see id.* Ex. 2 (Colborn Tr.) at 44:10-45:18.

RESPONSE: Plaintiff objects to the proposed Finding of Fact as consisting of hearsay as to the statement of Ms. Schuler, and as relying on improper lay opinion, and which does not tend to make any fact in evidence more likely than not and is therefore irrelevant. With respect to the testimony by Mr. Colborn, Plaintiff again objects that Defendants are attempting to proffer it as improper lay opinion testimony; and because it is testimony that is not relevant because it does not tend to make a fact in evidence more or less likely because the Avery criminal trial transcripts, which are in the record, reveal that Avery and his defense team disavowed any attempt to "prove" any facts; instead, they argued that if jurors believed that officers could have framed Avery, then there was reasonable doubt as to his guilt and a "not guilty" verdict should be returned. Barker Decl., Ex.17 transcript p. 18, Barker Decl., Ex.18 transcript p. 46 – 48. In contrast, MAM includes materials included that are not in the Avery trial, including edits to Plaintiff's testimony, see Barker Decl., Ex. 11 at p. 180-207; Ex. 19, and numerous out-of-court statements, see Addendum hereto.

29. In pre-suit correspondence, Colborn also wrote that MaM "maintain[s] and keep[s] alive [Avery's] lies" about him. *See* Walker Decl. Ex. 2 (Colborn Tr.) at 163:11-23 (referencing *id.* Ex. 8 (Manitowoc-000270)).

RESPONSE: Plaintiff objects to this proposed Finding of Fact as relying upon improper lay opinion testimony; and because the testimony that is not relevant because it does not tend to make a fact in evidence more or less likely because the Avery criminal trial transcripts, which are in the record, reveal that Avery and his defense team disavowed any attempt to “prove” any facts; instead, they argued that if jurors believed that officers could have framed Avery, then there was reasonable doubt as to his guilt and a “not guilty” verdict should be returned. Barker Decl., Ex.17 transcript p. 18, Barker Decl., Ex.18 transcript p. 46 – 48. In contrast, in MAM, as explained above, numerous materials that were not presented by Avery or his lawyers at the trial were included, and Avery himself, who did not testify at his trial, (Barker Decl. Ex. 8) makes numerous direct accusations against Plaintiff in MAM that were not made at his trial. See Addendum (summarizing MAM content).

Subject to his objections, Plaintiff disputes the substance of the proposed Finding of Fact as the quoted material states that “The defense continues, in part thru Netflix, to maintain and keep alive these lies to this day.”

30. At her deposition in this case, Laura Ricciardi testified that Steven Avery was the “main character or a principal subject” of MaM. Walker Decl. Ex. 9 (Ricciardi Tr.) at 49:9-12.

RESPONSE: Plaintiff does not dispute that Ms. Ricciardi so testified. Ricciardi testified that MaM’s filmmakers documented Avery’s frame-up theory but did not “adopt it,” and overall “did not take sides.” Walker Decl. Ex. 9 (Ricciardi Tr.) 47:3-10; 48:19-24.

31. Ricciardi testified that MaM’s filmmakers documented Avery’s frame-up theory but did not “adopt it”, and overall “did not take sides.” Walker Decl. Ex. 9 (Ricciardi Tr.) 47:3-10; 48:19-24.

RESPONSE: Plaintiff objects to the proposed Finding of Fact as self-serving statements by Defendants do not negate evidence to the contrary. Further, while Ms.

Ricciardi so testified, her testimony is inconsistent with MAM itself, which includes numerous elements that a jury may determine “adopted” a “frame-up theory” and “took sides.” See Addendum (summarizing content of episodes).

32. Episode 1 shows Avery’s criminal history as a troubled young man, including documenting felony convictions for burglary, animal cruelty for burning the family cat to death, and a January 1985 confrontation where Avery ran his cousin, Sandra Morris, off the road and threatened her with a gun. Ep. 1 at 9:30-10:36, 12:00-16:03.

RESPONSE: Plaintiff does not dispute that the above incidents are referenced in MaM but disputes that they are mentioned with completeness or accuracy and disputes that they are shown as felonies. The animal abuse incident is portrayed, using Steve Avery’s voiceovers, as essentially an accident and hanging out with the wrong friends, Dkt #120-1 at 10:00 – 10:29. However Judge Willis’ Decision and Order describes the cat incident as the “defendant built a bonfire in his back yard, soaked a cat in gasoline and oil, and threw the cat in the fire. After the cat ran out of the fire, the defendant poured more gasoline on it before the animal died.” DKT 290-14, pp. 10-13. Avery has a voiceover and describes the burglaries occurring when they were looking for something to do and decided to rob a tavern. The scenes flashing \$14.00 in quarters and two six packs of Pabst beer and two cheese sandwiches, implying this what was taken Dkt #120-1 at 9:30 - 10:00. The incident with Sandy Morris is portrayed as brought on by her alleged “spreading rumors” of Avery, leading him befuddled as to how else to handle it, Dkt #120-1 at 12:31 – 14:00.

33. The episode then depicts Avery’s arrest and conviction for the 1985 rape he did not commit. *Id.* at 27:53-28:13.

RESPONSE: Plaintiff does not dispute that Episode 1 includes discussion of Avery’s arrest and conviction for the 1985 rape, though this is not what is shown at the

citation provided. However, Plaintiff again disputes that the proposed Findings of Fact relating to Episode 1's content are fair summaries because they cherry-pick certain portions and fail to describe the episode in its entirety. Plaintiff again refers to the attached episode summaries, including, but not limited to, the summary of Episode 1.

34. In an interview appearing in MaM Episode 1, Judge Fred Hazlewood, who presided over the 1985 rape trial, said that "violence was a real reoccurring regular part of [Avery's] life, [and] that women seemed to be the victims." *Id.* at 27:53- 28:13.

RESPONSE: Plaintiff does not dispute that Judge Hazelwood is depicted making the quoted statement in MAM Episode 1, but Plaintiff reiterates the MAM objection set forth in his response to Netflix's proposed Finding of Fact No. 1, as the statement may not be what Judge Hazelwood actually said during any interview with MAM's creators. In addition, Plaintiff disputes that the proposed Finding of Fact provides an accurate depiction of the content of Episode 1 taken in context Plaintiff again refers to the Episode summaries attached as an Addendum hereto, including the summary for Episode 1.

35. Episode 2 documents Avery's civil rights lawsuit against Manitowoc County, including portions of Colborn's deposition about the jail call he received while working as a jailer in the 1990s. *See* Ep. 2 at 18:27-19:59.

RESPONSE: Plaintiff disputes that Episode 2 "documents" Avery's civil rights lawsuit, as it instead includes information that is not in the record of the civil rights case. Addendum to these responses (Episode Summary). Plaintiff does not dispute that portions of Colborn's deposition from the civil rights lawsuit is shown in Episode 2 at 18:27 – 19:59 but deny that he is portrayed accurately or completely. Similarly, MAM does not fairly represent Mr. Colborn in excerpts from video depositions taken during Avery's civil trial. The full video deposition of Mr. Colborn's testimony in Avery's civil case

demonstrates that Mr. Colborn appeared confident and relaxed and made regular eye contact with the examining attorney. Dkt # 129, Burnett Decl., Ex. 1, In contrast, in the clips of Mr. Colborn's testimony at Mr. Colborn's civil suit deposition that appear in MAM, his gaze is frequently not matched to the examining attorneys. Moreover, the deposition footage was not displayed in full screen in MAM, so that Mr. Colborn appears to be looking down in answering questions, but the full-screen video shows that he was looking at an exhibit. Dkt # 129, Burnett Decl., Ex. 1 at 4:10 PM, 4:13-4:17 PM. The document cannot be seen on MAM. *See* Dkt# 120-2 at 18:30-19:05.

In addition, during the clip cited in the proposed Finding of Fact, Attorney Steven Glynn is providing commentary that was not part of the record of the civil rights case., as he is referring to it retroactively. Dkt #120-2 at 17:20 – 18:25, 19:05 – 21:45, 29:40 -30:25.

36. The episode also shows an interview with one of Avery's lawyers in the civil case, Steven Glynn, who says:

“And the day [Avery] got out, or the day after, that's when Colborn decides to contact his superior officer named Lenk. And Lenk tells him to write a report and they then go have contact with the sheriff. Now let's just stop and think about that for a minute. Why does that happen? Why does it happen then when it didn't happen eight years earlier? I mean, I think I know the answer. I mean, I think the answer is pretty clearly these people realized that they had screwed up big time. Colborn realized it, Lenk, as his superior realized it, and the sheriff realized it. So Lenk tells Colborn to write a report, the sheriff tells Lenk, ‘Get me the report.’ The sheriff puts the report in a safe. That's how much he cares about documenting this thing.”

Id. at 20:33-21:24.

RESPONSE: Plaintiff does not dispute that this quote is present in MAM, but disputes that individual portions of episodes can be considered out of context of the entire episodes, and refers to the Episode Summary attached hereto as an addendum.

37. The episode ends with Halbach’s disappearance, Avery’s arrest, and law enforcement searches of the Avery compound. *Id.* at 31:16-56:34.

RESPONSE: Plaintiff does not deny that the foregoing subjects are discussed in MAM at Episode 2, but Plaintiff disputes that the proposed Finding of Fact fairly represents the import, content or tone of the episode and refers to the Episode Summary attached hereto as an addendum, including the summary for Episode 2. The episode ending is not 25 minutes long.

38. Episode 3 depicts the split in opinion in Manitowoc, including with interviews of some who believed Avery’s claims he was framed, *id.* at 14:16-15:36, and others expressing belief of Avery’s guilt—including Avery’s own brother, Chuck, *id.* at 41:55-42:03.

RESPONSE: Plaintiff objects to the proposed Finding of Fact to the extent it attempts to represent as admissible facts the statements allegedly shown in MAM; again, Plaintiff asserts the MAM objection as the statements shown almost certainly were edited. In addition, the statements are hearsay to the extent Netflix attempts to offer them for the truth of the matters asserted. For the limited purpose of showing what is contained in MAM, Plaintiff disputes that the summary provided is accurate. Defendants were not able to identify the individuals speaking or provide any information about them at their depositions. Dkt # 286-6 and 286-3. Therefore, they cannot establish that the individuals who are represented as claiming that Avery was framed were from Manitowoc or that the bar was in Manitowoc where the individuals were playing pool. Plaintiff again refers to the addendum to the proposed Findings of Fact as a more accurate summary of MAM in context, including the summary of Episode 3.

39. At his deposition in this case, Colborn acknowledged that local residents had divergent views at the time of Avery’s arrest and trial, stating “I’ll agree that there were some in the community that thought he was innocent; some thought he had done this again” and “Avery had his supporters . . . Law enforcement probably had a few supporters as well.” *See* Walker Decl. Ex. 2 (Colborn Tr.) at 77:8-14, 83:3-7.

RESPONSE: Plaintiff does not dispute that Mr. Colborn so testified.

40. The episode also includes the views of law enforcement, such as footage from an interview with Manitowoc County Undersheriff Robert Hermann, who says that “some of the evidence—the DNA evidence at the scene—it’s impossible for us to have that type of evidence, you know, to plant. It’s just—it’s not realistic.” Ep. 3 at 22:50-23:19.

RESPONSE: Plaintiff asserts the MAM objection as it is impossible to know whether and how much editing occurred to Undersheriff Herma’s statement. Plaintiff also objects that the statement is hearsay to the extent Netflix purports to offer it for the truth of the matters asserted. In addition, one statement does not represent “the views of law enforcement.” Further, Plaintiff disputes that MAM represented the “views of law enforcement” as legitimate. To the contrary, Netflix and Chrome sought to undermine law enforcement views, such as by using theme music to identify them as the “baddies” and the “villains.” Barker Decl., Ex. 1, NFXCOL0002009 and 2133, Barker Decl. Ex. 2, MANHARDT00000793. In addition, MAM sought to portray the views of law enforcement as a precursor to having their stories retold by their “more reliable” narrators, *i.e.*, Avery and his family, and to “have the audience kicking themselves” for having believed law enforcement. Barker Decl., Ex. 2, Manhardt 00000149.

41. The episode ends with footage of authorities’ announcement that Brendan Dassey, Avery’s nephew, had confessed to helping kill Halbach and footage of the confession itself. *Id.* at 23:39-1:00:52.

RESPONSE: Plaintiff asserts the MAM objection as it is likely that the alleged “footage” was edited, as described in the response to proposed Finding of Fact 1. Plaintiff further refers to the Episode Summary attached as an addendum as a more appropriate summary of MAM in context, including the summary for Episode 3. Plaintiff further disputes that the episode ending is over 37 minutes long but does not dispute that the

episode spends time featuring Brendan Dassey and provides what is represented to be footage of a portion of his confession.

42. While Episode 4 focuses largely on pretrial events in the case against Dassey, the episode closes with footage of Avery's counsel Jerome Buting, prosecutor Norm Gahn, and Investigator Weigert inspecting the vial of Avery's blood in the court clerk's office which Avery's attorneys speculated was the source of Avery's blood in Halbach's SUV, and then footage of a phone call from Buting to Strang in which Buting claims that the hole in the rubber stopper indicated the vial had been tampered with. Ep. 4 at 1:01:45-1:04:20.

RESPONSE: Plaintiff asserts the MAM Objection as it is not possible to know how much editing occurred to the alleged "footage" shown. Plaintiff further refers to the more complete summary attached as an addendum, including the summary of Episode 4. Plaintiff does not dispute that the episode ends with the blood vial as a "cliffhanger" but disputes that the episode shows who was present at the time. Although text on screen states that Wiegert and Gahn are present, neither is shown.

43. Episode 5 starts a four-episode arc depicting Avery's murder trial. *See generally* Eps. 5-8.

RESPONSE: . Plaintiff asserts the MAM Objection as the trial sequences were heavily edited, as shown by the edits to Plaintiff's own testimony. Plaintiff further disputes the summary referenced in the proposed Finding of Fact and refers to the more complete summary attached as an addendum, including the summary of Episodes 5-8. Plaintiff further disputes that Episodes 5-8 accurately "depict" the Avery murder trial and nothing else, as the episodes also contain edited testimony of Plaintiff, as well as numerous other additions that are not part of the trial, including Avery's and others' out-of-court statements. See Addendum.

44. Episode 5 includes footage of prosecutor Norm Gahn defending Manitowoc County law enforcement by saying, "when officers are accused of what they're being accused of, they deserve to have their reputations protected. They're good solid decent family men. . . . Again, I just cannot emphasize too much, give us the chance to meet this planting frame-up defense." MaM shows the court granted that request. Ep. 5 at 1:09-2:18.

RESPONSE: Plaintiff asserts the MAM objection. Plaintiff also refers to his attached episode summary, including the summary for Episode 5, as the statement referenced must be considered in context. Plaintiff also disputes that MAM's aim was to fairly represent Gahn's point of view; to the contrary, Netflix and Chrome sought to undermine law enforcement views, such as by using theme music to identify them as the "baddies" and the "villains." Barker Decl., Ex. 1, NFXCOL0002009 and 2133, Barker Decl. Ex. 2, MANHARDT00000793. In addition, MAM sought to portray the views of law enforcement just to have their stories retold by MAM's preferred narrators and to "have the audience kicking themselves" for having believed them. Barker Decl., Ex. 2, Manhardt00000149.

45. It also includes footage of law enforcement interrogating Avery, during which Avery claims someone named "Tammy" told him that "a cop" put Halbach's vehicle on the Avery Salvage Yard property. *Id.* at 52:12-53:20.

RESPONSE: Plaintiff asserts the MAM objection described above in response to proposed Finding of Fact #1 to the extent that Netflix is attempting to claim that the "footage" of the apparent interrogation was allegedly genuine and unedited as shown in MAM. Plaintiff also objects to the statements made in the purported "footage" as containing at least two levels of hearsay (Avery's statements and the supposed statements by "Tammy" to Avery). Plaintiff does not dispute that MAM includes a segment that appears to show law enforcement interrogating Avery, who appears to state that someone told a person named "Tammy" that "a cop" put Teresa's vehicle on his property.

46. The final three and one-half minutes of the episode show excerpts of Colborn's testimony regarding the call he made to a county dispatcher before Halbach's SUV was found. *Id.* at 53:20-56:55.

RESPONSE: Plaintiff disputes the proposed Finding of Fact as the last three and a half minutes of Episode 5 of MAM do not show “excerpts” of Plaintiff’s testimony, but rather, amalgamated and reformulated versions of his testimony that are spliced together. See Barker Decl., Ex. 10 pp. 180-207 and Barker Decl. Ex. 19.

47. MaM’s presentation of Colborn’s testimony about the dispatch call begins by showing Avery defense lawyer Dean Strang eliciting testimony from Colborn that patrol officers often call a dispatcher to check the license plate number “of a car they have stopped, or a car that looks out of place for some reason,” to get information about the person to whom the vehicle is registered. Ep. 5 at 53:17-53:50.

RESPONSE: Plaintiff does not dispute that MAM’s edited version of Mr. Colborn’s trial testimony includes an apparent exchange in which Avery defense lawyer Dean Strang elicits testimony from Mr. Colborn as described. Plaintiff disputes that his testimony as represented in MAM is an accurate representation of the testimony at the Avery trial See Barker Decl., Ex. 10 pp. 180-207 (Demos testimony confirming edits made to trial testimony as shown in Exhibit 62); Ex. 19.

48. Also in Episode 5, MaM then shows Strang playing a tape of the call, in which Colborn asks a dispatcher to “run” a license plate SWH-582, which the dispatcher says “shows that she’s a missing person, and it lists to Teresa Halbach.” *Id.* at 54:03-54:20.

RESPONSE: Plaintiff does not dispute that MAM’s edited version of Mr. Colborn’s trial testimony includes an apparent exchange in which Avery defense lawyer Dean Strang appears to play a tape of a call in which Mr. Colborn asks a dispatcher to “run” a license plate SWH 582, and the dispatcher is heard apparently responding, in part, “shows that she’s a missing person, and it lists to Teresa Halbach.” Plaintiff disputes that the call as represented in MAM is an accurate representation of the portions of the call that were played at the Avery criminal trial. See Barker Decl., Ex. 10 pp. 180-207 (Demos testimony confirming edits made to trial testimony as shown in Exhibit 62); Ex. 19 pp. 180-82.

49. Colborn is heard asking the dispatcher, “‘99 Toyota?” and she replies, “Yup.” *Id.* at 54:19-54:23.

RESPONSE: Plaintiff does not dispute that the above exchange is included in Episode 5 of MAM.

50. Amid further cross-examination, MaM shows Strang asking Colborn, “Were you looking at these plates when you called them in?” and Colborn responding, “No, sir.” *Id.* at 55:26-55:30; *see also* Dkt. 119-1 at 5.

RESPONSE: Plaintiff does not dispute that MAM’s edited version of Mr. Colborn’s trial testimony includes an apparent exchange in which Avery defense lawyer Dean Strang elicits testimony from Mr. Colborn as described. Plaintiff disputes that his testimony as represented in MAM is an accurate representation of the testimony at the Avery trial. Following his response at trial, Strang immediately moves on to the next question. Barker Decl., Ex. 3. In MAM, after Mr. Colborn’s response, there is a pause during which Mr. Strang appears to glare at Mr. Colborn, and then Mr. Colborn is shown appearing to shift uncomfortably in his chair, lean back, and crack his knuckles. Barker Decl. Ex. 3.

51. After that denial, MaM shows Colborn testifying he believed the call happened on November 3, 2005, “[p]robably after I received a phone call from [Calumet County] Investigator [Mark] Weigert letting me know that there was a missing person.” Ep. 5 at 55:37-55:52.

RESPONSE: Plaintiff does not dispute that MAM shows what is described, but disputes that his testimony is accurately represented as it is edited. Barker Decl., Ex. 19.

52. Strang asks Colborn whether Weigert had provided the license plate number, and Colborn testifies that he does not remember exactly, but “[h]e had to have given it to me, because I wouldn’t have had the number any other way.” *Id.* at 55:53-56:09; *see also* Dkt. 119-1 at 6-7.

RESPONSE: Plaintiff disputes the proposed Finding of Fact as the referenced portions of Episode 5 of MAM do not show Plaintiff’s testimony, but rather, amalgamated and reformulated versions of his testimony that are spliced together.

See Barker Decl., Ex. 10 pp. 180-207 and Ex. 19 at p. 186.

53. Then, Strang asks whether someone listening to the call could reasonably conclude that Colborn was looking at the SUV when he made the dispatch call, followed by Colborn's affirmative answer to another question asking whether the call sounded like hundreds of other calls he had made before. Ep. 5 at 56:10-56:26; *see also* Dkt. 119-1 at 7-8.

RESPONSE: Plaintiff disputes the proposed Finding of Fact as the referenced portions of Episode 5 of MAM do not show Plaintiff's testimony, but rather, amalgamated and reformulated versions of his testimony that are spliced together.

See Barker Decl., Ex. 10 pp. 180-207 and Ex. 19 at pp. 186-187.

54. MaM also shows the very next exchange, in which Strang asks, "But there's no way you should have been looking at Teresa Halbach's license plate on November 3, on the back end of a 1999 Toyota?" followed by Colborn's answer, "I shouldn't have been and I was not looking at the license plate." Ep. 5 at 56:26-56:42; *see also* Dkt. 119-1 at 8.

RESPONSE: Plaintiff disputes the proposed Finding of Fact as the referenced portions of Episode 5 of MAM do not show Plaintiff's testimony, but rather, amalgamated and reformulated versions of his testimony that are spliced together as follows:

See Barker Decl., Ex. 10 at pp. 180-207 and Ex. 19 p. 187. Taken together with the edit made in the preceding proposed Finding of Fact – which has Mr. Colborn purportedly admitting that his call sounded like he was looking at the license plate when he made it – the passage included in this proposed Finding of Fact now has Mr. Colborn appearing to contradict his own testimony of a few moments prior.

18 Q. (By Attorney Strang)~ There's no way you should
19 have been, is there?
20 A. I shouldn't have been and I was not looking at
21 the license plate.
22 Q. Because you are aware now that the first time
23 that Toyota was reported found was two days later
24 on November 5?
25 A. Yes, sir.

187

55. Colborn acknowledged at his deposition that MaM included not one, but two of his explicit denials, while he was testifying in uniform and under oath, that he was looking at Halbach's vehicle at the time of the call. Walker Decl. Ex. 2 (Colborn Tr.) at 344:23-345:1.

RESPONSE: Plaintiff does not dispute that some denials were included in MAM, but the denials were made less apparently credible by the edits made by MAM to his testimony and by splicing in apparent physical reactions that made him look more nervous. Netflix representatives knew that the denial at the conclusion of Episode 5 would not be portrayed in a manner that would be construed by viewers as a truthful statement, as they referenced the ending as the "Colborn license plates bomb" during production, and they indicated that because of it, "setting Colborn up as the potential cop to plant the car works really well now." Barker Decl., Ex. 1, NFXCOL0001990 and 2150.

56. Episode 6 shows more testimony from Avery's trial, as well as an out-of-court statement by Buting responding to the prosecution's assertion that framing Avery would require a conspiracy among a large group of people to succeed, musing rather that "two people could've done this easily enough if they had the motive to do it. Maybe one, even. . . . [W]ho better than a police officer would know how to frame somebody?" Ep. 6 at 56:26-57:08.

RESPONSE: Plaintiff asserts the MAM Objection with respect to alleged testimony shown from Avery's trial in Episode 6. Subject to his objection, Plaintiff does not dispute that Episode 6 includes an out-of-court statement by Buting, but disputes that the proposed Finding of Fact accurately and fully represents the statement.

57. Episode 7 includes excerpts of Colborn’s testimony regarding the jail call, which Colborn criticized in his opposition to Netflix’s Motion to Dismiss the SAC for leaving out the portion of his testimony in which he “corrected” his reference to transferring the call to a detective and said he transferred the call to the detective division of the sheriff’s office. Ep. 7 at 17:46-18:30; SAC Ex. B at 4; Dkt. 79 at 6-8.

RESPONSE: Plaintiff disputes that Episode 7 includes “excerpts” of Mr.

Colborn’s testimony; rather, the Episode includes spliced and reformulated version of his testimony.

Plaintiff does not dispute that Mr. Colborn made criticism in his opposition to Netflix’s Motion to Dismiss the SAC as stated above but dispute that his criticism is portrayed in this statement in a fair manner or in context. See Dkt. 79 at 6 – 8 and Dkt. 105 at pp. 6-8 and p. 47.

58. At his deposition in this case, Colborn criticized MaM for leaving out testimony that he answered the phone, “Manitowoc County Jail, Officer Colborn.” Walker Decl. Ex. 2 (Colborn Tr.) at 355:23-357:8.

RESPONSE: Plaintiff does not dispute that Mr. Colborn criticized MAM at his deposition for leaving out testimony that he answered the phone, “Manitowoc County Jail, Officer Colborn,” but he disputes that the proposed Finding of Fact represents Mr. Colborn’s complete answer to the question. See Dkt. 279-2 Depo. p. 356.

59. However, the episode includes Colborn’s testimony that he received that call “when I was working [in] my capacity as a corrections officer at the Manitowoc County Jail.” Ep. 7 at 17:46-18:30; SAC Ex. B. at 4.

RESPONSE: Plaintiff does not dispute this proposed Finding of Fact, but disputes that Episode 7 fairly represents Mr. Colborn’s testimony at the Avery trial. The edits made were confirmed by Ms. Demos. Barker Decl., Ex. 19. In Episode 2, when the jail call was first discussed by Steven Glynn, all references to Mr. Colborn’s status as a jail employee at the time of the call were omitted. Dkt #120-2 17:20 – 18:25, 19:05 – 21: *see also* Barker Decl., Ex. 2 Mary Manhardt #509.

60. Colborn also testified that “my reason that I didn’t write a report has been eliminated from my testimony. . . . There would have been no need to write a report every time you receive a telephone call and transfer it.” Walker Decl. Ex. 2 (Colborn Tr.) at 362:22-363:9.

RESPONSE: Plaintiff disputes the testimony as parsed above as an incomplete summary of the deposition testimony that is taken out of context.

See Barker Decl. Ex. 14, Depo. Pp. 360-362 see Colborn Trial testimony at Dkt. 290-19, transcript pp. 212-213.

61. But the episode includes Colborn’s statement that “[i]f I wrote a report about every call that came in, I would spend my whole day writing reports.” SAC Ex. B at 9; *see also* Ep. 7 at 23:54-24:02.

RESPONSE: Plaintiff does not dispute that the quoted statement is included in MAM, but it is contained in an edited exchange that eliminates Mr. Colborn’s explanation that downplays the transfer of the call as it is more unreasonable to expect that a report would be written about a transferred call than one that was not transferred. The more complete exchange at trial is at Dkt. 290-19, Transcript pp. 199 -200, 212-213.

62. Episode 7 also includes Colborn’s testimony that he did not know if the call had anything to do with Avery. SAC Ex. B at 5; Ep. 7 at 18:36-18:44.

RESPONSE: Plaintiff does not dispute that in Episode 7, he is shown testifying that he did not know if the call had anything to do with Avery. However, he disputes that the context is accurately represented in MAM as the question and answer in MaM at the above clip were spliced together and are not accurate with the trial testimony. In MaM it shows prosecutor Ken Kratz’s question spliced together and Mr. Colborn answering “No Sir” to the question when he actually stated “No, I don’t”. See Dkt. 105:52 and Colborn Trial Testimony at Dkt. 290-19, transcript p. 213 as shown below:

9 Q. Let me ask you this, as you sit here today,
10 Sergeant Colborn, do you even know whether that
11 call was about Mr. Steven Avery?
12 A. No, I don't.

63. The episode also includes Colborn's denial that he planted evidence to frame Avery. Specifically, Kratz asked Colborn, "Have you ever planted any evidence against Mr. Avery?" SAC Ex. B at 5. And MaM shows Colborn responding, "I have to say that this is the first time my integrity has ever been questioned, and no, I have not." Ep. 7 at 19:09.

RESPONSE: Plaintiff does not dispute that MAM shows what appears to be the exchange as characterized in the proposed Finding of Fact, but Plaintiff disputes that it is an accurate representation of Mr. Colborn's trial testimony. The court testimony is shown below – see Colborn Testimony at Dkt. 290-19, transcript pp. 140-141:

24 Q. Have you ever planted any evidence against
25 Mr. Avery?

140

1 A. That's ridiculous, no, I have not.
2 Q. Have you ever planted any evidence against
3 anybody in the course of your law enforcement
4 career?
5 A. I have to say that this is the first time my
6 integrity has ever been questioned and, no, I
7 have not.

64. Colborn objects that this scene omits his previous response, "that's ridiculous, no I have not," and at his deposition testified that it was because the answer included in MaM "doesn't come across very forceful or convincing," though he admitted that MaM did convey that he expressly denied planting evidence against Avery. Walker Decl. Ex. 2 (Colborn Tr.) 359:2-14; 360:14-16.

RESPONSE: Plaintiff does not dispute that he objects that this scene omits his actual response, but the testimony as characterized above that “MaM did convey that he expressly denied planting evidence against Avery”. Dkt. 290-19 pp. 140-141), Barker Decl. Ex. 14, Colborn depo. pp. 358-359.

14 **Q** So would you agree that this episode got
15 **across the most crucial points of this portion of**
16 **your direct testimony by Mr. Kratz?**

17 MR. BURNETT: Objection, form.
18 Go ahead.

19 A No, I don't believe it did.

20 **Q** Why not?

21 A There were too many things that -- too many
22 forceful points that were eliminated to clearly get
23 it across. I come across as -- you know, looking at
24 this -- if I was looking at this and I didn't know it
25 was me, I would think, Boy, this officer's pretty

358

24 Q. Have you ever planted any evidence against
25 Mr. Avery?

140

1 A. That's **ridiculous**, no, I have not.

2 Q. Have you ever planted any evidence against
3 anybody in the course of your law enforcement
4 career?

5 A. I have to say that this is the first time my
6 integrity has ever been questioned and, no, I
7 have not.

65. Colborn also complains of the scene in Episode 7 that appears at 24:19-24:30, in which Colborn says that a brief shot of him leaning back in the witness chair and cracking his knuckles “make[s] me look nervous and apprehensive and that I’ve been caught in some sort of lie,” and asserted that footage was recorded when the jury was not present. Walker Decl. Ex. 2 (Colborn Tr.) at 496:18-497:6.

RESPONSE: Plaintiff does not dispute that Mr. Colborn’s testimony was in part as cited above, but Plaintiff disputes that his testimony refers to Episode 7 at 24:19 – 24:30, but rather applies to Episode 5 – see Dkt. 120-5 at 55:31 – 55:40.

66. Episode 7 also shows excerpts of testimony regarding the RAV4 key found in Avery’s bedroom, including Colborn testifying that the key appeared after he handled the bookcase “rather roughly, twisting it, shaking it, pulling it,” and jammed items back into it. Ep. 7 at 16:42-17:30; *see also* Walker Decl. Ex. 2 (Colborn Tr.) at 351:17-25 (admitting this scene conveys the important parts of his testimony, including that he handled the bookcase roughly and didn’t touch the key).

RESPONSE: Plaintiff disputes the proposed Finding of Fact as the referenced portions of Episode 7 of MAM do not show Plaintiff’s testimony, but rather, amalgamated and reformulated versions of his testimony that are spliced together. *See* Barker Decl., Ex. 10 at pp. 180-207; Ex.19 at p. 186.

Plaintiff does not dispute that at his deposition, Mr. Colborn testified that “Yes, I will agree that the portions – that a portion of my testimony about how I handled the bookcase and that I didn’t touch the key are on this clip” but disputes Netflix’s characterization that MAM “conveys the important parts of his testimony”.

67. The episode includes excerpts of the testimony of Calumet County Sheriff’s Sgt. William Tyson, who testified that he accompanied the Manitowoc County officers on a November 5, 2005 search of the trailer because he had been told that Manitowoc County deputies should not be left alone on the Avery property. Ep. 7 at 4:18-5:58.

RESPONSE: Plaintiff disputes that the proposed Finding of Fact is an accurate representation of Sgt. Tyson’s testimony. . Sgt. Tyson did not say he had been told that the Manitowoc County deputies should not be left alone, but he knew that the Manitowoc

County District attorney had told the officers not to be alone. *See* Tyson trial testimony at Dkt. 290-19, transcript pp. 23:17 – 25:4

68. At trial, defense attorney Jerome Buting asked Tyson whether he ever “had to act like a babysitter, or a watchdog, for the other officers who were conducting a search,” to which Tyson responded that he “did not treat this as if [he] was babysitting.” Dkt. 119-1 at 21.

RESPONSE: Plaintiff does not dispute this proposed Finding of Fact.

69. Buting immediately follow ed up by asking whether, “in any of [his] years as an officer, [he] had to watch the officers who were searching where you were, to make sure that they weren’t alone,” to which Tyson answered “no.” Dkt. 119-1 at 21.

RESPONSE: Plaintiff does not dispute this proposed Finding of Fact.

70. Colborn complains that, in MaM, this exchange is condensed to a single question and answer:

Buting: Had you ever in any other search in your entire career had to act like a babysitter, or a watchdog, for the officers who were conducting a search?

Tyson: No.

Ep. 7 at 5:18-5:31.

RESPONSE: Plaintiff does not dispute that Mr. Colborn complains that MAM inserted an incorrect answer to a question between Buting and Tyson and eliminated Mr. Tyson’s response that he did not treat the assignment as if he was babysitting. The trial

transcript is:

7	Q.	Had you ever, in any other search in your entire
8		career, had to act like a babysitter, or a
9		watchdog, for the officers who were conducting a
10		search?
11	A.	I did not treat this as if I was babysitting.
12	Q.	Had you ever, in any of your years as an officer,
13		had to watch the officers who were searching
14		where you were, to make sure that they weren't
15		alone?
16	A.	No.
17	Q.	This was a first for you, wasn't it?
18	A.	Yes.

See Tyson Trial Transcript at Dkt. 290-19, transcript p. 25:7-18.

71. Episode 7 also shows Colborn’s and Lenk’s testimony denying planting blood, *id.* at 18:44-19:10, 32:53-33:09, and prosecutors criticizing the defense’s “frame-up” theory, *id.* at 44:38-45:34.

RESPONSE: Plaintiff does not dispute that the cited portions of MAM include what appears to be testimony of Colborn and Lenk denying planting blood, but he disputes that MaM accurately depicts trial testimony. See Colborn Trial testimony at Dkt. 290-19, p.140:14 – 141:7 and Lenk Trial testimony at Barker Decl. Exhibit 7, transcript pp. 18:18 – 19:1. The testimony shown below shows how the questions were combined in MaM with only one answer provided.

18	Q	Lieutenant Lenk, did you ever, um, obtain any
19		blood from the clerk's office or did you obtain
20		any blood from any location and plant it anywhere
21		on the Avery salvage property?
22	A	No, sir, absolutely not.
23	Q	Did you ever plant it anywhere in Teresa
24		Halbach's vehicle or anywhere where it could be
25		found as part of this investigation?
18		

1	A	No, sir, definitely not.
---	---	--------------------------

Plaintiff does not dispute that MAM MaM shows news coverage of prosecutor Gahn defending law enforcement at the identified passage, but asserts the MAM Objection described in his response to proposed Finding of Fact #1 as Defendants have refused to produce raw footage of the press conference, as explained in the response to proposed Finding of Fact #1. In addition, the segment was included in order for MAM to retell prosecutors’ versions of events with rebuttals from Avery, his family, and his attorneys’ out-of-court statements. Barker Decl., Ex. 2 Manhardt 493.

72. It includes Kratz telling reporters, “around these parts if you’re going to suggest that a cop is crooked, you’re going to suggest that a cop committed crimes, then you better have something other than your elbow was on the table. And in this case, to suggest that these police officers planted evidence with nothing, that is with not with one shred, at least anything that I’ve seen that approaches evidence, uh, I think is absolutely deplorable.” *Id.* at 14:04-14:29.

RESPONSE: Plaintiff does not dispute that MAM MaM shows news coverage of prosecutor Kratz appearing to make the identified statements at the identified passage,, but asserts the MAM Objection described in his response to proposed Finding of Fact #1 as Defendants have refused to produce raw footage of the press conference, as explained in the response to proposed Finding of Fact #1. In addition, the segment was apparently included in order for MAM to retell the perspective of law enforcement with rebuttals from Avery, his family, and his attorneys’ out-of-court statements. Barker Decl., Ex. 2 Manhardt 493.

73. The episode also includes local reporter Angenette Levy describing Colborn at a news conference as “a law enforcement officer for thirteen years. He puts on a uniform, a badge and a gun every day and goes to work and tries to do his best,” and challenging Strang by asking, “if you were going to put somebody on the stand and accuse that person of a conspiracy, Mr. Kratz kind of made it sound like you should be able to offer some proof that this planting actually took place.” *Id.* at 24:30-25:47.

RESPONSE: Plaintiff does not dispute that MAM shows news coverage of a reporter (who is unidentified) appearing to make the identified statements at the identified passage, but asserts the MAM Objection described in his response to proposed Finding of Fact #1 as Defendants have refused to produce raw footage of the press conference, as explained in the response to proposed Finding of Fact #1. Plaintiff further disputes that the excerpt cited in the proposed Finding of Fact is fairly taken in context, as it is used in MAM as a set-up for Strang’s response in which he is shown making an out-of-court statement in response to the reporter that states that the evidence of the conspiracy in which Mr. Colborn is alleged by them to have participated is greater than that on which

he has seen federal prosecutors convict defendants in conspiracy cases. Dkt #120-7 24:30
– 25:47.

74. It also includes Gahn’s saying of Manitowoc County law enforcement: “My blood starts to boil when . . . I hear this, that these police officers, these good solid citizens, good decent men are accused of planting this evidence.” *Id.* at 34:45-34:58.

RESPONSE: Plaintiff does not dispute that MAM shows news coverage of prosecutor Kratz appearing to make the identified statements at the identified passage, but asserts the MAM Objection described in his response to proposed Finding of Fact #1 as Defendants have refused to produce raw footage of the press conference, as explained in the response to proposed Finding of Fact #1. In addition, the segment was apparently included in order for MAM to retell the perspectives of law enforcement with rebuttals from Avery, his family, and his attorneys’ out-of-court statements. Barker Decl., Ex. 2 Manhardt 493.

75. Episode 8 includes more than eight minutes of excerpts from both sides’ closing arguments, intercutting those arguments (*i.e.*, shifting back and forth between them) to show viewers key assertions from each side. Ep. 8 at 3:40-12:04.

RESPONSE: Admit that Episode 8 includes excerpts from closing arguments on both sides, but the Deny that the closing arguments are presented in their entirety as the testimony is spliced together. See closing statements at Barker Decl. Ex. 17 and 18.

76. The episode depicts Buting arguing that evidence could have been planted by one officer working alone—naming Lenk, *id.* at 6:08-6:50, and then Kratz’s response to this that “th[e] vial planting defense is absolutely ludicrous,” *id.* at 7:22-7:27.

RESPONSE: Plaintiff does not dispute that the described statements are in MAM but disputes that the closing arguments are fairly represented in MAM. The proposed Finding of Fact also omits numerous elements of Episode 8 that are slanted toward Avery and his supporters, as described in the Episode Summary in the Addendum.

77. And it reaches its climax with footage of Judge Willis reading the jury’s verdict convicting Avery of murder. *Id.* at 26:02-27:46.

RESPONSE: Plaintiff does not dispute that Judge Willis is shown reading the verdict at the above timestamp for Episode 8. but objects to Netflix’s characterization of that as the “climax” as non-factual and irrelevant.

78. Episode 8 also includes footage of a local news anchor reading Colborn’s post-verdict statement praising the verdict. *Id.* at 33:57-34:16.

RESPONSE: Plaintiff does not dispute that Episode 8 includes what appears to be video of a local news anchor reading Mr. Colborn’s statement, but Plaintiff is not in possession of the raw news footage and Defendants refused to produce it in discovery; accordingly, Plaintiff asserts the MAM Objection as to any finding about the alleged accuracy of the footage.

79. Episode 9 shows footage of Dassey’s trial and conviction and from Avery’s sentencing, where Judge Willis tells Avery, “you are probably the most dangerous individual ever to set foot in this courtroom.” Ep. 9 at 53:00-54:00; *id.* 1:01:59-1:02:03.

RESPONSE: Plaintiff does not dispute that the described statement appears in MAM, but disputes that this proposed Finding of Fact fairly summarizes Episode 9, as it omits most of the items heavily favoring Avery and his supporters that are described in the Episode Summary for Episode 9 that is contained in the Addendum hereto.

80. Episode 10 describes post-verdict developments, such as the fact that Avery and Dassey both lost their first rounds of appeals. *See generally* Ep. 10.

RESPONSE: Plaintiff does not dispute that the described statement appears in MAM, but disputes that this proposed Finding of Fact fairly summarizes Episode 10, as it omits most of the items heavily favoring Avery and his supporters that are described in the Episode Summary for Episode 10 that is contained in the Addendum hereto.

81. [This enumerated item intentionally left blank.]

82. On October 19, 2018, Netflix premiered a second 10-episode season of Making a Murderer, which follows the post-conviction appeals of Avery and Dassey. SAC ¶ 49.

RESPONSE: Plaintiff does not dispute that on October 19, 2018, Netflix premiered a second 10-episode season of Making a Murderer, but disputes that the only content of the second season is the post-conviction appeals of Avery and Dassey. [=

83. None of the statements challenged in the SAC are from the second season of MaM. *See* SAC ¶¶ 57-82 (detailing claims at issue, referencing and challenging only S1 statements).

RESPONSE: Plaintiff disputes the Defendants' characterization of the Second Amended Complaint. Dkt. 105 p. 17 – 19 describe defamatory content in the second season of MaM.

IV. NETFLIX'S INVOLVEMENT IN MAM

84. Netflix licensed MaM from Laura Ricciardi and Moira Demos in July 2014. (hereinafter, the "Producer Defendants"). Walker Decl. Ex. 10 (excerpts of NFXCOL0000091) at 1.

RESPONSE: Plaintiff does not dispute this proposed Finding of Fact

85. Prior to Netflix's acquisition of the film, Moira Demos wrote in July 2013 that "[t]he series is 90% shot and we currently have rough cuts of the first three episodes. To date this project has been exceedingly independent. The series has been entirely produced, directed, shot and edited by my partner Laura Ricciardi and myself." Walker Decl. Ex. 11 (E. Daily Subp. Prod. 31-0001) at 0002.

RESPONSE: Plaintiff objects to the proposed Finding of Fact as relying on hearsay to the extent it is submitted for the truth of the matters asserted.

86. The license agreement, signed on or about July 28, 2014, contained a warranty that the Producer Defendants would provide a "truthful and accurate" series to Netflix that did not defame anyone. *See* Walker Decl. Ex. 10 (excerpts of NFXCOL0000091) at 107.

RESPONSE: Plaintiff does not dispute that the license agreement states the Distributor represents, warrants and covenants that ... "(o) the Series shall be truthful

and accurate.” but Plaintiff disputes that the licensing agreement referenced defamation at p. 107.

87. The Producer Defendants hired their own lawyers for the production. Walker Decl. Ex. 12 (CHRM003641); *see also* Decl. of Lisa Nishimura (“Nishimura Decl.”) ¶ 6.

RESPONSE: Plaintiff objects to this proposed Finding of Fact as irrelevant, as the motions for summary judgment are not premised on any “advice of counsel” defense and if any such defense is not raised, Defendants should not have withheld documents with pre-suit counsel based on assertions of attorney-client privilege. Subject to the objection, Plaintiff does not dispute this proposed Finding of Fact.

88. Netflix’s core team for MaM consisted of Lisa Nishimura, Adam Del Deo, Ben Cotner, and—to a lesser extent—Marjon Javadi. *See* Walker Decl. Ex. 13 (Del Deo Tr.) at 65:9-66:22.

RESPONSE: Plaintiff does not dispute that Netflix’s core team for MAM consisted of Nishimura, Del Deo, Cotner and Javadi, but disputes that the transcript excerpt referenced indicates that Javadi was involved “to a lesser extent.”

89. No one at Netflix was responsible for vetting MaM for accuracy or for defamation, or engaged in such vetting. Nishimura Decl. ¶ 6; *see also* Decl. of Adam Del Deo (“Del Deo Decl.”) ¶ 8.

RESPONSE: Plaintiff objects to this proposed Finding of Fact as calling for a legal conclusion as to Netflix’s responsibility to avoid defaming others, which is not a matter that a party can simply deny by affidavit nor contract out of by agreement with someone other than the defamed party. Subject to the objection, Plaintiff disputes the proposed Finding of Fact as Netflix representatives noted the presence of potentially defamatory material on more than one occasion, and on at least one occasion, indicated that the material should be left in the series without alerting the Chrome Defendants because it would be contrary to the direction Netflix had been “pushing them in” to dial

back the statements. Barker Decl., Ex. 1, NFXCOL0000294 ; Barker Decl., Ex. 1, NFXCOL0002071.

90. On the business side, in addition to financing the film, Netflix helped the Producer Defendants with budgeting, meeting deadlines, and facilitating introductions to third-party specialists who could help with elements of the filmmaking such as music and graphics. Nishimura Decl. ¶ 5; Del Deo Decl. ¶ 4; Walker Decl. Ex. 13 (Del Deo Tr.) 63:14-24; *id.* Ex. 14 (NFXCOL0000215) at 216; *id.* Ex. 15 (NFXCOL0000242); *id.* Ex. 16 (NFXCOL0000265); *id.* Ex. 17 (NFXCOL0000282) at 287; *id.* Ex. 18 (NFXCOL0000294) at 296; *id.* Ex. 19 (NFXCOL0000335) at 339; *id.* Ex. 20 (NFXCOL0002099).

RESPONSE: Plaintiff does not dispute the proposed Finding of Fact but adds that Netflix also helped in the editing process. See Dkt. 275, p. 2 ¶5 where Lisa Nishimura states “I helped the filmmakers refine their edited, assembled footage (known as cuts). Netflix was also heavily involved in the editing process and provided numerous notes and suggestion, along with significant direction to the Chrome Defendants during production. See also Dkt. 275, p. 2 ¶5 (Nishamura declaration). Netflix also approved the final versions of all episodes. Dkt. # 286-4 Depo p. 141 and DKT # 286-3 Del Deo testimony (Del Deo transcript p. 155-156).

91. No one at Netflix edited the series. Walker Decl. Ex. 21 (Nishimura Tr.) at 16:7; 56:23-57:3; Nishimura Decl. ¶ 7; *see also* Del Deo Decl. ¶ 5.

RESPONSE: Plaintiff objects to this proposed Finding of Fact as phrased. While Netflix may be attempting to use “edit” as a term of art that means specifically doing the work of cutting video clips, in common parlance, it is a broader term that includes “to direct the publication of something” [as in a newspaper]. [Edit Definition & Meaning - Merriam-Webster](#) In this sense, Netflix was heavily involved in the editing process and provided numerous notes and suggestion, along with significant direction to the Chrome Defendants during production. See, e.g., . See Barker Decl. Ex. 1 NFXCOL0000199 -

0000202, 0000208-0000210, 0000215-219. See also Dkt. 275, p. 2 ¶5 (Nishamura declaration). Netflix also approved the final versions of all episodes.

92. At her deposition in this case, Nishimura testified that “[a]ll of the editing was controlled purely by the filmmakers. . . . [T]o be clear, no one on my team is a trained editor. And the software and the actual mechanism of editing is not one that I myself or anyone on my creative team is trained in.” Walker Decl. Ex. 21 (Nishimura Tr.) at 56:9-14, 56:23-57:1; *see also id.* at 16:6-7.

RESPONSE: Plaintiff does not dispute that Nishamura testified as stated in the proposed Finding of Fact, but disputes that the statement is consistent with the facts of Netflix’s exercise of final approval for the series, Barker Decl., Ex. 21 and 15, nor with the direction that Netflix provided to Chrome. On numerous occasions, Netflix representatives provided direction indicating what was needed for the next round of edits and suggested, through their comments, that while the versions of the episodes describing additional changes that they wanted to see made. *See, e.g.,* Barker Decl., Ex. Barker Decl. Ex. 1, NFXCOL0000199 -0000202, 0000208-0000210, 0000215-219.

93. Likewise, at his deposition in this case, Del Deo testified that “Laura and Moira were the filmmakers. They were looking at the footage—the trial footage, you know, all the assets they had. They would be the ones to make the call as to what ends up in the documentary or not.” Walker Decl. Ex. 13 (Del Deo Tr.) at 144:13-17; *see also id.* at 161:13-15; Walker Decl. Ex. 9 (Ricciardi Tr.) at 178:15-25.

RESPONSE: Plaintiff does not dispute that Del Deo testified as stated in the proposed Finding of Fact, but disputes that the statement is consistent with the facts of Netflix’s right to and exercise of final approval rights for the series, Barker Decl., Ex. 21 and 15, nor with the direction that Netflix provided to Chrome. On numerous occasions, Netflix representatives provided direction indicating what was needed for the next round of edits and suggested, through their comments, that there were additional changes that they wanted to see made. Barker Decl. Ex. 1, NFXCOL0000199 -0000202, 0000208-0000210, 0000215-219.

94. Laura Ricciardi testified at her deposition that “if I think about the workflow, we—you know, we were working in separate locations. I think we were, you know, mainly communicating on phone calls. There was an occasional meeting, but, you know, for the most part, we -- Moira and I were most interested in, you know, being able to do the creative work, and then, at times we were required to share it with Netflix and that would, you know, lead to notes and conversations, and then we would go back and we would work creatively[.]” Walker Decl. Ex. 9 (Ricciardi Tr.) at 178:15-25.

RESPONSE: Plaintiff does not dispute that Ricciardi made the statement described in the proposed Finding of Fact.

95. Creatively, the Netflix team did help shape the series by reviewing edited, assembled footage—“cuts”— for their overall look and feel and from the perspective of a Netflix subscriber. Nishimura Decl. ¶¶ 5, 7; Del Deo Decl. ¶¶ 4-5.

RESPONSE: Plaintiff does not dispute this proposed Finding of Fact.

96. However, members of the team did not conduct side-by-side comparisons of cuts to previous iterations in an attempt to understand what precisely the filmmakers added or cut to improve flow. Nishimura Decl. ¶ 7; Del Deo Decl. ¶ 5.

RESPONSE: Plaintiff does not dispute that members of the Netflix team did not “conduct side-by-side comparisons of cuts to previous iterations” but disputes that they did not “attempt to understand what precisely the filmmakers added or cut to improve flow” because a jury could infer from the comments and notes provided by Netflix that they were noting and were aware of cuts compared to previous iterations. For example, after the revised version of Episode 5, Netflix’s observation that “setting up Coborn as the cop to potentially plant the car works really well now” shows that they were aware of changes between episode versions.

97. Upon reviewing a cut Netflix would provide to the filmmakers “notes,” which served as suggestions and jumping-off points for discussion, not demands; just because a suggestion was made does not mean it was implemented. Walker Decl. Ex. 21 (Nishimura Tr.) at 126:21-25; *id.* Ex. 9 (Ricciardi Tr.) at 94:9-17; *see also* Del Deo Decl. ¶¶ 4-5.

RESPONSE: Plaintiff does not dispute that Netflix provided “notes” to the filmmakers and the above testimony indicates they were suggestions, but Plaintiff

disputes the statements as inconsistent with the fact of Netflix's exercise of final approval rights for the series, Barker Decl., Ex. 21 and 15, nor with the direction that Netflix provided to Chrome. *See, e.g.*, See Barker Decl. Ex. 1 NFXCOL0000199 - 0000202, 0000208-0000210, 0000215-219. Plaintiff further disputes Netflix's characterization of the notes as "jumping-off points for discussion" and disputes that there was any reference to the statement "just because a suggestion was made does not mean it was implemented" in the materials referenced.

98. Although Colborn asserts Netflix's suggestions to improve pacing show actual malice, such suggestions are a common form of feedback in documentary filmmaking and have "to do with the way you're moving the viewer through the story." Walker Decl. Ex. 22 (Dennis Tr.) at 40:14-22; *compare id.* Ex. 23 (Pl.'s Responses to Netflix's First Set of Interrogs. (Oct. 6, 2021)), Interrog. 2 at 9; *with id.* Ex. 24 (NFXCOL0000212); *id.* Ex. 25 (NFXCOL0001943) at 1946; *id.* Ex. 26 (NFXCOL0001959); *id.* Ex. 27 (NFXCOL0001976) at 1996; *id.* Ex. 28 (NFXCOL0002075) at 2078; *id.* Ex. 29 (NFXCOL0002131).

RESPONSE: Plaintiff objects to the proposed Finding of Fact to the extent that Netflix is attempting to use Lisa Dennis to provide expert testimony about what is common in filmmaking, as she was not disclosed as an expert witness, and objects to the proposed Finding of Fact as irrelevant as to what is common for forms of documentary feedback as the question is whether the suggestions are made in such a way as to knowingly or recklessly produce defamatory material. Subject to the objections, Plaintiff does not dispute that Dennis testified that suspense pacing has "to do with the way that you're moving the viewer through the story" but disputes Netflix's characterization in the statement as there are no citations for the balance of the statement that it is allegedly a common form of feedback in documentary filmmaking

99. Nishimura stated in her declaration that edits regarding pacing were intended to "engage the viewer" and help the viewer digest the most salient points of a long and sprawling account. Nishimura Decl. ¶¶ 8, 13-14.

RESPONSE: Plaintiff objects to the proposed Finding of Fact as self-serving statements by Defendants are not entitled to weight on summary judgment, particularly in defamation cases. Subject to the objection, Plaintiff does not dispute that Nishimura’s declaration at the cited paragraphs states “Our notes on the pacing of the series were intended to help the filmmakers engage the viewer,” but Plaintiff denies defendants’ characterization that it helped the viewer to digest the most salient points of a long and sprawling account as that statement is not referenced in the citations listed. Plaintiff further responds that the statement in the Declaration is not inconsistent with knowing or reckless disregard for the truth and in fact supports the inference that engaging the viewer at all costs was the goal of the series and Netflix.

100. So too for “cliffhangers”: Del Deo attests that Netflix employees suggested that episodes should end on a cliffhanger—a standard documentary series technique—in order to keep viewers engaged so they watch the next episode, including those episodes in which Avery is ultimately convicted. *See* Del Deo Decl. ¶ 12; *compare* Walker Decl. Ex. 23__ (Pl.’s Response to Netflix’s First Set of Interrogs. (Oct. 6, 2021)), Interrog. 1 at 2 (citing *id.* Ex. 24 (NFXCOL0000212) at 213) *with id.* Ex. 30 (NFXCOL0000226) at 229; *id.* Ex. 31 (NFXCOL0000273) at 274; *id.* Ex. 19 (NFXCOL0000335) at 339; *id.* Ex. 32 (NFXCOL0002059) at 2063.

RESPONSE: Plaintiff objects to the extent that Netflix is proffering Del Deo’s testimony as an expert as to “standard documentary technique” as he was not listed nor disclosed as an expert witness. Subject to the objection, Plaintiff does not dispute that Del Deo’s declaration states that Netflix employees suggested that episodes should end on a cliffhanger to keep viewers engaged so they watch the next episode, but Plaintiff does dispute that Del Deo stated in his declaration this was a standard documentary series technique. Plaintiff further responds that the statement in the Declaration is not inconsistent with knowing or reckless disregard for the truth and in fact supports the inference that engaging the viewer at all costs was the goal of the series and Netflix.

101. No one at Netflix ever suggested (or would suggest) that filmmakers sacrifice accuracy in order to speed up the pace of a scene or to make a scene more impactful. Del Deo Decl. ¶¶ 11, 13; *see also* Nishimura Decl. ¶ 8.

RESPONSE: Plaintiff does not dispute that Nishimura’s declaration at ¶ 8 states “Our notes on the pacing of the series were intended to help the filmmakers engage the viewer. We never suggested or intended to suggest that the filmmakers should sacrifice accuracy in favor of speed” and that Del Deo’s declaration ¶ 13 states “But no one at Netflix ever suggested here (or would suggest) that filmmakers sacrifice accuracy in order to speed up the pace of a scene or to make a scene more impactful.” However, Plaintiff disputes the substance of the statements in the declarations because Netflix’s notes and comments regarding the series demonstrate that they encouraged biased edits and efforts to portray law enforcement as “baddies” and “villains,” Barker Decl., Ex. 1, NFXCOL0002009 and 2133, Barker Decl. Ex. 2, MANHARDT00000793, while Del Deo suggested regarding the Averys, “Let’s portray them as a very happy family,” Barker Decl., Ex. 1 NFXCOL 000009, and accordingly, jurors may draw the inference that the suggestions to cut testimony were consistent with their overall intent to shape the series to portray Mr. Colborn as a principal villain and the Averys as heroes regardless of the truth. In addition, jurors may find support for the opposite conclusion to this proposed Finding of Fact because Netflix can point to nothing in its creative notes that cautioned Chrome to avoid sacrificing accuracy in order to speed up the pace of a scene.

102. An example of this is Netflix’s note suggesting the Producer Defendants hold on a particular scene a bit longer, while expressly acknowledging that “[w]e know this is court footage that may not exist.” *See* Walker Decl. Ex. 24 (NFXCOL0000212) at 213.

RESPONSE: Plaintiff does not dispute that the Netflix note states “Can we hold a bit longer on Colborn’s face here. He looks caught.” And goes on to state “We know that this is court footage that may not exist.” However, Plaintiff disputes Netflix’s

proposed Finding of Fact to the extent it is asserted to constitute an example of an exhortation for accuracy. To the contrary, jurors may infer that the statement could be interpreted as encouraging the Chrome Defendants to manufacture footage if necessary, which in fact, they did, by extending the scene in question to show Mr. Colborn purportedly being stared down by Mr. Strang while shifting uncomfortably in his chair and cracking his knuckles – footage that was taken from a different court scene. See Barker Decl., Ex. 3 CHRM 867 14:35 – 15:08 vs. Episode 5 55:31 –55:54. Moreover, Netflix can point to no instruction advising the Chrome Defendants not to replace or substitute reactions or footage, and jurors may infer that this was consistent with their intent to “engage the viewer” at all costs, including the truth.

103. Other notes Colborn highlighted in his discovery responses suggested the use of graphical elements to enhance the clarity and factual accuracy of the series, especially because Avery’s prosecution for Halbach’s murder involved a large number of facts and relevant players, including several law enforcement agencies and legal teams. Nishimura Decl. ¶ 16; Del Deo Decl. ¶¶ 13-14; *compare* Walker Decl. Ex.23 (Pl.’s Response to Netflix’s First Set of Interrogs. (Oct. 6, 2021)), Interrog. 1 at 3-4 *with id.* Ex. 33 (NFXCOL0000208) at 210; *id.* Ex. 14 (NFXCOL0000215) at 219; *id.* Ex. 34 (NFXCOL0000288); *id.* Ex. 27 (NFXCOL0001976) at 1982; *id.* Ex. 35 (NFXCOL0000293); *id.* Ex. 36 (NFXCOL0000245); *id.* Ex. 16 (NFXCOL0000265).

RESPONSE: Plaintiff does not dispute that Netflix suggested the use of graphical elements” but Plaintiff disputes Netflix’s after-the-fact characterization of those as strictly to enhance the clarity and factual accuracy of the series, especially because Avery’s prosecution for Halbach’s murder involved a large number of facts and relevant players, including several law enforcement agencies and legal terms; jurors may draw the inference that the graphical elements were inserted to emphasize Mr. Colborn’s role as an alleged principal in the conspiracy.

104. At his deposition in this case, Colborn testified that “defendants” knew MaM was false because “[t]hey were sitting in the courtroom and saw my complete unedited testimony.” Walker Decl. Ex. 2 (Colborn Tr.) at 435:12-436:9, *see also id.* 441:8-14, 444:13-445:3.

RESPONSE: Plaintiff does not dispute this proposed Finding of Fact.

105. Asked how others could know Avery's frame-up theory was false when even Griesbach—a local resident who personally knew the accused officers—believed the theory was plausible, Colborn further testified: "I don't have an answer other than Mr. Griesbach didn't attend the trial." Walker Decl. Ex. 2 (Colborn Tr.) at 464:11-465:17.

RESPONSE: Plaintiff objects to the proposed Finding of Fact as irrelevant.

Michael Griesbach's initial beliefs as to the subject matter of MAM do not tend to make any fact of consequence more likely than not. Subject to the objection, Plaintiff admits that he testified as set forth in the quoted portion of the proposed Finding of Fact, but responds that Mr. Griesbach's Declaration submitted with this response answers Netflix's counsel's question. Declaration of Michael Griesbach, ¶¶ 3-10.

106. No Netflix employee who worked on MaM attended any portion of any court proceeding involving Steven Avery. Walker Decl. Ex. 21 (Nishimura Tr.) at 173:23; *see also* Nishimura Decl. ¶ 10; Del Deo Decl. ¶ 7.

RESPONSE: Admit that Nishimura's and Del Deo's declarations, as cited above, state Netflix employees did not attend any portion of the court proceeding, but Deny Dkt. 279-21 p. 11 addresses attending the court proceeding.

107. No Netflix employee who worked on MaM ever visited Manitowoc County. Walker Decl. Ex. 21 (Nishimura Tr.) at 173:23; Nishimura Decl. ¶ 10; Del Deo Decl. ¶ 7.

RESPONSE: Plaintiff does not dispute that the declarations cited make the assertion in the proposed Finding of Fact.

108. No Netflix employee who worked on MaM attended or conducted any interview of any person for MaM. Nishimura Decl. ¶ 10; Del Deo Decl. ¶ 7.

RESPONSE: Plaintiff does not dispute that the declarations cited make the assertion in the proposed Finding of Fact.

109. No Netflix employee who worked on MaM has ever spoken to anyone depicted in MaM. Nishimura Decl. ¶ 10; Del Deo Decl. ¶ 7.

RESPONSE: Plaintiff does not dispute that the declarations cited make the assertion in the proposed Finding of Fact.

110. No Netflix employee who worked on MaM ever received or reviewed raw footage of the underlying events depicted in MaM. Nishimura Decl. ¶ 9; Del Deo Decl. ¶ 6; *see also* Walker Decl. Ex. 37 (NFXCOL0000138) (all raw footage was in the exclusive possession and control of the Producer Defendants).

RESPONSE: Plaintiff does not dispute that the declarations cited make the assertion in the proposed Finding of Fact., However Netflix did receive access to “cuts” that were never provided to plaintiff. Dkt. 272 p. 2 ¶5 and Dkt. 275 p. 2 ¶5.

111. Beyond raw footage, no Netflix employee who worked on MaM ever received or reviewed any other source material from the events MaM documents such as deposition or trial transcripts or exhibits. Nishimura Decl. ¶¶ 9, 10; Del Deo Decl. ¶ 6.

RESPONSE: : Plaintiff does not dispute that the declarations cited make the assertion in the proposed Finding of Fact. However, Netflix did receive access to “cuts” that were never provided to plaintiff. Dkt. 272 p. 2 ¶5 and Dkt. 275 p. 2 ¶5.

112. Colborn admits he has no evidence to contradict the preceding six statements. Walker Decl. Ex. 2 (Colborn Tr.) at 182:2-10, 182:23-183:2, 183:3-18, 184:21-185:1; *id.* Ex. 38 (email from Colborn’s counsel confirming Colborn has no such evidence).

RESPONSE: Plaintiff does not dispute that Mr. Colborn testified that he personally had no such evidence, but Plaintiff is aware that such evidence does exist, as identified in the preceding responses, and including Dkt. 279-38 p. 2, which indicates that Netflix representatives visited Chrome’s editing studio. Jurors may infer that Netflix viewed raw footage and/or other source materials at the visit despite their claims that they have little to no recollection of what occurred at those visits. See Barker Decl. Ex. 15. Depo. Pp 51-52 (Nishamura saying she doesn’t recall).

113. At her deposition in this case, Nishimura testified as follows: “I’d like to clarify how you define ‘raw footage.’ So, you see here when they refer to ‘assembled footage,’ you know, that is what the filmmakers do, right? So, they had been working on the project for many, many years, and I imagine, at that point, had hundreds, if not thousands of hours of footage. So,

we would review material, but material as provided by the filmmakers in an assembled form. So, edited by them.” Walker Decl. Ex. 21 (Nishimura Tr.) at 49:10-19; *see also id.* 106:2-22, 107:14-17.

RESPONSE: Plaintiff does not dispute that Nishamura made the quoted statement during her deposition.

114. Del Deo similarly testified that the Netflix creative team “looked at the cuts that came in,” but did not, for example, review any of the videotaped depositions from Avery’s civil lawsuit against Manitowoc County. Walker Decl. Ex. 13 (Del Deo Tr.) at 145:12-17.

RESPONSE: Plaintiff does not dispute that Del Deo testified “we looked at the cuts that came in” but disputes the remainder of the statement as it was not referenced in Del Deo’s cited testimony.

115. Not even the third-party editors the filmmakers hired to work on MaM reviewed all of the raw footage. Walker Decl. Ex. 39 (Manhardt Tr.) at 153:17-22.

RESPONSE: Deny as the referenced transcript refers to reviewing “case file materials that were obtained from the civil case clerk”. *See also* Barker Decl., Ex. 13 depo p. 44-45, 60-61.

116. Moreover, Netflix employees were not aware of the specific edits at issue in this case until their depositions in April 2022. Nishimura Decl. ¶ 11; Del Deo Decl. ¶ 15.

RESPONSE: Plaintiff does not dispute that Nishamura and Del Deo so claim in their declarations but disputes the statements as patently not credible given that they were both originally named in the original Complaint that described edited testimony and the Complaint was the subject of significant media attention. It is further not credible given that as Netflix pointed out in proposed Finding of Fact # 86, the agreement with Chrome (f/k/a Synthesis) purported to require a “truthful” product so it is difficult to believe that Netflix representatives did not broach the subject of edited testimony with Chrome after the Complaint was filed. Their apparent failure to do so, based on the lack of any such produced communications, supports an inference that they already knew about the edits.

117. At her deposition in this case, Nishimura testified that she did not personally have “any knowledge of changes that are made, and, so, it’s hard for me to speculate on motive for change.” Walker Decl. Ex. 21 (Nishimura Tr.) at 95:7-19; *see also* Nishimura Decl. ¶ 11.

RESPONSE: Plaintiff does not dispute that Nishamura made the quoted statement at her deposition but disputes the statement as patently not credible.

118. Questioned about editing to the scene where Colborn testifies about the dispatch call, Nishimura testified that “Colborn successfully makes his point saying, ‘I should not have been and I was not looking at the license plate.’ So I believe he made his point. . . . And speaking to the macro, you know, the jury found Steven Avery guilty. So I think [viewers] must have heard this as well.” Walker Decl. Ex. 21 (Nishimura Tr.) at 176:16-25; Nishimura Decl. ¶ 11 (“I would not have had questions or concerns about the edits had I known about them at the time, which I did not.”).

RESPONSE: Plaintiff objects to the statement as non-responsive to the question that was posed to Nishamura and therefore subject to a motion to strike at trial. Subject to the objection, Plaintiff does not dispute that Nishimura made the statements quoted in her deposition but disputes Netflix’s editing of the quotation in the proposed Finding of Fact, adding “viewers” when Nishimura was likely referring to the jury when she said “they”. In addition, Plaintiff disputes the substance of Nishamura’s comment as the “point” Mr. Colborn attempted to make in his testimony appeared to contradict testimony delivered moments earlier when, based on Netflix’s edits, he was shown as allegedly having admitted that his call to dispatch was reasonably interpreted as that he was looking at the license plates.

119. At his deposition in this case, Del Deo similarly testified, “[W]e trusted them to edit the show . . . [s]o I’m not in a position to comment—to make a snap judgment here today as to whether or not a piece of footage that’s raw footage should be swapped out or used within the context of the series.” Walker Decl. Ex. 13 (Del Deo Tr.) at 161:13-21.

RESPONSE: Plaintiff does not dispute that Del Deo testified as quoted in the proposed Finding of Fact, but disputes that the Finding of Fact consists of any testimony

of any material fact as Del Deo stated that he was not in a position to answer the question posed.

120. Del Deo unequivocally denied that he believes MaM to be asserting that Colborn planted evidence to frame Avery. Walker Decl. Ex. 13 (Del Deo Tr.) at 173:15-19; *id.* 174:2-7.

RESPONSE: Plaintiff does not dispute that Del Deo so testified, but asserts that the testimony is inconsistent with the Netflix series notes, including the note that states, “Setting Colborn up as the potential cop to plant the car works really well now,” Barker Decl., Ex. 1, NFX000274, , and Del Deo admitted that he reviewed the series notes.

Barker Decl., Ex. 16, Del Deo transcript pp. 89-90, 96. Plaintiff further responds that this is inconsistent with Del Deo’s exchange with Ben Cotner in which Del Deo wrote that it seemed that Buting’s statements in the series were directly accusing officers of planting evidence and even murdering Teresa Halbach to frame Avery for it. Barker Decl., Ex. 1, NFXCOL0002079.

121. Both he and Nishimura likewise have averred that Netflix did not intend for MaM to convey that Colborn *in fact* planted evidence and that it never occurred to them that any reasonable viewer would understand either the *series or Netflix* to be reaching a conclusion about Colborn’s culpability. *See* Nishimura Decl. ¶ 18; Del Deo Decl. ¶ 10.

RESPONSE: Plaintiff does not dispute that the Nishimura and Del Deo declarations state that they did not intend for Ma\AM to convey in fact that Colborn planted evidence, but disputes that the declarations include the statement that “it never occurred to them that any reasonable viewer would understand either the series or Netflix to be reaching a conclusion about Colborn’s culpability.” Plaintiff further disputes the substance of the statements as there is no reason that Nishamura and Del Deo would have been encouraging the Chrome Defendants to use techniques to portray law enforcement officers as “the baddies” and as “villains” of the series if they were not intending MAM to convey that they planted evidence, or at least were being reckless as to truth or falsity.

In addition, the testimony is inconsistent with the Netflix series notes, including the note that states, “Setting Colborn up as the potential cop to plant the car works really well now,” Barker Decl., Ex. 1, NFX000274, and Del Deo and Nishamura admitted that they reviewed the series notes. Barker Decl., Ex. 16, Del Deo transcript pp. 89-90, 96. Barker Decl. Ex. 15, Nishamura transcript pp. 54-55. Plaintiff further responds that this is inconsistent with Del Deo’s exchange with Ben Cotner in which Del Deo wrote that it seemed that Buting’s statements in the series were directly accusing officers of planting evidence and even murdering Teresa Halbach to frame Avery for it. Barker Decl. Ex. 1, NFXCOL0000295. In the exchange between Del Deo and Cotner, which was also copied to Nishamura, in which Del Deo questioned whether the series was making a direct accusation by Buting against the officers, Cotner stated, “I hope people know it’s just a theory. . . .” Barker Decl. Ex. 1, NFXCOL0000294.

122. The Netflix employees who worked on MaM did not doubt—or have any reason to doubt—the Producer Defendants’ commitment to accuracy. Walker Decl. Ex. 13 (Del Deo Tr.) at 62:21-63:5, 146:23-24; Nishimura Decl. ¶ 4.

RESPONSE: Plaintiff does not dispute that the Nishimura Declaration states “They never gave those of us at Netflix reason to doubt them or their work, and we relied on them to get the facts right.” However, in the exchange between Del Deo and Cotner, which was also copied to Nishamura, in which Del Deo questioned whether the series was making a direct accusation by Buting against the officers, Cotner stated, “I hope people know it’s just a theory. . . .” evidencing knowing disregard for the truth or at a minimum, recklessness as to whether people would know it was a theory or not. In addition, Netflix was a partner all the way in attempting to shape the series to portray law enforcement in “baddies” and “villains,” as they urged Chrome, so of course they had no problem with the series’ objectives to do so. In addition, Nishamura and Del Deo

approved the final cuts of the episodes in the series and were aware of all of the direct out-of-court accusations contained in it by Avery, Avery's family members, and Avery's various attorneys, and pool hall strangers. Dkt. # 286-3 and 286-6; Dkt. # 286-4 Depo p. 141. Likewise, Plaintiff does not dispute that Del Deo testified "I was impressed at how well they were articulated and how they wanted to go in eyes wide open and capture, you know, accurate, factual events..." and that "we trusted them" but Plaintiff disputes that this testimony is evidence of a "commitment to accuracy" by any Netflix or Chrome, for the reasons stated above.

123. At his deposition in this case, Del Deo testified to the following: "I was very impressed at how . . . how they wanted to . . . capture, you know, accurate, factual events, really follow the story from the Steven Avery perspective and also from the perspective of the police officers involved in the case, Manitowoc, and let—let the subjects capture in an objective way what was happening[.]" Walker Decl. Ex. 13 (Del Deo Tr.) at 62:21-63:5.

RESPONSE: Plaintiff does not dispute that Del Deo testified as stated but disputes that the testimony has any substantive value as to any issue in this case. In addition, the testimony contradicts Netflix's series notes, which demonstrate that the "perspective" of the police officers involved in the case was that they were to be portrayed as villains and "baddies." Barker Decl., Ex. 1 NFXCOL0002009, 2043, 2174.

124. Nishimura and Del Deo attest that, if they had ever been concerned about the accuracy of a cut or episode, they would have raised the concern with the Producer Defendants—but they never experienced such concern. Nishimura Decl. ¶ 8; Del Deo Decl. ¶ 9.

RESPONSE: Plaintiff does not dispute that Nishimura's and Del Deo's declarations so state, but disputes the proposed Finding of Fact as neither Nishimura nor Del Deo are credible in asserting that they were concerned about accuracy as opposed to their stated goals of ensuring that the series was produced with the objective of "marketing" and "awards qualifying," not accuracy. Barker Decl., Ex. 1 NFXCOL0000308 Barker Decl., Ex. 1 NFXCOL0001952

V. COLBORN'S ALLEGATIONS IN THE SAC

125. Colborn asserts that because Netflix wanted to sensationalize an old, forgotten story and hook viewers to make more money, MaM is biased and unfair, and that Netflix—unlike him—“ha[s] an instinctive distrust of law enforcement.” SAC ¶¶ 15, 17, 48, 59(c), 62, 66; Walker Decl. Ex. 2 (Colborn Tr.) at 174:9-12; 463:7-13; *see also id.* Ex. 23 (Pl.’s Response to Netflix’s First Set of Interrogs. (Oct. 6, 2021)), Interrog. 1 at 1-3 (Netflix intended to “inflare viewers to dislike him”); *id.* Ex 49 (Pl.’s Suppl. Response to Netflix’s Interrog. No. 1 (July 15, 2022)) at 4 (Netflix employees wanted viewers to “see police as adversaries”).

RESPONSE: Plaintiff denies Netflix’s characterization of the Second Amended Complaint. The paragraphs cited do not state that MAM is biased and unfair “because Netflix wanted to sensationalize an old, forgotten story and hook viewers to make money.” However, as noted in the immediately preceding proposed Finding of Fact, Netflix did act with stated goals of ensuring that the series was produced with the objective of “marketing” and “awards qualifying.” Barker Decl., Ex. 1 NFXCOL0000308; Plaintiff’s quoted deposition testimony is “I don’t have an instinctive distrust of law enforcement” but does not say Netflix does. Plaintiff does not dispute that Plaintiff asserted in discovery answers that Netflix intended to “inflare viewers to dislike him” and Netflix employees wanted viewers to “see police as adversaries”.

126. But, at the time of his deposition, Colborn had watched only slightly more than an hour of the entire series; he had not watched even a second of Episodes 8, 9, or 10; and he had no intention of watching any more. Walker Decl. Ex. 2 (Colborn Tr.) at 58:7-10; 67:15-17; 411:2-23; 485:24-486:5.

RESPONSE: Plaintiff objects to the proposed Finding of Fact as irrelevant, because Plaintiff can and did hire attorneys who represent him in this matter and who can present the series to the jury, but subject to the objection, Plaintiff does not dispute the substance of the proposed Finding of Fact.

127. In response to a series of questions at his deposition regarding whether unchallenged portions of MaM might counterbalance the portions Colborn believes portray him negatively, Colborn repeatedly said he did not know because he had not watched the entire

series. Walker Decl. Ex. 2 (Colborn Tr.) at 125:4-10, 125:23-126:10; *see also, e.g., id.* 188:23-190:11, 190:12-192:25, 471:13-474:21, 480:7-486:5.

RESPONSE: Plaintiff objects to the proposed Finding of Fact as irrelevant, because Plaintiff can and did hire attorneys who represent him in this matter and who can present the series to the jury, but subject to the objection, Plaintiff does not dispute the substance of the proposed Finding of Fact.

128. Colborn’s only basis for claiming that MaM was biased against him or that it somehow conclusively asserted he planted evidence, thereby defaming him, were calls and messages he received from anonymous individuals who he concedes were not reasonable viewers and who many not even have watched MaM. Walker Decl. Ex. 2 (Colborn Tr.) at 205:2-8, 292:16-294:3, 293:13-19; 296:1-19.

RESPONSE: Plaintiff disputes the interpretation of his testimony as asserted in the proposed Finding of Fact. Plaintiff testified that he relied on counsel to analyze the basis for claims against the Defendants based on the series. Barker Decl., Ex. 14, Colborn Depo. P. 58, 59, 294. Furthermore, Plaintiff identified other instances where MAM’s interpretation by the public was made apparent to him including, but not limited to, having his car put on Facebook, having someone at the hospital make social media posts about seeing him and Scotland Yard issuing a statement that he was not credible. (Barker Decl. Ex. 14 Colborn Depo p. 261-264; 277-278) .

129. In text message exchanges with Colborn, Schuler—who is a producer of a “rebuttal” documentary tentatively titled Convicting a Murderer (“CaM”)—said that its director was “very pro LE,” meaning pro law enforcement; that CaM would convey to viewers that Avery was “gaf,” meaning guilty as f***; and that it will “humanize” Colborn. Walker Decl. Ex. 41 (Schuler Tr.) 172:11-24, 174:2-175:11, 176:14-17.

RESPONSE: Plaintiff objects to this proposed Finding of Fact because as a lay witness, Brenda Schuler’s opinions are not relevant or admissible. Without waiving said objection, Plaintiff does not dispute the testimony of Ms. Schuler as quoted.

130. Colborn does not believe the CaM filmmakers’ perspective prevents them from making a fair and objective documentary. Walker Decl. Ex. 2 (Colborn Tr.) at 236:1-5.

RESPONSE: Plaintiff objects to the proposed Finding of Fact as irrelevant, as not tending to make any fact in evidence more probable than not, but subject to the objection, Plaintiff does not dispute that the statement describes Mr. Colborn's testimony.

131. Schuler likewise testified that she also believes CaM will be "a fair and accurate and transparent documentary" despite her bias against Avery, and she does not believe there is anything unethical or irresponsible about making a documentary that has a point of view. Walker Decl. Ex. 40 (Schuler Tr.) at 190:16-191:20; *see also id.* 220:4-221:11.

RESPONSE: Plaintiff objects to this proposed Finding of Fact because as a lay witness, Brenda Schuler's opinions are not relevant or admissible. In addition, the opinions themselves are so generic and vague as to be inapposite to the case at bar and therefore likewise irrelevant and based on incomplete hypotheticals. Subject to the objections, Plaintiff does not dispute that the quoted text accurately quotes Ms. Schuler's testimony but disputes the additional characterization in paraphrase that she testified she had a bias against Avery. Plaintiff further does not dispute that Schuler stated that that she does not believe there is anything unethical or irresponsible about making a documentary with a point of view.

132. Colborn admits that any physical manifestations of his alleged emotional distress are so mild that not even the woman he lives with is able to observe them. Walker Decl. Ex. 2 (Colborn Tr.) at 131:16-132:18, 133:22-25, 296:20-297:10.

RESPONSE: Plaintiff does not dispute that Colborn testified that any physical manifestations are not known to the woman he lives with but disputes the characterization of the reason, as he testified that they do not discuss them.

133. Colborn testified in his deposition that the only documentary evidence regarding his alleged emotional distress is his medical records and testimony. Walker Decl. Ex. 2 (Colborn Tr.) at 339:23-340:5.

RESPONSE: Plaintiff does not dispute the proposed finding of fact.

134. Colborn's medical records show that, for years after MaM's release, he did not experience any anxiety, distress, or depression. *See* Walker Decl. Ex. 42 (Colborn 00153) at 154-

62 (self-reporting no depression or anxiety on generalized screening questionnaires); *id.* at 157 (“PSYCH: Denies anxiety, depression, or mania”).

RESPONSE: Plaintiff does not dispute the proposed Finding of Fact as to the cited medical records identified therein, with the exception of the 2/12/2018 questionnaire showed plaintiff had difficulty falling asleep. Dkt. 279-44, p. 155.

135. Colborn’s medical records show that he did not begin taking anxiety and blood pressure medication until December 28, 2018, 11 days after he filed this lawsuit. *See* Walker Decl. Ex. 43 (Colborn 00061) (prescribing Buspirone for anxiety and Lisinopril for hypertension for the first time).

RESPONSE: Plaintiff does not dispute the proposed finding of fact.

136. Colborn admitted at his deposition that his medical records are accurate in this regard. Walker Decl. Ex. 2 (Colborn Tr.) at 332:25-341:7.

RESPONSE: Plaintiff does not dispute the proposed finding of fact.

137. Colborn received supportive calls from dozens of people upon announcing his voluntary retirement from the Manitowoc County Sheriff’s Office in 2018. Walker Decl. Ex.2 (Colborn Tr.) at 313:2-25.

RESPONSE: Plaintiff does not dispute the proposed finding of fact.

138. Colborn held a leadership position in his church for years after MaM premiered, ending in 2020 after approximately six years. Decl. of Rev. Tom Pankow (“Pankow Decl.”) ¶¶ 9-10; Walker Decl. Ex. 44 (COLBXTS_0006758) at 6761.

RESPONSE: Plaintiff does not dispute the proposed finding of fact. Pankow Declaration ¶ 4 (Dkt. 278) states Colborn served as a church elder for 6 years until 2020.

139. Colborn testified at his deposition that the evidence-planting allegations raised in Avery’s murder trial harmed his reputation years before MaM’s release. Walker Decl. Ex. 2 (Colborn Tr.) at 136:24-137:5.

RESPONSE: Plaintiff does not dispute that Colborn testified at his deposition that his reputation was harmed at the time of the trial, but disputes the implication that the harm was permanent as he testified that after the verdict, his reputation went back to how it was prior to the trial. *See* Dkt. 279-2 Colborn Tr. at 136:24-137:5:

24 Q (By Ms. Walker:) All right, Mr. Colborn. I
25 have some wrap-up questions from items we were
138
Case 1:19-cv-00484-BHL Filed 09/16/22 Page 21 of 90 Document 279-2
2015652341 365reporting LLC www.365reporting.net

Andrew Colborn vs. Andrew L. Colborn
Netflix, Inc., et al. July 21, 2022

1 discussing before the lunch break, and the first one
2 is would you agree with me that your integrity had
3 been questioned and your reputation harmed at the
4 time of trial?
5 A Yes.
6 Q And you can't as you sit here today quantify
7 the reputational harm arising from trial and the
8 contemporaneous media coverage that came along with
9 the trial, can you?
10 MR. BURNETT: Objection, form.
11 A I can say after the verdict, my reputation
12 and everything went back to how it was.

140. He likewise admitted that statements by several third parties during and after the Avery trial defamed him and led to death threats. Walker Decl. Ex. 2 (Colborn Tr.) at 120:23-121:17, 141:8-20; *id.* Ex. 45 (COLBORN-004486); *id.* Ex. 46 (COLBORN-004586); *id.* Ex. 47 (COLBORN-004611).

RESPONSE: Plaintiff disputes the proposed Finding of Fact. Mr. Colborn testified that statements by third parties after the release of MaM harmed his reputation. See Dkt. 279-2 Colborn Transcript 141:8-20.

141. His ex-wife, Barbara Colborn, stated that, during the Avery trial, Colborn was stressed, agitated, withdrawn, quiet and not himself; that he would “pace in the house” and “started drinking a little more;” and that he “didn’t want to go anywhere in public. Decl. of Barbara Colborn (“B. Colborn Decl.”) ¶¶ 8-9; *see also* Decl. of Kathleen Heinzen ¶ 6 (“[Colborn] was not himself during the trial.”); Pankow Decl. ¶ 12 (“[Colborn] took Avery’s claims at trial that he planted evidence very personally.”).

RESPONSE: Plaintiff does not dispute the proposed finding of fact.

142. At his deposition, Colborn agreed that the Avery murder trial was emotionally difficult for him; specifically, that he “wasn’t himself” during the trial, that he was quiet, that he could only focus on the trial, and that he stopped going out in public during the trial. Walker Decl. Ex. 2 (Colborn Tr.) at 113:15-17; 114:9-11.

RESPONSE: Plaintiff does not dispute the proposed finding of fact.

143. At the outset of this case Colborn blamed MaM for his divorce, *see* Walker Decl. Ex. 48 (Pl.’s Response to Chrome Defs.’ First Set of Interrogs. (Jan. 28, 2022)), Interrog. 8.

RESPONSE: Plaintiff objects to this proposed Finding of Fact as irrelevant because at Netflix’s request, the parties entered into a stipulation that Mr. Colborn would no longer make that assertion in this case. Netflix’s attempt to introduce evidence on a stipulated matter may open the door to the evidence despite the stipulation, and Mr. Colborn reserves the right to seek appropriate relief from the Court. Subject to the objection, Plaintiff does not dispute that plaintiff stated in the above referenced interrogatory answer that “my inability to go back to the person I was before MaM destroyed my 30 year marriage and the marriage ended in divorce.”

144. His ex-wife subsequently explained they divorced in large part because Colborn was unfaithful to her. *See* B. Colborn Decl. ¶ 28.

RESPONSE: Plaintiff does not dispute that Barbara Colborn’s declaration stated “Andy’s affair is a big cause of our divorce.”

145. Colborn admitted that his divorce caused him anxiety and distress. Walker Decl. Ex. 2 (Colborn Tr.) at 301:17-25.

RESPONSE: Plaintiff does not dispute the proposed finding of fact.

146. Colborn’s affair and divorce also harmed his relationship with his in-laws, as Ms. Betty Heinzen, Colborn’s former mother-in-law, stated that she “no longer consider[s] Andrew Colborn a relative because he ran off with another woman and divorced my daughter, Barb, who suffers from problems with her peripheral vision.” Decl. of Betty Heinzen ¶ 4.

RESPONSE: Plaintiff does not dispute the proposed finding of fact.

147. Likewise, Ms. Heinzen’s husband and Colborn’s former father-in-law, Paul Kopidlansky stated, while MaM had no impact on his opinion of Colborn because he didn’t watch it, he is “not proud of [Colborn]” because he “ran off with another woman when his wife Barbara needed him most.” Decl. of Paul Kopidlansky ¶¶ 5-6, 9.

RESPONSE: Plaintiff does not dispute the proposed finding of fact.

148. Colborn contends that two references in Netflix documents to the jail call show actual malice, but in those documents Del Deo simply states his opinion that it “seems very thin that Colburn not having specific knowledge of who called him would be the key to the case,” and that the call “is [a] weak revelation to me.” *Compare* Walker Decl. Ex. 23 (Pl.’s Response to

Netflix's First Set of Interrogs. (Oct. 6, 2021)), Interrog. 1 at 2-3 *with id.* Ex. 33 (NFXCOL0000208) at 210; *id.* Ex. 30 (NFXCOL0000226) at 227.

RESPONSE: Plaintiff does not dispute that Netflix documents 210 and 227 (Dkt. 279-30 p. 3 and Dkt. 279-33 p. 4) show actual malice but deny these are the only two references of actual malice related to the jail call. Additional evidence of actual malice related to the jail call specifically appear are described in Walker Decl. Ex. 23 (Dkt. 279-23 p. 3-10). Additionally, Netflix included in MaM commentary by Steve Glynn regarding the jail call. Dkt. 120-2 at 18:20 – 19:20. In addition, Plaintiff has repeatedly summarized evidence of actual malice generally for Defendants in numerous interrogatory responses and supplemental responses. Plaintiff disputes Netflix's downplaying of the substance of the documents referenced in the proposed Finding of Fact that Netflix recognized that the jail call as a supposed motivation for Mr. Colborn to plant Avery "seemed very thin" and that it was a "weak" reveal, as these establish that Netflix and Chrome both recognized that there were significant reasons to doubt the linchpin of accusations that Mr. Colborn conspired to plant evidence.

149. Colborn similarly contends that internal communications among the Netflix team regarding the discovery of the key to Halbach's SUV show actual malice, but in them Cotner only expresses the opinion that the discovery of the key is among "the weaker arguments" at Avery's trial. *Compare* Walker Decl. Ex. 23 (Pl.'s Response to Netflix's First Set of Interrogs. (Oct. 6, 2021)), Interrog. 1 at 3-4; *with id.* Ex. 34 (NFXCOL0000288).

RESPONSE: Admit that NFXCOL0000288 (Dkt. 288 p. 2) has Ben Cotner stating "This is a bridge episode that really covers a lot of the weaker arguments (key falling on the floor, police log, access to Clerk's office, ...). Deny this is the only evidence of actual malice. Walker Decl. Ex. 23 (Dkt. 279-23 p. 3-10), as Plaintiff has repeatedly summarized it in his interrogatory responses.

150. Colborn also points to Netflix employees' notes and communications regarding music in the series, but those documents show that Netflix employees suggested "a thriller atmospheric score," that would "punctuate" "key point[s]" and "really up[] the stakes" for viewers, such as with "danger music" at a climactic point. *Compare* Walker Decl. Ex. 23 (Pl.'s Response to Netflix's First Set of Interros. (Oct. 6, 2021)), Interrog. 1 at 3; *with id.* Ex. 14 (NFXCOL0000215) at 216; *id.* Ex. 15 (NFXCOL0000242); *id.* Ex. 16 (NFXCOL0000265); *id.* Ex. 17 (NFXCOL0000282) at 287; *id.* Ex. 18 (NFXCOL0000294) at 296; *id.* Ex. 19 (NFXCOL0000335) at 339; *id.* Ex. 20 (NFXCOL0002099).

RESPONSE: Plaintiff does not dispute that Netflix employees suggested music to fit the quoted terms above, but the documents also show that Netflix employees sought to include music to help identify law enforcement representatives as "baddies" and "villains" of the series, Barker Decl., Ex. 1, NFXCOL 2009 and 2133, Barker Decl. Ex. 2, Manhardt 793, from which jurors can draw inferences of actual malice toward law enforcement by Netflix in its participation in the production of the series

Dated this 4th day of November, 2022.

By: /s/ George Burnett

George Burnett, State Bar No.: 1005964
LAW FIRM OF CONWAY, OLEJNICZAK & JERRY,
S.C.
231 S. Adams Street
Green Bay, WI 54301
P.O. Box 23200
Green Bay, WI 54305-3200
Phone: (920) 437-0476
Fax: (920) 437-2868

April Rockstead Barker, State Bar No. 1026163
ROCKSTEAD LAW, LLC
525 N. Lincoln Ave.
Beaver Dam, WI 53916
(920) 887-0387
(262) 666-6483 (facsimile)
aprilrbarker@rocksteadlaw.com

4403717

ADDENDUM TO RESPONSE TO DEFENDANTS' PROPOSED FINDINGS OF FACT: EPISODE SUMMARIES

This Addendum supplements Plaintiff's Response to the following of Defendants' Proposed Findings of Fact, which purport to summarize MAM and/or particular episodes thereof.

Episode 1, Dkt #120-1

Viewers are initially introduced to Steven Avery through what appears to be home video footage of his joyous return to the Avery family salvage yard and homestead after his prior conviction for rape was set aside. From there, the series portrays Avery's identification as the suspect for the rape as something that was engineered entirely by representatives of the Manitowoc County Sheriff's Department. ("They made the case against him that night" (Walt Kelly)). The series includes testimony of Sheriff's Department employees from depositions given in a civil case that Avery later brought against the County, the excerpts from which are interspersed with interpretive comments from Avery's civil suit attorneys, Steven Glynn and Walt Kelly; Avery's criminal defense attorneys from both the circuit court and appellate level in the rape case; Avery's family members; and Avery himself. The unanimous conclusion of all of these individuals is that the law enforcement community knew or should have known at the time they pursued the rape charge against Avery that the actual perpetrator of the rape, Gregory Allen, was responsible. Avery's father is featured angrily calling the judge who presided over the trial as a "son of a bitch," and Avery's parents are also shown describing their pain watching Avery endure the rape trial.

The motive for the Sheriff's Department to attempt to pin the crime on Avery is described as two-fold: In part, they were allegedly motivated by class bias against Avery for his family's salvage yard business; and in part, they were allegedly seeking revenge for an incident for which charges were already then pending against Avery in which he ran the wife of a Sheriff's Department deputy off the road and threatened her with a gun. Viewers are informed that the victim, Sandy Morris, also happened to be Avery's cousin, and that according to Avery, she had badmouthed him.

Viewers also learn that while Avery had prior brushes with the law, most of them were essentially harmless snafus of happenstance or bad luck rather than evidence of his character. For example, Avery's animal abuse conviction for tossing a cat into a campfire is described by Avery in voiceover commentary as the product of friends "egging" him on; and likewise, Avery attributes his decision to participate in a robbery of a local establishment as the product of hanging around with the wrong friends. According to Avery's family, Avery was not the type to commit a serious criminal offense because he was always such a happy, jovial guy. (Ducat: he was always "just happy, happy, happy . . .")

Avery's civil suit attorneys, Glynn and Kelly, feature prominently in the episode as they describe what is apparently the evidence that they intended to use to prove the civil case against the County, including, among other things, (1) an alleged friendship between Sandy Morris and the detective who purportedly suggested to the rape victim that her description of the perpetrator sounded like Steven Avery; (2) a sketch of the perpetrator prepared by a high-ranking member of the Sheriff's Department whom Glynn and Kelly allege had access to Avery's mug shot as a guide for the sketch; (3) a claim that City of Manitowoc police officer told the Sheriff that Allen might be the suspect; (4) Assistant District Attorneys' warnings to then District Attorney Dennis

Vogel that Allen rather than Avery may have committed the crime; and (5) the discovery that in the Avery case file, there was a copy of a complaint against Allen for a prior sexual assault charge for which he had been prosecuted by Vogel.

As a result, Glynn and Kelly suggest, the case against the County for which they had demanded \$36 million was essentially a slam dunk. Avery's former public defender is shown commenting that it was a "crock of shit" that the Attorney General's office refused to pursue criminal charges against law enforcement representatives in connection with Avery's prosecution. Glynn is also shown intoning mysteriously that the Sheriff's Department representatives are so "threatened" by the lawsuit that they are writing "memos" of things that happened "10 years earlier" over a copy of a document that will later be revealed as a memorandum written by Plaintiff, Andrew Colborn.

As the episode draws to a close, viewers are informed by an Avery relative that "something told her" that the County was "not done with" Avery and that they would make sure that they did not have to "hand that man \$36 million." Glynn is heard stating, as images of police cars are shown, that the one thing they did not warn Avery about was that if you pursue a civil rights case against a County in which you still live, you could be "charged with murder." At that point, images of Sheriff's Department representatives, including Plaintiff, rotate ominously on screen over foreboding music. This is the audience's first introduction to the Plaintiff in this case, Andrew Colborn, who is shown as one of the looming threats waiting to exact revenge on Avery. The episode concludes with brief audio of an apparent conversation between a law enforcement officer and a dispatcher asking in the early stages of the Halbach criminal investigation whether Steven Avery is in custody.

Episode 2, Dkt #120-2

The second episode opens with audio of the phone call that Theresa Halbach placed indicating what time she would be arriving at the Avery salvage yard on what would be the last day anyone else saw her alive. It then launches into a disturbing home video of Ms. Halbach, several years prior to her death, in which she says that she wanted people to know if she dies that she was happy with what she did with her life. From there, MAM jumps back to Avery's release and an upbeat music track plays over video and photos of Avery and his new girlfriend, while Avery and others explain that he had set out to live his life anew.

Glynn also explains that Avery has become something of a "celebrity" in the criminal justice field, with politicians posing for photos with him. The audience learns that in October 2005, a criminal justice reform bill was introduced as "the Avery bill" and Avery was likely to receive \$450,000 from the State of Wisconsin as compensation for years wrongly served for the Beernsteen rape. Glynn explains that this will keep Avery from accepting a "lowball" settlement in his civil suit. What appear to be "greatest hits" excerpts from the civil suit depositions followed, in which it appears that Kelley is decimating Manitowoc County witnesses.

With the air of an amiable gossip relishing his role as raconteur, Glynn then dishes that they learned in the lawsuit about some "serious meat" in the form of a telephone call that was received by Mr. Colborn when he previously worked as a jailor. While Glynn speaks, video imagery of Mr. Colborn appears in the background. "What we learn," Glynn says dramatically, "is that while Steven Avery is sitting in prison, now for a decade, a telephone call comes in to the Manitowoc County Sheriff's Department (an image of Mr. Colborn's report is shown in background while Glynn is speaking) from another law enforcement agency . . . saying that they

had someone in custody who said that he had committed an assault in Manitowoc, and an assault for which somebody was currently in prison.”

The series next jumps to scenes from Mr. Colborn’s deposition in the Avery case, but the episode omits scenes that would have disclosed that Mr. Colborn testified that he transferred the call to the Detective Division. Glynn then continues, “Manitowoc doesn’t have huge numbers of major assaults where people go to prison and certainly where people would still be in prison. . . . at a minimum, somebody ought to check this out.” MAM also includes a graphic as Glynn is speaking that states, “1995 • Gregory Allen is arrested for sexual assault in Brown County / Andrew Colborn receives call about inmate confession.”

Glynn continues speaking thereafter, stating, “The fellow who got that call was named Colborn. And you might say that there should be a record of him immediately making a report on this, there might be a record of his immediately contacting a supervising officer, there might be a record of him contacting a detective who handles sexual assault cases, ahh, there might be some record of it. But if you thought any of those things, you’d be wrong, because there isn’t any record in 1995, 1996, 1997, 1998, 2000, 2001, 2002, 2003” MAM then displays a graphic with years running from a timeline image with Mr. Colborn’s photograph above it, and a statement after the year “2003” that states, “DNA evidence exonerates Steven Avery.”

Episode 2 then continues to feature Glynn explaining how Mr. Colborn, allegedly realizing that he had “screwed up, big time” by doing nothing with the call, purportedly joined with other Sheriff’s Department personnel to participate in a “conspiracy of silence” at Avery’s expense. As Glynn ultimately intimates, this directly sets the stage for accusations, made directly by Avery onscreen, that the Sheriff’s Department framed him for the Halbach murder:

ECF # 120-2 20:25 – 21:13	Glynn continues, “Now 2003 is a year that has meaning because that’s when Steven Avery got out. And the day he got out, or the day after, that’s when Colborn decides to contact his superior officer, named Lenk. And Lenk tells him to write a report. And then they go have contact with the Sheriff. . . .why does it happen . . . when it didn’t happen eight years earlier? Um, ahh, I mean, I think I know the answer. I think the answer is pretty clearly these people realized that they had screwed up big time. Colborn realized it, Lenk as his superior realized it, and the Sheriff realized it.
ECF # 120-2 21:08-21:12	Images of Mr. Colborn, James Lenk, and the Sheriff are shown.
ECF # 120-2 21:12 – 21:39	Glynn continues, “So Lenk tells Colborn to write a report, the Sheriff tells Lenk, ‘Get me the report.’ The Sheriff puts the report in a safe. That’s how much he cares about documenting this thing. Well obviously it doesn’t do anybody, it certainly doesn’t do Steven Avery any good to document that eight years after the fact, because Steve Avery has been sitting in a cage”
ECF # 120-2 22:55-23:14	Avery voiceover after civil deposition excerpts, stating, “A lot of people told me to watch my back. Most of the time, I didn’t even believe them. But then, sitting and doing depositions, I don’t know. It kind of changed my mind. They were covering something up.”
ECF # 120-2 22:45-22:50	Cuts to image with close-up of Mr. Colborn’s signature.

ECF # 120-2 23:14-23:26	Avery states, “And they were still covering something up. Even with the sheriff who’s on there now – he’s covering something up.”
ECF # 120-2 23:28-23:50	Cuts to footage of Mr. Colborn’s videotaped deposition
ECF # 120-2 26:52-26:56	Video image of Mr. Colborn
ECF # 120-2 26:56-27:33	Steven Glynn asserts, “This was an unconscionable withholding of information that would have been of use to Steven Avery’s lawyers . . . If that information had come to light in 1995, Steven Avery would have gotten out in 1995. So they cost Steve Avery eight years of his life. This is as close to a conspiracy of silence as I think you could find in a case.”
ECF # 120-2 28:24-29:07	Rotating images of Mr. Colborn, other alleged conspirators shown.
ECF # 120-2 28:35-29:37	Interview with Walt Kelly, who states, “October of 2005, from the perspective of the Manitowoc County government and their defense lawyers, I believe they all knew they were in the most serious kind of trouble. There was a very grave prospect of a very, very substantial verdict. [Their] insurers have taken the position that because of the nature of the allegations against the County, the Sheriff and the DA, the policies do not cover, which would mean that Manitowoc County itself, and the Sheriff and the DA, would be on the hook for those damages in the civil suit.
ECF # 120-2 29:40-30:22	Glynn interview continues, “We don’t need to have somebody tell us that this is going to have an effect on law enforcement. Of course it has an effect Imagine what it’s like when you’re going to say that you’re a liar, and that you hid evidence, and that you deliberately prosecuted a person that you knew, or at least had reason to know, wasn’t guilty of the crime? And putting all that aside, by the way, in terms of your own professionalism, there’s a guy out there raping and beating women while the guy that you put in prison is sitting in a cell.”
ECF # 120-2 30:29-31:04	Glynn continues, “We were just on the absolute edge of getting ready to go after the named defendants in the case with depositions when I get a call from Walt [Kelly] who tells me that he has gotten a call from a journalist asking if either of us would care to comment on the apparent intersection in life between Steven Avery and a woman who has gone missing in the Manitowoc area who we later learn to be Teresa Halbach.”

Episode 2 then shows what appears to be video footage of the search for Ms. Halbach’s vehicle on the Avery Salvage yard, as well as audio of the call made by the woman who located Ms. Halbach’s green RAV 4 on the property. Low, staccato tones can be heard ominously in the background. News footage regarding Teresa Halbach’s disappearance is followed by footage of an Avery interview in which he says that anyone could have access to his property to plant evidence

and accuses the county of possibly doing “something” with Teresa Halbach and trying “to plant evidence on me,” adding that he “wouldn’t put nothing past the county.”

After footage from press conferences by authorities, Avery is heard saying, “All I can think is they’re trying to railroad me again.” Likewise, after a search of Avery’s property is shown, Avery continues, “I ain’t been home. They’s been searching. You know, how hard is it to put evidence in the house or on the property? . . . The . . . Sheriff . . . was out to get me the first time. How do I know he ain’t got nothing to do with it this time?” After more news footage, Avery continues, “all these memories and everything else, and they’re just sketching me out again. . . . Following a montage of news reports, video of Ms. Halbach’s family speaking to interviewers, a vigil for Ms. Halbach, and excerpts from a law enforcement press conference, Avery says tearfully, “You know we’re all victims, and they just won’t leave us alone. They just keep it up. . . .” A press conference discloses that Avery has been arrested, but Walt Kelly is heard allegedly telling a news reporter that he does not know where Avery is being held.

Footage of an interrogation of Avery is shown in which he says that Ms. Halbach’s bones and vehicle key and Avery’s blood were planted on his property, stating, “See, if somebody else plants that shit there, you ain’t going to see . . .” The investigator is heard asking him, “You think two officers who don’t know you . . .” The Halbach special prosecutor, Ken Kratz, is then shown explaining that Avery’s DNA was found on the Toyota key. Afterward, Avery is heard telling the news media as he is transported to jail, “I’m innocent.” The episode concludes as Avery is heard saying, “You know last time, it took me 18 years to prove my innocence. This time, I don’t know how long,” over the series’ theme music.

Episode 3, Dkt #120-3

The next episode begins with discussion of the fact that while the legislative reform initiated as the “Avery bill” would be signed, politicians were distancing themselves from him. Walt Kelley laments Avery’s “transformation” from victim to accused, stating that Avery was “endangered” in his new role. The series then includes excerpts from the preliminary hearing in the Halbach case, showing Avery’s brother stating, outside the courtroom, that the Averys were willing to pledge their property as bond and “risk everything” for Avery’s defense. Fast-paced guitar strumming signals that something dangerous is underway.

After the probable cause finding, MAM shows Ms. Halbach’s brother remarking in an apparent statement to press that he “doesn’t believe” Avery’s attempt to point blame at the “Manitowoc County police,” followed by additional montage-style footage of news reports and other material. A sad conversation between Avery’s parents and Avery in jail is shown in which Avery says that he’s ready to give up, as well as a segment that includes Avery’s family members reading angry letters from community members, followed by footage of a jail visit by Avery’s relatives. Avery’s father is heard thereafter saying, “They don’t care. They’ll take an innocent man and make him guilty . . . we went through this 20 years ago and we’re going through it now again.”

The episode then features a number of unidentified individuals playing pool with Avery’s brother, Chuck, in a bar. The substance of their comments is as follows.

ECF # 120-3 14:14-14:42	Unidentified woman in a bar states, “I really do think he was framed. . . There’s a lot that points to where the Sheriff’s	Bar patron statement follows visuals of Mr. Colborn
----------------------------	--	---

	Department could've had something to do with it. And then I don't know if it's true or not, but I also heard that Manitowoc County was not supposed to be allowed in to search, and they were in there and they searched. And that's who found the key apparently after the third day was the Manitowoc County Sheriff's Department. . . .“	
3 ECF # 120-3 14:43-15:05	Male bar patron adds, “I only have one word, from the cops on up: corruption. I mean, big time. I mean, if people dig far enough, they'll see that.”	

ECF # 120-3 15:06 -15:36	Unidentified female bar patron continues, “I don't care what anybody says, that's a lot of money to pay out from here in Manitowoc County. It's a small area and I really, truly believe the county didn't have the funds to pay it outAnd they can say, ““Oh, you really believe the Manitowoc County police department and the FBI and everybody came in and they set all this up just to have Steven Avery guilty of this thing? Yes, I do. . . .”
-----------------------------	---

The series then reveals Avery's settlement of his civil suit for \$400,000, of which Avery is described as receiving \$240,000, while his attorneys receive \$160,000. In a telephone call with his sister, Avery is heard explaining that he “had to do it” in order to obtain funds to pay a private lawyer for the Halbach defense. He adds, “This way, they figure they just got away with it, they can do it again You know it ain't gonna stop 'em.” Glynn describes the consequences of the settlement as “horrendous” because “nobody was being held responsible for what happened to Steven Avery.” In a telephone call from Glynn to Avery, Glynn also introduces viewers to Avery's new private attorneys, Dean Strang and Jerry Buting. Glynn praises them and states that the “Manitowoc cops” respect Strang and that Buting has handled cases involving high notoriety. Buting and Strang are then shown on the salvage yard investigating the scene, followed by Strang's comments:

ECF # 120-3 20:21 – 21:03	Strang says in an apparent MAM interview, “I didn't see them plant evidence with my own two eyes. I didn't see it. But do I understand how human beings might be tempted to plant evidence under the circumstances in which the Manitowoc County Sheriff's Department found itself after Steven's exoneration of the lawsuit, of the Avery Commission, of the governor hugging Steven and holding him up as an example of the criminal justice system gone wrong I don't have any difficulty understanding those human emotions at all.”
------------------------------	--

<p>ECF # 120-3</p> <p>21:16-21:49</p>	<p>Buting, in an interview that was apparently also for MAM, states, “So, you’ve got motivation of the officers to want to get him. And then when lo and behold there’s this woman who disappears and one of the last people she saw was Steven Avery. . . . Now, we’ve got him. A-ha. We knew it.’ They conclude that he’s guilty, right off the bat. And they thought, ‘We’re going to make sure he’s convicted.’” And they helped it along by planting his blood in the RAV4 and by planting that key in his bedroom.”</p>
---------------------------------------	---

Avery then says in a voiceover, “I got a better chance now. I got lawyers – the best ones in Wisconsin. Both of ‘em. . . . And there’s so many ways they can go on this, to prove my innocence.” Avery then goes on to identify law enforcement officers as suspects in Halbach’s murder: “I just hope the truth comes out, of who did this. And if it’s the cops, I don’t know if we’ll ever know that or not. See, that’s the only thing that scares me.” Avery’s statements are also shown on the screen.

The Undersheriff is shown indicating that it is “far-fetched” and “impracticable” that the evidence could have been planted. MAM then cuts to a press conference announcing a confession by Brendan Dassey, Avery’s nephew, that he participated in Avery’s rape and murder of Halbach. Authorities also explain that they conducted additional searches of the Avery property with the benefit of the information provided by Dassey. Via a news report excerpt, we learn that the Wisconsin Innocence Project removed Avery from its website. A call between Dassey’s mother, Avery’s sister, Barb Janda, and Avery in jail is played, in which Avery repeatedly denies any involvement in the Halbach murder and tells Janda that she needs to “figure out” why Dassey would admit to it. Janda is then shown stating that authorities “interrogated [Dassey] and made him say what they wanted him to.” Additional news reports indicate that prosecutors added charges against Avery because of Dassey’s confession and that the judge denied a request for the Averys to post their property as bail, instead increasing Avery’s bail. Strang is featured telling the Court that Avery “is innocent.” In a voiceover, Avery reiterates that he is innocent and should have been allowed to be released on bail, because “I’m innocent. Innocent people don’t run.” The series then features Avery’s family members, including his father complaining that “They got our family all tore apart. It ain’t right.” A personal call between Avery and his girlfriend is shown in which they profess affection for each other.

Reesa Evans, Avery’s public defender in the Beersteen case, opines that it “doesn’t seem likely” that Avery would have killed Halbach, as it was “a little too sophisticated” for Avery to have pulled off, but that if he did it, his anger at being wrongly accused for the Beerstein case could explain it. Next, Avery’s girlfriend says that she was pressured by investigators to turn against Avery while she was in jail for a drunk driving offense. Dassey’s mother then explains that it was only after Avery’s girlfriend refused to cooperate that they “went after ” Dassey. It is explained that he is a “slow learner.” MAM graphics assert that Dassey was questioned three times without a lawyer present. Excerpts from video of Dassey’s interrogation are contrasted with Avery’s attorneys’ expert asserting that investigators were “shaping” Dassey’s statements. Buting is also shown in detail asserting that investigators “really messed up” in their handling of the interrogation. Dassey is then shown talking to his mother and stating in response to her question whether he did the things he said, “Not really.” He tells her that the investigators “got into [his] head.” Strang explains that for the authorities, charging Dassey was a strategic ploy

that took away Avery's alibi witness and made him a state witness instead. He also tells viewers that the evidence contradicts Dassey's statement and that the events described in the confession "didn't happen." Dassey is shown being arrested, and his mother laments at the end that he has been presented an offer that if he testifies against Avery, he will receive a much more lenient sentence than if he does not.

Episode 4, Dkt #120-4

Episode 4 opens with more of Brendan Dassey and his mother agreeing that he is not guilty, followed by photographs of him as a child. Avery is then heard saying that he "feels sorry" for Dassey even though Dassey's statements made Avery "look bad." The viewers are also introduced to Dassey's new attorney, who describes his client as subject to the influence of "evil incarnate," an apparent reference to Avery. Avery is also heard explaining that he knows that Dassey was coerced into his confession because Avery himself did not do anything. The Court denies Dassey's motion to suppress the statements made to investigators. Teresa Halbach's brother is shown saying that the decision is "a big victory" for the Halbachs, but he is shown admitting to a reporter that he had not seen video of the confession. Dassey's investigator is then shown eliciting a written statement from Dassey that is also incriminating even though Dassey says several times that to the investigator that Dassey was "only there for the fire." Law enforcement officers are then shown interviewing Dassey outside his attorney's presence, apparently at his attorney's request. Another confession ensues, with investigators shown telling Dassey that if he lies to them, they will tell his mother. In audio of a phone call between Dassey and his mother, he says that he was there and that Avery did commit the crime. Avery's mother is shown saying that she knows they are innocent, but now Janda doesn't believe her.

Avery is then heard complaining that he won't get a fair trial because of the amount of media coverage of the case, and asking, "Where's the justice?" His girlfriend says in an interview that she spoke with Avery twice night of the Halbach murder and he sounded normal. Avery's father says that he doesn't think that Avery would kill Halbach when everyone knew she was coming there that day. Avery's investigator then criticizes the number of searches of the Avery property during the investigation. He says that as a result of the number of searches, "[t]he key was worthless." He also claims that investigators' claim that the only DNA found on the Toyota key is "patently ridiculous" and indicates to him that the key was "scrubbed clean" and Avery's DNA was placed on it.

Buting is shown criticizing the State's evidence. Attorney Buting, in an interview for MAM, states "Some would – might think, 'Well, you know we – our hands were tied . . . That you got a client who's saying that he's being framed. Publicly, that's kind of the defense you'd better go with . . . But it really wasn't that way here. The defense was raised because we think the evidence pointed that way. . . ." In clips of an apparent news broadcast, then-Sheriff Peterson is heard rejecting the notion that law enforcement would have framed Avery, saying it would have been "easier just to kill him." Strang is shown calling the statement "insane." Brendan is then heard telling his mother in another call that he was not involved in Halbach's murder.

Avery's girlfriend suggests that she is drinking again in order to deal with the stress of the charges against Avery/ She is then re-arrested for drinking, and prosecutors allegedly pressure her to have no contact with Avery in order to stay out of jail. Avery's father is then shown looking at pictures of Sheriff Department representatives. Sheriff Peterson is then shown testifying at the Halbach trial in cross-examination by Strang. Dassey's mother is heard on the phone telling

Dassey not to agree to plead guilty, despite his attorney's apparent recommendation. Avery's father says angrily, "An attorney's supposed to work for you. That ain't no lawyer." Dassey's attorney is shown suggesting to a news reporter that Avery is orchestrating Dassey's request to terminate his appointment as Dassey's counsel. However, Dassey fails to persuade the Court that he should be provided a different attorney. Dassey's mother is heard saying afterward on the way out of the courthouse, "Dirty bastards." A news report of a statement by Strang then says that he denies that Avery is involved in Dassey's request for another lawyer, but that the family is frustrated that no lawyer is really defending Dassey. Meanwhile, Avery's father is heard informing Avery that Avery's girlfriend is breaking off their relationship, apparently in response to pressure from authorities.

Dassey's attorney summarizes a letter that was sent by Dassey to the judge indicating that Dassey was not involved in Halbach's murder and that he was merely at a bonfire later. He calls the letter "kind of dumb" and says that it helps Avery by limiting Dassey's value as a witness. Strang is shown speaking sadly about Dassey's situation while driving. Dassey's attorney is dismissed and is shown justifying his decisions in response to questions from reporters. Avery is heard saying that it's "hard" that he is in jail by himself and can't talk to anyone.

Buting says in another MAM interview, "Sheriff Peterson . . . clearly, clearly has a strong dislike for Avery. If the very top guy has this kind of attitude . . . that's gonna permeate the department, the whole department. If not, at least it's going to permeate the upper echelon that's close to him, and that would include the lieutenants and the sergeants." At that point, a graph showing photographs of a Sheriff's Department hierarchy appears on screen. The photographs of two lieutenants and sergeants, including Mr. Colborn, are then suddenly illuminated during the words "lieutenants and sergeants." Buting then states that in their view, Lenk's name "just kept coming up, over and over and over, at critical moments." Buting says he did not believe that it was a coincidence that Lenk signed a form relating to the transmittal evidence for the prior rape case to the State. Buting then tells Strang says in telephone call as they are examining a blood vial containing Avery's blood that because the tube contains a needle hole, this shows that "Some officer went into that file, opened it up, took a sample of Steve Avery's blood and planted it in the RAV4." He says, "Game on," to conclude the episode.

Episode 5. Dkt #120-5

The episode opens with continued apparent reaction by Avery and Buting to the vial of evidence. The prosecution and defense are shown arguing to the Court whether the State should be permitted time to address the claim regarding the blood vial as support for a defense that evidence was planted. Another segment shows the respective attorneys arguing whether the State should be penalized for dropping charges that would depend on Dassey's testimony so close to Avery's trial. The judge permits the State to drop the charges without penalty. Buting and Strang are shown ruling jury questionnaires in which responses apparently assert that Avery is guilty. Avery's mother is shown watching a news report regarding jury selection. Attorneys and spectators are shown congregating at the courtroom as ominous music plays.

Excerpts of the State's opening statement are shown. Avery is then heard saying in an apparent telephone interview with MAM, "They wouldn't look at nobody else. They're paying all their attention to me. And they shouldn't be doing that. That's what they did before." Again, Avery's words are shown in print on screen. Buting discusses the strategy for responding to the prosecution's opening, again in a private interview with Buting. He tells the audience that the

jury doesn't yet know that "there is evidence that [Halbach's] bones were moved." He also says that he is now "more worried" about the blood vial argument because the FBI may come up with some "dishonest" test to claim that the blood in the vial from Avery's former prosecution is different from the blood in the RAV. He adds that, "If they would go to the length of planting the key, which I think the jury's going to get, then the blood follows easily." MAM includes excerpts from Strang's opening, including reference to Mr. Colborn's discussion with Avery during the missing persons phase of the investigation and Mr. Lenk's alleged offer to assist in the investigation. Strang argues that whomever killed Theresa Halbach "exploited" the Sheriff's Department's tunnel vision in focusing on Avery. MAM then shows an apparent excerpt of Avery being interrogated, played over eerie music.

Avery's nephew Bobby Dassey testifies (in presumably heavily edited footage) that he saw Ms. Halbach walking toward Avery's trailer after she arrived and that her vehicle was still on the Avery property at about 2:45 p.m. He also testifies that Avery made a comment to him later that day, which Dassey interpreted as a joke, asking if he wanted to help Avery get rid of a body. Strang is shown arguing to the judge that the Court should declare a mistrial or instruct the jury to disregard the testimony as false because the substance of Dassey's testimony was not disclosed to Avery's counsel. Excerpts from press conferences with the respective attorneys follow, concluding with a reporter asking, "How can Ken ask that question?" Viewers are informed that Willis denies the motion for a mistrial. Avery's mother says, "We always thought Bobby liked Steven. Now it doesn't seem like he does." Buting is shown in an interview saying that because law enforcement had "tunnel vision," the opportunity to pursue leads about other suspects was lost. Ms. Halbach's brother testifies regarding his listening to Halbach's voicemail messages, but he denies erasing any of them. Buting is shown examining a witness who contends that some messages were apparently erased because the voicemail was not full anymore as it allegedly had been previously. A witness testifies that Ms. Halbach had been receiving nuisance calls prior to her death. Buting is shown arguing that "something was going on" with Halbach's phone while Halbach was being described as missing. The judge states that he does not see the relevance of the defense's intended evidence. Avery is heard saying, "I saw her leave. So I'm not the last one [to see Ms. Halbach.] Whoever did this is the last one."

Strang makes an argument in an interview with MAM that uncertainty in the criminal justice system should result in any error being decided against the State and for the individual. An investigator testifies that as Avery was the last person to see Ms. Halbach alive, he was the most logical place to start. Buting asks whether they should have investigated her roommate, who failed to report her missing for several days. Buting is shown out of court in an apparent interview stating that while in most cases, the people closest to the victim are investigated, that did not happen in this case. Ms. Halbach's roommate testifies about learning that Ms. Halbach was missing and what he did next. He testifies that the police never asked him for an alibi and he was not treated as a suspect. After a swell of foreboding music and a glimpse of footage apparently from the missing persons search, Kratz and Buting examine the roommate, and he acknowledges that the only person to whom he gave a camera on the date of the search is the woman who ultimately found the RAV4, Pam Sturm. Ms. Sturm is then shown testifying regarding the search. Buting is then shown stating in an out-of-court conversation with Strang, apparently filmed by MAM, that he does not believe Sturm.

ECF # 120-5 52:03- 52:12	Buting states, “Somebody knew that [Ms. Halbach’s vehicle]” was there before they ever went in there. I’m convinced of it.”
ECF # 120-5 52:13 – 53:20	Interrogation of Avery regarding follows Buting’s statement; Avery tells an officer that he was told by a woman identified only as “Tammy” that “a cop” put Ms. Halbach’s vehicle on Avery’s property “and planted evidence.”
ECF # 120-5 53:20-:24	Immediately after the above, cuts to footage of Mr. Colborn about to testify

After Avery’s statements that he heard from someone else that “a cop” had “planted evidence” and put the RAV 4 on his property, MAM cuts directly to what is implied to be actual footage of Mr. Colborn’s testimony at the trial. Strang plays a recording of Mr. Colborn’s call asking a dispatcher to run Ms. Halbach’s plate. Strang asks, “And then, you tell the dispatcher, 99 Toyota?” Mr. Colborn responds, “No, I thought she told me that.” The call is replayed. In his actual testimony at trial, Mr. Colborn acknowledged that he made the statement to the dispatcher, conceding the mistake in his prior response. However, in MAM, Mr. Colborn appears to make no such correction; rather, the camera simply pans to him after Strang shuts off the audio of the call.

Strang is shown asking Mr. Colborn, “Were you looking at those plates when you called them in?” Mr. Colborn responds, “No.” MAM shows Strang asking, “Do you have any recollection of making that call?” Strang is then shown asking Mr. Colborn, “Investigator Wiegert, did he give you that plate number before you called it in?” Mr. Colborn appears to respond, “No, I just don’t recall the exact content of our conversation back then, but he had to have given it to me, as I wouldn’t have had the number any other way.”

In MAM, Strang next asks, “Well, you can understand how someone listening to that might think that you were calling in a license plate that you were looking at on the back end of a 1999 Toyota.” In MAM, Mr. Colborn appears to damagingly admit, “Yes.” Strang then says, “But there is no way that you should have been looking at Teresa Halbach’s license plate on November 3, 2005.” Mr. Colborn responds, “I shouldn’t have been and I was not looking at the license plate.” Strang states, “Because you’re aware now that the first time that the license plate was reported found was two days later” At this point, eerie music that had been pulsing and swelling during Mr. Colborn’s testimony is punctuated by spooky chime tones. Mr. Colborn responds, “Yes sir,” followed by an immediate cut to the MAM theme music.

Episode 6, 120-6

At the beginning of the next episode, MAM flashes back to a press conference that occurred in 2006 and during which prosecutor Ken Kratz goes into great detail regarding the events described in Brendan Dassey’s confession. Buting and Strang are shown brainstorming how to deal with the State’s decision not to call Brendan Dassey as a witness even though “everybody knows” about the confession. MAM then shows what appears to be footage of the search of Avery’s garage that occurred after Dassey’s confession, as an investigator testifies

about the search. Strang and Buting are then shown in another apparent brainstorming session in which Strang questions why Manitowoc County representatives needed to participate in the search. Buting is then shown cross-examining an investigator. Buting asks him to admit that after four months of investigating that they had not found Ms. Halbach's DNA in Avery's trailer or the garage.

The State's bone expert is shown testifying that Ms. Halbach died by homicidal violence. Ken Kratz is then shown talking to reporters outside of court. More footage of the search of the garage is followed by examination of crime lab witness Sherry Culhane. She testifies that she found that the DNA of Teresa Halbach matched a bullet found in the Avery garage. She also acknowledges that she inadvertently introduced her own DNA into a control sample, but she says that it did not have an impact on the profile of the evidence sample. A reporter is shown questioning prosecutors as to whether the Halbach DNA could also have been introduced by mistake, which they deny. Buting is then shown at the press conference questioning the accuracy of the testing. He also asserts that because the bullet was found during a later search, it was found "under suspicious circumstances." Buting is shown examining Culhane, who acknowledges that she was asked by investigators to try to use the testing to confirm that Ms. Halbach was in the Avery trailer or garage. She also concedes that protocol would usually call for her to classify a test as "inconclusive" if a control is contaminated, but an exception was made in that case. She concedes that it is the first time she has made such an exception. Reporters are shown questioning prosecutors about the testimony. Avery is next heard stating in voiceover, "Somethin' ain't right. That's all I know. . . ." with the text of his statements appearing onscreen.

A meeting between Strang, Buting and Avery's parents is shown in which they all agree that there is too much blood in the human body for there to have been no blood found in Avery's trailer. Buting and Strang are then shown with Buting discussing how difficult it is to clean up blood splatter from a gunshot. Further cross-examination of Culhane is interspersed with criticism from Avery's investigator that indicates that Avery would not have been able to clean up the blood in the garage if Ms. Halbach had been shot there. Culhane admits on cross-examination that several other items did not test positive for Ms. Halbach's DNA nor for Dassey's DNA. At a press conference, Kratz indicates he will not spell out his theory entirely until closing argument. Buting and Strang are shown driving and discussing the case. The State's witness is shown testifying again regarding the bones that were examined for the case. The vast majority of the bone fragments were found in the burn pit behind Avery's garage, but she could not rule out another burn site. An investigator is examined regarding the process of collecting the bones. Avery's expert criticizes the collection as procedurally improper. He also testifies that his experience is that the place where the most bones are found is usually where they were moved. Strang is shown talking while driving in his car about the bone movement arguments. In a voiceover, Avery says that he can't figure it out, "just like the last case." His words appear onscreen again. Avery's parents are shown waiting for a visit, followed by photographs of the RAV 4. An expert testifies about the stains in the RAV4. Buting is shown indicating that the blood in the RAV4 "helps" the defense as evidence that she was killed off the Avery property. Avery's brother-in-law, Scott Tadych, testifies that he saw Avery standing next to a large fire. Buting suggests in more out-of-court interview commentary that it is odd that Tadych and Bobby Dassey identify each other as they drove past each other the day that Ms. Halbach was last seen.

A bus driver is shown testifying that she saw a woman taking photographs of a van at approximately 3:30 p.m. Strang explains to reporters out of court that the bus driver is the most

reliable witness regarding time and her testimony contradicted Bobby Dassey's timeline, Avery is then heard in voiceover saying, "The evidence don't make no sense . . . and how do you prove the Sheriff's Department's doing something?" His comments are again shown in text on the screen. Strang is shown in an interview with MAM indicating that "no sane lawyer" looks forward to presenting a framing defense because people implicitly tend to trust the police. As ominous music plays, Buting, in an interview with MAM, states, "One of the things that the state argued was that it would have taken a wide-ranging conspiracy . . . Really, two people could have done this easily enough if they had the motive to do it. Maybe one even. And the whole argument why would they risk doing this and risk getting caught. You have to understand, they probably would have no fear of ever being caught doing this. You know, who better than a police officer would know how to frame somebody?" James Lenk is then shown being sworn in to testify, and the episode ends over the series' theme music.

Episode 7, Dkt #120-7

Calumet County Sheriff Pagel is shown at a press conference stating that the Manitowoc County Sheriff's Department was only to provide support and equipment. Avery's father says, "They had Steve picked . . . right away. They set him up. Right from the beginning. . . They didn't find nothing down at his trial for three or four days, then all the sudden . . . oh, we found this, and we found that. And then the Manitowoc cops found they key! They weren't supposed to be investigating this at all. Right?"

Footage is shown of the search. Calumet County Sgt. Tyson testifies that he was told that no Manitowoc County officer was to be alone on the property and that if they were to locate evidence, it was to be turned over to Manitowoc County. Tyson acknowledged that he knew that Avery was suing Manitowoc County. He said that he watched what the Manitowoc County officers were doing. Buting asks Tyson whether he ever had to "act like a babysitter" while other officers were conducting a search. He is shown as responding, "No." Tyson indicates he was not present on the date that the Toyota key was found. The Calumet County Sergeant, Sergeant Kucharski, who was present for that search, indicated that it was "possible" that Mr. Colborn and Mr. Lenk planted the key in the sense that it was "possible" that aliens were in the room. Sergeant Kucharski testifies that the key might have fallen out of a bookcase. Strang cross-examines Mr. Lenk who testifies that objects were removed from the bookcase. An out-of-court conversation between Buting and Strang follows:

Buting: "It's not enough to just get the key. He wants Avery's DNA on that. And so he is gonna wait until it is the right time. And there is a Calumet County deputy with him on all of their searches.

Strang: Yep. There is

Buting: Somewhere nearby, and he was just waiting for the right time . . . when he could do it.

Strang: That key does not fall from, you know, in between the backboard and the frame of that little bookcase.

. . . .

Buting: And if we get them thinking, look, if the guy's capable of planting a key, who's to say he's not capable of planting blood?

Strang: Blood's easy. . . .

Buting: The bottom line is, they knew their boss had just recused the department and turned over lead authority in this investigation . . . because of that lawsuit. They were deposed in the lawsuit. They didn't tell. . . ."

Strang then cross-examines Mr. Lenk and asks if it would have been fairer if he had disclosed that he had been deposed in Avery's lawsuit before he joined the search on Avery's property. After Mr. Lenk's testimony, images of Avery's mother cooking in her kitchen are shown as Avery states, "I'm in the same situation that I was before. Just a couple of them wanting to nail me. And the other ones didn't. But nobody speaks up. I gotta go through this over and over." MAM displays an image of Mr. Colborn, as audio of Avery continues; video then switches between images of Mr. Colborn waiting to testify, Avery looking sad, and Mr. Colborn in court.

Mr. Colborn is shown testifying after Avery's comments. Spooky music plays while Mr. Colborn is asked to describe the call that he received while he was working in the Manitowoc County jail. Ken Kratz asks him, "Do you even know whether that call was about Steven Avery?" He responds, "No sir." In further questioning by Kratz, Mr. Colborn is shown testifying, "I have to say that this is the first time my integrity has ever been questioned and, no, I have not."

Strang then cross-examines Mr. Colborn. MAM cuts to an Avery investigator speaking in an interview. He criticizes Manitowoc County officers as having a conflict of interest, which he says brings into question their "actions and credibility" throughout the case. Mr. Colborn is then shown acknowledging that he was with Lt. Lenk while searching the Avery property. He is asked about police reports. He asks Mr. Colborn, "Your total contribution is a little less than half a page?" Mr. Colborn appears to respond yes to the question. MAM then appears to show the following exchange between the prosecutor and Mr. Colborn to which he answers, "If I wrote a report about every call that came in, I would spend my whole day writing reports."

Strang concludes his cross-examination, saying, "That's all I have." At the Halbach trial, the judge immediately says, "You're excused," to Mr. Colborn. Without hesitation, Mr. Colborn stands and exits the witness stand. However, in MAM, Mr. Colborn is shown sitting on the stand for several seconds looking deflated while ominous, pounding music plays in the background. MAM next shows excerpts from a news conference footage of exchange with reporter in which she questions Strang about whether the defense went too far by accusing Mr. Colborn of being a "bad cop," which includes the following:

Strang: This was a hard day, and there've been some hard days for Sgt. Colborn. . . ."

Reporter: "But my question is though, if you were going to put somebody on the stand and accuse that person of a conspiracy, Mr. Kratz kind of made it sound like you should be able to offer some proof that this planting actually took place."

Strang: You're hearing evidence of the conspiracy. And I've sat in many a federal courtroom and heard federal prosecutors prove a conspiracy on less than we've heard already hear and that you will hear by the end of this trial."

Buting says off camera, “The way the case is coming in at this point is much better for the defense than I would have thought, much better. Every single day, we’re reminding them of Manitowoc County’s bias in the investigation.”

A Sheriff’s Department representative is shown testifying that no person or citizen approached the RAV4 while he was standing watch over it. He did not see Mr. Lenk or Mr. Colborn near it. Buting cross-examines about the log for the RAV 4 scene. An investigator testifies that he saw no one tamper with the vehicle. Buting asks him whether he was concerned that for four hours, the vehicle was under the control of Manitowoc County officers. Buting elicits testimony that Mr. Lenk signed out of the scene one day but did not sign in.

Mr. Lenk testifies that he arrived at the scene shortly after 2 p.m. on November 5 but he did not recall a there being a log-in sheet at that point. He testifies that he did not have any contact with Ms. Halbach’s SUV at any time that he was on the property. Spooky music plays in the background. Mr. Lenk admits that he previously testified that he arrived at the property at 6:30 p.m. or 7 p.m. on November 5.

ADA Norman Gahn is shown stating that his blood boils when the officers are accused of planting evidence. Buting is shown at the same press conference criticizing Manitowoc County’s handling of the investigation. A shift leads to foreboding music as Buting states in a private interview that Mr. Lenk “would have known” that Mr. Lenk’s blood was available in the clerk’s office.

Buting is then shown examining a clerk who testifies that it is “not unusual” for officers to be in the clerk’s office and that the security bailiffs would have “master keys” that would enable them to access any room in the courthouse even when the clerk’s office is closed.

Audio of a telephone conversation between Avery and his mother follows:

Avery’s mother: It seems suspicious.

Avery: Yeah.

Avery’s mother: Them people ain’t gonna get away with everything.

Mrs. Avery is shown leaving the jail and remaining silent while reporters pepper her with questions about her visit with Avery.

Buting is shown explaining in an out-of-court MAM interview that no one tested blood for the presence of the preservative EDTA at the time the case started, but that the FBI “somehow” managed to create a test for EDTA after the trial. Buting is shown at a press conference stating that the judge is the first to rule that EDTA evidence is admissible. “It’s scary,” Avery says in a voiceover. An FBI agent testifies that they are responsible for investigating crimes of public corruption. He testifies that he concluded that the blood samples from the RAV 4 did not indicate the presence of EDTA and did not come from the vial of blood in the Manitowoc County Clerk of Court’s office. Dkt # # 120-7 37:43. Following segments regarding testing of the blood by the FBI, Buting is shown stating, “Look how quickly they got the FBI to retool their instruments It shows the imbalance between the individual and the power of the government. The full force of which they’re trying to bring to bear on this man. Why? . . . Because we have accused – and the evidence suspiciously points to – framing by one of them. . . . Again, it’s not like they think they’re framing an innocent man. But they are.”

Because the final three episodes do not focus as much on Mr. Colborn, instead of the narrative style used for the entirety of the first seven episodes, Plaintiff provides the following highlights:

Episode 8 (Dkt. #120-8)

- Eerie, foreboding music plays as the Averys and their lawyers in the courtroom (25:50-26:00).
- Avery is shown shaking head as the verdict is read (26:50-27:30).
- There is a long take on Avery, with sad music playing in the background, and shots of his mother looking upset (27:30-27:50).
- In footage of press conferences, first brief remarks by Kratz are shown, then comments are made by Strang and Buting are shown going to the podium. Strang says that the verdicts are clearly inconsistent. He says, “Our criminal justice system failed [Avery] before and I fear this is another example.” He adds that it’s “sad” that as a society, “we haven’t mastered justice any better than we have.” (29:35-31:55).
- A reporter asks, “So do you think there’s a killer out there who has not been caught?” (31:56-32:08).
- Buting replies, “Absolutely. That’s been our position all along.” (31:56-32:08).
- Avery’s father is shown saying, “They got their way, period. Manitowoc County won again.” (33:24-33:31).
- Shortly thereafter in the episode, MAM features an interview with an excused juror that says that he felt that there were “biased jurors” who had their minds made up. He said that other jurors were “weak and tired” and that, as a result, the verdict “may have been a compromise.” The excused juror states that there are, in fact, “a lot of unanswered questions,” adding “I believe we don’t know for sure. . . .who killed Teresa . . .” (35:40-36:35).
- Following the interview with the excused juror, MAM includes footage from an interview with Avery’s investigator in which he accuses the prosecutor of acting “unprofessionally” and states angrily, “This wasn’t seeking a truth, this was seeking a conviction.” (37:00-37:50).
- Kim Ducat, Avery’s cousin, is then shown stating that the conviction proves that “they” were “hellbent” on “nailing” Avery (37:50-38:10).

Episode 9 (Dkt. #120-9)

- Strang directly criticizes the Dassey verdict and says he does not believe that Dassey committed the offenses for which he was convicted (56:45-57:50).
- Avery’s mother states, “I love [you] guys and I know you’re innocent.” (57:50-58:00).
- Clips are shown from the Avery sentencing hearing, at which he denies killing Teresa Halbach and states that he will prove his innocence (1:00:05-1:01:00).
- Strang is shown stating to the camera, “Most of what ails our criminal justice system lie in unwarranted certitude on the part of police officers and prosecutors and defense lawyers and judges and jurors that they’re getting it right.” (1:03:11-1:03:30).
- Buting is shown stating to the camera, “We can never be guaranteed that no one’s ever going to accuse us of committing a crime. And if that happens, then you know, good luck, in this criminal justice system.” (1:03:49-1:04:06).

Episode 10 (Dkt. #120-10)

- A reporter for a local radio station is interviewed noting that everyone was convinced that Avery was guilty of rape until evidence proved otherwise and that now, with the Halbach case, investigative techniques are better and that in the community, the feeling is that Avery “got what he deserved.” (2:40-3:20)
 - Allan Avery is shown stating, “They ruined us. They ruined our business.” (3:54-4:00)
 - Avery says, “I gotta prove my innocence again. Just like my first case.” (5:06-5:30).
 - Post-conviction, most hearing footage is shown with a voiceover of Avery stating, “The appellate attorneys – they gotta find a loophole that what they did, it’s not legal.” (6:23-6:37)
 - Allan Avery states that Avery’s mother has “a lot of hope for a new trial” as a result of Avery’s appeal. (7:13-7:20).
 - Avery’s girlfriend states in an interview with MAM that she “truly did not believe” that Avery was guilty. (8:25-8:40)
 - Dassey’s mother (Avery’s sister) is shown stating in 2010, “If Steven would have done it, I think he would have confessed by now. And he hasn’t confessed. I believe he’s innocent.” (10:40-10:55).
 - Printed words on screen state, “In August 2011, the Wisconsin Court of Appeals upholds Judge Willis’ decision denying Steven a new trial.” Immediately following that statement, Avery states, “I always feel like they kicked me in the gut again . . .” (39:36-39:45)
 - Printed words state, “Four months later, in December 2011, the Wisconsin Supreme Court refuses to hear Steven’s case.” Immediately after, Avery states, “They shoulda did something. They shoulda heard it. Because the case doesn’t make no sense. You always get let down by the court system.” (39:57-40:13)
 - Printed words on the screen state, “At the filmmaker’s request, Steven’s former lawyers meet to discuss Steven’s remaining legal options.” Those present are shown as including Glynn, now identified as part of the post-conviction team; Strang; and Buting. During the meeting, Buting states, “I’ve still got my suspicions about whether something improper occurred during the deliberations.” (41:14-42:35).
 - MAM next cuts to an interview with the excused juror, who states, “I feel terrible that Teresa’s gone . . . but I also on the other hand feel bad because Steven and Brendan’s life has been taken from them, basically . . . deep in my heart, with all the evidence and all of the things that I know . . . whoever did this to Teresa is still out there.” (43:39-45:01)
 - Avery’s mother is shown stating, “I’m stickin’ by Steven.” She is also shown displaying a home listing for a house that she has “picked” for Avery “when he gets out so that he has got a good place to live. After being in prison for something he don’t even do.” (45:48-46:21)
 - Avery is next heard stating, “I’m trying to fight for a new trial.” (46:40-46:50)
 - The broadcast features Avery’s *pro se* post-conviction motion. (46:32-49:08)
 - Following sentimental footage of Avery’s parents, Kim Ducat, Avery’s cousin, is shown stating, “I hope when the day comes when he’s freed, his name is finally cleared, that his parents are still there . . .” (58:25-58:45)
 - Buting is shown stating, “. . . This may take a while to right this wrong. It took 18 years last time. I certainly hope that it doesn’t take another 18 years.” (1:00:00-1:00:14)
- Case 1:19-cv-00484-BHL Filed 04/30/20 Page 45 of 90 Document 131 46
- Avery states, “I want my life. But they keep on taking it . .