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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

MICHAEL GALSTER,

Plaintiff,

v.

No. 4:03CV1013 GTE

KELLY DUDA,

Defendant.

Wednesday, January 14, 2004
Little Rock, Arkansas
1:30 p.m.

TRANSCRIPT OF HEARING ON PRELIMINARY INJUNCTION - VOLUME 1
BEFORE THE HONORABLE G. THOMAS EISELE,
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES:

On Behalf of the Plaintiff:

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On Behalf of the Defendant:

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P R O C E E D I N G S

THE COURT: Good afternoon. The Court will call the case of Michael Galster versus Kelly Duda, case 4:03CV1013, for hearing upon plaintiff's motion for preliminary injunctive relief. The appearances: Mr. Joseph Woodson for Mr. Michael Galster.

MR. WOODSON: Present, Your Honor.

THE COURT: And Mr. David Bowden for Mr. Kelly Duda.

MR. BOWDEN: That's correct, Your Honor.

THE COURT: And Steve Smith.

MR. BOWDEN: Along with Mr. Steve Smith.

THE COURT: Welcome. Let me review the status of the case. The plaintiff filed his original complaint on December 24, 2003, alleging copyright infringement against the defendant under 17 U.S.C. Section 106 A(a) (3) (A). In addition, the plaintiff moved for a preliminary injunction to prevent the showing of the documentary film. The defendant filed an answer to the original complaint along with a response to the motion for a preliminary injunction. He also filed a motion to dismiss with brief in support.

On January 13, 2004, the plaintiff filed a motion for leave to amend the original complaint to add the allegation that the film is a "derivative work" of the plaintiff's copyrighted book, Blood Trail, and is thus protected under Title 17 U.S.C. Section 106(2). The defendant filed a motion to deny leave to amend.

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1 At the telephone hearing yesterday, plaintiff's counsel
2 conceded that this Court does not have jurisdiction under 17
3 U.S.C. Section 106A(a)(3)(A). The Court, therefore, observed
4 that there was no predicate for federal jurisdiction under the
5 original complaint. The Court, however, also observed that it
6 would probably grant the plaintiff's motion to amend, even
7 though it had some misgivings. It was during the hearing
8 yesterday that plaintiff's counsel advised the Court and the
9 defendant that his client had that day filed a copyright of the
10 disputed film in Washington, D.C.

11 Today plaintiff has filed a motion for reconsideration and
12 a supplemental motion to amend the original complaint. The
13 plaintiff characterizes the proposed amendment as the "first
14 amended complaint," even though he had previously filed a motion
15 to amend to which he attached a complaint also captioned "first
16 amended complaint." The two proposed first amended complaints
17 are not identical. No new motion for preliminary relief has
18 been filed.

19 The plaintiff in his most recent filings brings the Court's
20 attention to the case of Olan Mills, Inc., v. Linn Photo Co., 23
21 F.3d 1345, which is an Eighth Circuit 1994 case, which holds,
22 *inter alia* -- let me quote a portion of it.

23 "While registration is required under Section 411 of the
24 Copyright Act in order to bring suit for infringement,
25 infringement is not conditioned upon registration of the

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1 copyright. See 17 U.S.C. Section 408(a). Registration is not a
2 condition of copyright protection, though a copyright holder can
3 register a copyright and file suit after infringement occurs.
4 The timing of registration only determines whether the copyright
5 holder can recover statutory as opposed to actual damages."

6 Now, to clarify the status of plaintiff's pleadings, let me
7 review the three versions of the complaint.

8 The plaintiff's original complaint relied upon 17 U.S.C.
9 Section 106A and sought preliminary relief pursuant to Section
10 502(a). It included an allegation that plaintiff is the author
11 and owner of the film Factor 8 but notes that the copyright had
12 not been registered.

13 Next the plaintiff filed a motion to amend and attached a
14 proposed "first amended complaint." And it relied upon a
15 derivative work argument pursuant to Section 17 U.S.C. Section
16 106(2) and sought preliminary injunctive relief pursuant to
17 502(a). It also included the allegation that plaintiff is the
18 author and owner of the film Factor 8 but notes the copyright
19 had not been registered.

20 The plaintiff's proposed second amended complaint, which is
21 submitted today and styled as a "first amended complaint," is
22 basically the same as the first amended complaint but includes
23 the additional contention that Factor 8 is now a registered
24 copyright of the plaintiff.

25 So that the record is clear, I will direct that the second
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1 version of the "first amended complaint," submitted today, be
2 recaptioned as the "second amended complaint" so that the record
3 will be clear.

4 With some hesitation, I now grant the plaintiff's motion to
5 file the second amended complaint.

6 The issue before the Court today is whether the plaintiff
7 should be entitled to preliminary injunctive relief. Because of
8 the time pressures involved, I will treat the plaintiff's
9 original motion for preliminary injunction as raising all
10 factual issues pertaining to the plaintiff's claim for
11 preliminary injunctive relief. As I see it, this will involve
12 plaintiff's Olan Mills theory, his derivative works theory based
13 upon his copyrighted book, Blood Trail, and any rights plaintiff
14 may have obtained by virtue of the registration which he made
15 yesterday in Washington, D.C.

16 Since the Court has just had a chance to focus on the Olan
17 Mills case, let me discuss it again briefly. As I indicated,
18 the plaintiff relies upon that case. It is Olan Mills v. Linn
19 Photo Co., 24 F.3d 1345 (8th Cir. 1994), for his assertion that
20 the Court has jurisdiction to grant preliminary injunctive
21 relief under Title 17 U.S.C. Section 502(a) regardless of
22 whether plaintiff has registered the copyright he seeks to
23 enforce.

24 I've already quoted from the Olan Mills, and I won't repeat
25 that.

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1 We found a law review article which provides the statutory
2 explanation for the seemingly incongruous concept that an
3 injunction may be appropriate to protect unregistered copyrights
4 even though registration is required to bring an infringement
5 suit.

6 Let me quote from this article in the Temple Law Review.
7 It is captioned "Copyright Law." It is 68 Temp.L.Rev. 491 at
8 page 496, the spring edition of 1995.

9 I quote, "Another critical issue that often surfaces in the
10 area of copyright infringement is that of the appropriate
11 remedy, specifically, whether a court should grant an
12 injunction. The provisions of the Copyright Act provide courts
13 with some guidance on this question. Section 411(a) limits the
14 institution of an infringement suit to copyrights which have
15 been registered with the United States Copyright Office.
16 However, Section 408(a), by expressly providing that
17 registration is not a condition of copyright protection,
18 recognizes that unregistered copyrights may still be infringed
19 and are deserving of a remedy for this infringement. Thus,
20 Section 408(a) 'opens the door' for Section 502(a), which
21 confers sweeping authority on the courts to issue injunctions to
22 prevent or restrain infringement of a copyright and does not
23 require that the owner register its copyright or that the
24 copyrighted work be in existence before a court may grant
25 equitable relief."

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1 Now, I received this pleading specifically raising the Olan
2 Mills theory for the first time this morning. I know the
3 defendants obviously have not had an opportunity to respond in
4 writing at least to this new contention. But from my
5 preliminary review of the law, it appears that, following the
6 Eighth Circuit's opinion in Olan Mills, this Court would have
7 jurisdiction to enter a preliminary injunction to prevent the
8 defendant from infringing upon the plaintiff's copyright, if
9 any, in the film in question, whether or not the plaintiff had
10 registered his copyright, assuming, of course, that he could
11 prove that he was the owner and the author of the film as
12 alleged.

13 So before I take up the issues concerning preliminary
14 relief, let me give the defendants an opportunity to respond to
15 essentially the Olan Mills argument, that under the Eighth
16 Circuit case this Court would have authority to issue an
17 injunction under the circumstances that I've just indicated.
18 Mr. Bowden.

19 MR. BOWDEN: Thank you, Your Honor. May it please the
20 Court. I believe that in a properly pled procedurally sound
21 matter, if this matter had been brought under an Olan Mills
22 theory in the first instance instead of this changing the theory
23 every day, legal theory du jour fashion in which plaintiff has
24 proceeded with this case, I think that it would be appropriate
25 to at least entertain the motion of a preliminary injunction,

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1 not that they are entitled to one. But I do not believe that
2 there has been a substantial following of the local rules and of
3 the federal rules of civil procedure in the way this has
4 proceeded. We have -- on three successive days we've had three
5 different legal theories of why this Court should act.

6 We came here prepared today, Your Honor, to discuss the
7 derivative theory, and we had dismissed originally the original
8 complaint. This morning, sometime after 9 o'clock -- I'm not
9 sure exactly -- about 10 o'clock, we received a copy of this
10 complaint. We are in no way prepared to respond to it in any
11 sort of adequate fashion. My client's rights are being
12 prejudiced by having to respond to it in such a fashion. We do
13 not believe that there has been a proper request made of this
14 Court for a preliminary injunction. As I believe the Court
15 noted yesterday, there have been no requests to amend in the
16 original instance. And now we have a second amended complaint
17 here before us.

18 We believe that it is procedurally flawed. We believe that
19 the Court should refuse to act upon the Olan Mills theory of
20 having been advanced at this last possible minute to the
21 prejudice of my client, who has travel plans. We have witnesses
22 that we could have called that now we're going to have to get on
23 telephone and possibly in a hurried fashion. We have one, Ms.
24 Mara Leveritt, who is on her way to a banquet, where she is the
25 guest of honor or something, as I understand it, in

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1 Fayetteville, and is going to have to talk to us by cell phone
2 before 3 o'clock, before we can even get to hear the plaintiff's
3 position.

4 Yes, in the abstract, I believe there's probably
5 jurisdiction under the Olan Mills theory to hear this case.
6 There is also the issue here of proving ownership. There's also
7 the issue of proving substantial use of expression. Your Honor,
8 given the recent events and the precipitous manner in which this
9 copyright has been registered, although we can show the Court
10 that we have previously submitted the same materials that he
11 claims as his material we submitted to the United States
12 Copyright Office sometime ago, and so they are both pending, so
13 there is an active dispute to that. We will dispute his
14 copyright if need be.

15 THE COURT: You are saying both of them are pending?

16 MR. BOWDEN: Both of them are pending, Your Honor.

17 THE COURT: Let me interrupt a moment. I think the
18 defendant does have legitimate reason to object to the
19 procedural manner in which this has developed. It's kind of
20 piecemeal. But my decision is to cut to the merits of the
21 matter. I don't see how the Olan Mills confronts you with any
22 serious problems, because it essentially is based upon the
23 theory the plaintiff is the owner and author of the work.

24 MR. BOWDEN: Your Honor --

25 THE COURT: And that the defendant was his employee.

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1 Go ahead.

2 MR. BOWDEN: As a sometime writer and sometimes
3 photographer myself that has had some few things published, I
4 would agree that a work does not have to be registered in order
5 to be copyrighted. My objection here is the manner in which
6 this has been brought before the Court, the fashion in which
7 it's been done. Frankly, Your Honor, the book title itself says
8 that it is done by Michael Sullivan. We have -- while we have
9 thought at least up until now that was probably Mr. Galster, I
10 would like to see some proof of that.

11 THE COURT: I've already expressed a little skepticism
12 about the derivative work issue yesterday. But I'm going to go
13 ahead and let the plaintiff put on its case. And insofar as
14 that becomes an issue, we'll deal with it in the course in this
15 proceeding. So I'm overruling your objections on procedural
16 grounds. We're going to proceed to the heart of the matter.

17 So let me go forward a little bit about what we're doing
18 here, that the standard for preliminary injunctive relief is
19 understood by the attorneys. The plaintiff seeks preliminary
20 relief to prevent the defendant from showing the documentary
21 film Factor 8 in any public forum, including the scheduled
22 showing at the Slam Dance Film Festival in Park City, Utah, now
23 scheduled for January 17, 2004, until the case can be heard on
24 the merits.

25 Plaintiff has the burden of proving that he is entitled to
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1 injunctive relief. The factors a Court must consider in
2 granting injunctive relief are: (1) the threat of irreparable
3 harm to the movant; (2) the state of balance between the harm
4 and the injury that granting the injunction would inflict upon
5 the nonmoving party; (3) the probability that movant will
6 succeed on the merits; and (4) the public interest. See
7 *Dataphase Systems, Inc., v. CL Systems, Inc.*, 640 F.2d 109, 111
8 (8th Cir. 1981). The inquiry is an equitable one, requiring the
9 district court to consider "whether the balance of equities so
10 favors the movant that justice requires the court to intervene
11 to preserve the status quo until the merits are determined."
12 See *Dataphase* at page 113, footnote omitted. Moreover, no
13 single factor is determinative in this inquiry, and these
14 factors are not a rigid formula. See the *Dataphase* case and
15 *Bandag, Inc., v. Jack's Tire & Oil Company*, 190 F.3d 924 at 926,
16 an Eighth Circuit 1999 case.

17 Let me clarify these four factors in the copyright context.
18 First let's look at irreparable harm. "In copyright
19 infringement cases, the general rule is that a showing of a
20 prima facie case raises a presumption of irreparable harm." See
21 *Taylor Corporation v. Four Seasons Greetings, LLC*, 315 F.3d 1039
22 at 1041 to 1042 (8th Cir. 2003).

23 Now, under the factor likelihood of success, in considering
24 the likelihood that the plaintiff will prevail on the merits at
25 the preliminary injunction stage, the focus is not on whether

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1 the plaintiff "will ultimately win." See *Glenwood Bridge, Inc.,*
2 *v. City of Minneapolis*, 940 F.2d 367 at 371 (8th Cir.1991); and
3 also *O'Connor v. Peru State College*, 728 F.2d 1001 at 1002 (8th
4 Cir. 1984), from which I quote. "The proceedings are at an
5 early stage. And to prejudge the evidence before it is fully
6 collated and demonstrated is basically unfair. Under these
7 circumstances, the court should avoid deciding with any degree
8 of certainty who will succeed or not succeed." "Adjudication of
9 a motion for preliminary injunction is not a decision on the
10 merits of the underlying case." That last quote, the last
11 sentence is from *Hubbard Feeds v. Animal Feed Supplement, Inc.*,
12 182 F.3d 598 at 603 (8th Cir. 1999). Indeed, and I quote again,
13 "the standard for granting a permanent injunction is essentially
14 the same as for a preliminary injunction, except that to obtain
15 a permanent injunction the movant must attain success on the
16 merits," citing *Randolph v. Rodgers*, 107 F.3d 850 at 857 (8th
17 Cir. 1999).

18 I further quote this case, from *United Industry Corp. v.*
19 *Clorox Co.*, 140 F.3d 1175 at 1179 (8th Cir. 1998). "At the
20 early stage of a preliminary injunction motion, the speculative
21 nature of this particular 'likelihood of success' inquiry
22 militates against any wooden or mathematical application of the
23 test. Instead, a court should flexibly weigh the case's
24 particular circumstances to determine whether the balance of
25 equities so favors the movant that justice requires the court to

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1 preserve the status quo until the merits are determined."

2 Another quote, this is from Curtis 1000, Inc., v.
3 Youngblade, 878 F.Supp. 1224 at 1247 (N.D. of Iowa 1995).
4 "Likelihood of success on the merits requires that the movant
5 find support for its position in governing law. In order to
6 weigh in the movant's favor, the movant's success on the merits
7 must be at least sufficiently likely to support the kind of
8 relief it requests."

9 Now, the next item is the applicable law on the merits. I
10 want to mention that. I do not have the benefit of extensive
11 briefings by the parties on the appropriate standard to be used
12 to consider the merits of the plaintiff's copyright infringement
13 claim on the merits. The plaintiff has, however, cited Hartman
14 v. Hallmark Cards, Inc., 833 F.2d 117 at 120 (8th Cir. 1987), in
15 his brief filed yesterday. It appears to me that the Hartman
16 case provides the applicable legal standard.

17 Basically, under Hartman, the threshold merits issue is
18 whether the plaintiff's version of the film and the defendant's
19 version are substantially similar works. Now, let me just ask
20 the lawyers if you agree on the test in that respect.

21 MR. WOODSON: Yes, Your Honor.

22 THE COURT: Mr. Bowden?

23 MR. BOWDEN: Your Honor, I do agree with that. And
24 that's one of the problems with this precipitous manner in which
25 this has been brought. We have no way of going through the

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1 materials to determine substantial similarity at this late date.
2 THE COURT: Well, of course we have the film. In one
3 connection, we have a book and I don't know what else. Anyway,
4 it may present you with some problems that you are not going to
5 be able to handle today as well as you might handle it on a full
6 trial on the merits. But the exigencies of the situation
7 require the Court to go forward.

8 So under Hartman, to establish a claim for copyright
9 infringement in the absence of direct evidence of copying,
10 plaintiff has to prove: (1) the ownership of the copyright in
11 Factor 8; (2) access by defendant to plaintiff's work; and (3)
12 substantial similarity between the two films in both ideas and
13 expression. As to the determination of substantial similarity,
14 the Eighth Circuit explained: "Determination of substantial
15 similarity involves a two-step analysis. There must be
16 substantial similarity 'not only of the general ideas but of the
17 expressions of those ideas as well.' First, similarity of ideas
18 is analyzed extrinsically, focusing on objective similarities in
19 the details of the works. Second, if there is substantial
20 similarity in ideas, similarity of expression is evaluated using
21 an intrinsic test depending on the response of the ordinary,
22 reasonable person to the forms of expression."

23 Now, with respect to the balance of harms, that's factor
24 three, the balance of harms as between Mr. Galster and Mr. Duda,
25 if a copyright infringement is proved, this factor becomes

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1 negligible. See *Four Seasons*, 315 F.3d 1042, citing *E.F.*
2 *Johnson Co. v. Uniden Corporation of America*, 623 F.Supp. 1485
3 at 1491 (D. Minn. 1985).

4 With respect to the public interest, in *Four Seasons*
5 *Greeting* -- that's the case -- the Eighth Circuit stated that
6 "the public interest is served in protecting the holders of
7 valid copyrights from infringing activity." That's 315 F.3d at
8 1042.

9 But basically it's the same standard that's applied in any
10 application for preliminary relief in federal court. I note
11 with respect to certain issues that could come up, the Sections
12 202, having to do with ownership of copyright; under 201(a),
13 "Initial Ownership. Copyright in a work protected under this
14 title vests initially in the author or authors of the work. The
15 authors of a joint work are co-owners of copyright in the work."

16 201(b) states: "Works Made for Hire. In the case of a
17 work made for hire, the employer or other person for whom the
18 work was prepared is considered the author for purposes of this
19 title, and, unless the parties have expressly agreed otherwise
20 in a written instrument signed by them, owns all of the rights
21 comprised in the copyright."

22 Now, let me ask the parties if you are willing to have any
23 evidence which we take today to be considered at any hearing
24 upon the merits so it will not have to be repeated. I'll ask
25 the plaintiff.

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1 MR. WOODSON: Yes, Your Honor.

2 THE COURT: And the defendant?

3 MR. BOWDEN: Your Honor, again, we're at a
4 disadvantage because we don't have the ability to investigate to
5 see what has been filed with the copyright office and all that.
6 So at this point I would have to say no.

7 THE COURT: All right. Then it will have to be
8 repeated.

9 MR. BOWDEN: Regretfully, but I would.

10 THE COURT: I understand. Now, does either party or
11 both parties request the rule in the case?

12 MR. BOWDEN: Yes, Your Honor, sure do.

13 THE COURT: So any witness who is going to testify in
14 this proceeding must be out of the courtroom and can't be in
15 here except when he or she is actually testifying and may not
16 discuss his or her testimony with any other witness after
17 leaving the courtroom. I'll leave it to the attorneys to police
18 the application of the rule. But any potential witness, if
19 you'll look around, they should be told to leave the courtroom
20 and find someplace to make themselves comfortable outside. And
21 they will be in court only when they are actually testifying.

22 Now, I want to raise the issue, Mr. Bowden has a problem
23 with respect to a particular witness who won't be available, I
24 guess, after 3 o'clock. And I want to accommodate that person,
25 so I'll ask the plaintiff how you wish to proceed. Do you wish

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1 to go ahead and get started?

2 MR. WOODSON: I would suggest to the Court that we
3 call our first witness, which is the plaintiff. And then after
4 his testimony, I have no objection to the defendants calling
5 their witness out of order.

6 THE COURT: If it gets going too long, we'll just
7 recess the plaintiff's testimony and give you the time you think
8 is necessary for this witness that you want to bring on by
9 telephone.

10 MR. BOWDEN: Your Honor, at the present time, it is
11 already 2 o'clock. And that's the only concern I have, is if
12 she's cross-examined extensively, it may cut into the time that
13 she's available to us.

14 THE COURT: Could Mr. Smith maybe start the ball
15 rolling? And why don't we just go ahead and try to get her on
16 the phone and go ahead and take her testimony. We can start
17 with the testimony of the plaintiff. You are here, and the
18 plaintiff's attorney is here. Mr. Smith can tell us when we're
19 ready to proceed with this absent witness. Is that all right?

20 MR. BOWDEN: That's fine with me, Your Honor.

21 THE COURT: Mr. Woodson, call your first witness.

22 MR. WOODSON: We would call the plaintiff, Michael
23 Galster.

24 THE COURT: Come forward, Mr. Galster. The witness
25 stand is right there. If you will face me, raise your right

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1 hand.

2 MICHAEL GALSTER, PLAINTIFF WITNESS, DULY SWORN

3 MR. WOODSON: May it please the Court.

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION

6 BY MR. WOODSON:

7 Q. Please state your name for the record.

8 A. Michael Robert Galster.

9 MR. BOWDEN: Your Honor, one second, please. These
10 two gentlemen back here, are they your witnesses?

11 MR. WOODSON: They are not.

12 MR. BOWDEN: That's all I need.

13 BY MR. WOODSON:

14 Q. Mr. Galster, where do you live?

15 A. 2407 Cherry Street, Pine Bluff, Arkansas.

16 Q. I would like to take just a few moments to introduce you to
17 the Court. Would you tell the Court what your educational
18 background is?

19 A. I graduated from Pine Bluff High School, 1972. I have an
20 undergraduate degree in biology from the University of Arkansas
21 at Little Rock, have a postgraduate degree from Shelby State
22 Community College, Memphis, Tennessee. I am a board certified
23 prosthetist and orthotist, registration No. 00886. I own
24 Galster's Orthopedic Laboratories. We have offices in Pine
25 Bluff, Conway, Searcy, and Greenville, Mississippi. And I've

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1 owned that since 1978.

2 THE COURT: In your profession, do you primarily deal
3 with making prosthetic devices and applying them to the patient?

4 THE WITNESS: Yes, sir.

5 BY MR. WOODSON:

6 Q. Do you have a family?

7 A. Yes. I have five kids, a whole bunch of foster children,
8 and eight grandchildren.

9 Q. In addition to your work as a prosthetist, have you had any
10 experience in the creative arts?

11 A. Yes, I have.

12 Q. Would you tell the Court a little bit about what experience
13 you've done and what works you have produced?

14 A. I'm a trained vocalist. I'm a baritone. I sing with the
15 symphony orchestras from several different places. I also have
16 quite a bit of experience in musical theater. I've been
17 interested in videography for many years. I made two shorts
18 which were shown at the 1994 DEMA, Diving Equipment &
19 Manufacturing Association in Dallas.

20 THE COURT: When you say "shorts," tell us what that
21 means.

22 THE WITNESS: These are video shorts. One was about
23 12 minutes long. One was about 19 minutes long. One was
24 entitled The Coral Caves of Banco Chinchorro, which I filmed
25 down in Mexico on the coral reefs. The other was Spearfishing

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1 101, which was a basic primer on saltwater spearfishing. I have
2 been the co-creator in two musical albums. One is entitled Home
3 of My Heart 2001, which I made with my wife at the time. It's a
4 collection of folk and Irish songs, some of which we both wrote.
5 The most recent one was Christmas Blessings, from this past
6 Christmas, 2003. The name of that is Christmas Blessings. And
7 I wrote several of the songs. And I coauthored others that
8 appeared on the album. I've also done a video for Sombrero,
9 which is a wild horse drive in Colorado every year. That was in
10 2002.

11 BY MR. WOODSON:

12 Q. Have you ever written any books or screenplays?

13 A. I'm the author, of course, of Blood Trail. I wrote it
14 under a pen name of Michael Sullivan. It was originally
15 copyrighted by my publisher, Jameson Press, which was then
16 converted to me once I dropped the pen name. It is now
17 copyrighted under my name, Michael Robert Galster. I've also
18 written a couple of screenplays. One of them is Tours of Duty,
19 which was registered at the Screenwriters Guild last year. And
20 I have another one that's pending registration right now.

21 MR. WOODSON: Your Honor, may I approach the witness?

22 THE COURT: You may.

23 BY MR. WOODSON:

24 Q. I'm handing to you what has been marked Plaintiff's Exhibit
25 No. 26. Would you identify that for the Court?

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1 THE COURT: Speak a little louder. Is it 26?

2 MR. WOODSON: 26. Yes, Your Honor.

3 THE WITNESS: This was my novel, Blood Trail, written
4 in 1997, published in '98.

5 BY MR. WOODSON:

6 Q. Did you personally write that?

7 A. I did.

8 Q. Would you explain to the Court a little bit of the
9 background of the underlying story for the book?

10 A. As a child, I grew up in Pine Bluff. My dad was a state
11 police officer. I was in and out of the prisons pretty
12 regularly with him as a child, got to know a lot of the people.
13 I went off to school, years later came back as a practitioner.
14 I was approached by a group called HMA, Health Management
15 Associates. I went to work for them on a part-time basis as a
16 prosthetist/orthotist and for many years held an orthopedic
17 clinic every two weeks in the prison.

18 During the course of that time, I got to know a little bit
19 about a program that was then called the plasma program. It was
20 kept very quiet for the most part. What I came to find out in
21 the years after I came back from Korea as a missionary -- I was
22 keenly aware of the blood issues, because I had gotten so sick
23 over there working in the Wilson Leprosy Center that they
24 suspected I had AIDS. It turned out I didn't. But I was keenly
25 aware of that. And I started seeing in my inmate prisoners more

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1 and more signs of AIDS infections, especially hepatitis, several
2 different forms of hepatitis. I was concerned about this, even
3 though I was working on orthopedic problems and didn't know
4 anything about plasmapheresis or the collecting of blood.
5 Q. Let me interrupt you. Would you explain to the Court a
6 little bit of how you were aware of the blood problems with the
7 inmates?

8 A. I would see inmates for orthopedic problems. I would see
9 that they were very ill. I would also see that they would have
10 a patch on their arm where it appeared that they had just
11 given -- where a blood test had been done. So I would look in
12 their records and the jackets of their folders and try to see
13 what the test indicated, indeed found out they had not had a
14 blood test. But they told me that they had sold their blood
15 that day or the day before or two days before. And this kind of
16 horrified me, even though I didn't realize the implications at
17 the time. So I started researching this. And the more I saw,
18 the more it upset me. I couldn't imagine what the prison was
19 doing with blood from inmates so grossly infected.

20 I asked some questions. I was shut down very quickly.
21 This continued on for quite a few years. I hate to say that I
22 kind of ignored it for a few years. But finally, in 1995, I saw
23 a small article that appeared from a Canadian source that said
24 Canadians, especially Canadian hemophiliacs, were dying from
25 contaminated plasma that apparently came from Arkansas. And

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1 suddenly all my fears were kind of made real. And I started
2 checking records within the prison and medical unit and trying
3 to understand what had happened. This is when I started putting
4 together the idea for how to expose this story.

5 Q. What did you find when you started putting together those
6 facts?

7 A. We found that there actually were no tests being done for
8 the inmates. Occasionally they would prick a finger and tell
9 the inmate that they were doing a hepatitis screening. And in
10 truth, only about 1 out of every 20 to 30 were even pricked.
11 Most of them were able to bleed freely. Even those who were
12 very ill were able to -- if they had been marked off the normal
13 bleeding list, they were able to trade favors to get back on the
14 list. The reason the inmates wanted to do this is because this
15 was the only source they had for income. No other income was
16 allowed in the prison.

17 MR. BOWDEN: Your Honor, I think we're in agreement
18 that the Arkansas Department of Corrections has had some
19 problems with the blood program. I'm not seeing where this is
20 getting us to the issue of copyright anywhere all that quickly.

21 THE COURT: Well, it's background, I'm assuming. I
22 assume that the attorneys will move the case along as quickly as
23 possible. I'll have to leave it to the judgment of the
24 attorneys.

25 When you were having your clinics, they are in the prison.

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1 THE WITNESS: Yes, sir.

2 THE COURT: Were they in the infirmary part of the
3 prison, or did you have a separate area where you did your work?

4 THE WITNESS: Most of them were in the infirmary, in
5 the medical unit. But many times I went to Cummins and also to
6 Tucker.

7 THE COURT: How about at Cummins? Were they in the
8 medical unit?

9 THE WITNESS: Yes, sir.

10 BY MR. WOODSON:

11 Q. When you started noticing the problems with the blood and
12 the contaminated blood with the inmates, what facts did you
13 begin to discover in terms of the story leading up to Canada?

14 A. I started putting correlations between the inmates, when
15 they bled and where they bled. Many of them were carried out of
16 the prison to bleed in a private facility. That was also
17 managed by the company that had employed me. So I started
18 checking with different people that I felt I could talk to in
19 the Pine Bluff area. Ultimately I was faced with dropping it,
20 making a scene publicly and exposing myself and my family. I
21 finally settled on two ideas I thought I might be able to pull
22 off that would expose the story, realizing who and what powerful
23 men were behind the story. One of them was to make a
24 documentary film. The second one was to write a book. Primary
25 Colors had just come out. It was a novel that had been written

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Galster - Direct

1 anonymously. And it was successful in showing the workings of a
2 campaign. And a lot of people gave it a lot of attention. I
3 thought that was a technique I could use to hopefully expose the
4 story to a reporter, who would pick up the investigation and
5 carry it out so I wouldn't have to. It was kind of a chicken's
6 way out, but I didn't want to expose my story, really didn't
7 want to expose myself and my family to any abuse from bringing
8 this story forward. So I chose to write a book.

9 In 1995, I wrote the first chapter. In '96, I wrote most
10 of the rest of the book. At the end of '97, early '98, I found
11 a publisher that was willing to publish it. And immediately
12 after publication was when I hired -- well, immediately after
13 finding a publisher, early in '98 is when I hired Mr. Duda to go
14 to work for me to help me carry out the investigation and the
15 filming of different people that were willing to come forward
16 and tell their story.

17 Q. Is the book that you wrote called Blood Trail?

18 A. Yes.

19 Q. Is that Plaintiff's Exhibit 29?

20 A. 26. 26.

21 Q. 26. I'm sorry.

22 THE COURT: It will be received. And so it was
23 published in 1998?

24 (Plaintiff Exhibit 26 received in evidence.)

25 THE WITNESS: Yes, sir. It was on the shelves in
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1 September of '98.

2 BY MR. WOODSON:

3 Q. You've advised the Court of how you came to uncover the
4 blood scheme at the Arkansas prisons and how you came to write
5 the book. Describe to the Court the process that you went
6 through in developing the idea for the film.

7 A. Well, originally I was thinking about the film, because
8 I've done a lot of videography, not extremely professional, but
9 I've had a lot of fun with it. And I had thousands of hours of
10 film on tape, so I was intrigued by documentaries all along.
11 And I thought a documentary would be an excellent way to
12 supplant the novel. By the time I had reached this point, the
13 novel was essentially being scuttled in the United States, even
14 though it was becoming very successful in Canada. The Canadians
15 were very familiar with this story and were horrified by the
16 facts that I brought forward in the novel. And the idea that
17 the blood that came from Arkansas that they did find was
18 contaminated had come from a source such as a prison, where IV
19 drug users, homosexual activity, and in-house tattoos were a
20 norm of the day, and probably contributed to the overall
21 delinquency of that type of plasma.

22 So I was intrigued with the idea of interviewing as many of
23 these people would come forward. I had met Kelly Duda. A
24 couple of years before, he had become the boyfriend of a very
25 good lifetime friend of mine, Mae Travis. She introduced us.

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1 He brought to me a film that he was interested in making
2 called --

3 Q. Let me stop you right there. What was the purpose of
4 hiring Mr. Duda?

5 A. I hired him because he told me he had a degree in
6 filmmaking and he had experience in filmmaking. As I said, he
7 had approached me with the idea of making a film. And I had
8 told him, "Let me tell you a story that I've written a book on
9 and uncovered. And this is the film we need to make if we are
10 going to make a film." And that's when I told him the story
11 about the contaminated plasma coming out of the Arkansas prisons
12 and affecting the Canadians.

13 MR. WOODSON: May I approach the witness, Your Honor?

14 THE COURT: You may. So you met him through his
15 girlfriend?

16 THE WITNESS: Yes, through Mae Travis.

17 BY MR. WOODSON:

18 Q. Once you conceived the idea for the film, describe in a
19 little bit more detail what you started doing specifically to
20 create this documentary film.

21 A. We did several things. We sat down, and I made out a map
22 of things that we could do to try and gather more information.

23 THE COURT: You are saying "we." You are talking
24 about you and Mr. Duda?

25 THE WITNESS: Me and Mr. Duda, to try and gather up
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1 more information concerning the people that were actually
2 involved. And it took quite a bit of doing to do that. One of
3 the techniques we used is Exhibit -- I think -- is that a P-1 --
4 P-1, which is an ad we ran in the Democrat-Gazette and I think
5 also in the Arkansas Times, and ran on several local radio
6 stations.

7 MR. WOODSON: For the record, the plaintiff is
8 referring to Plaintiff's Exhibit No. 1.

9 THE COURT: So what is it?

10 THE WITNESS: It is an ad that calls to inmates,
11 doctors, nurses, guards, anyone that may have been involved with
12 the blood program in the eighties. "If you were involved in
13 this program and are willing to share your experience, please
14 call our number, and our investigators will keep your
15 information totally confidential."

16 BY MR. WOODSON:

17 Q. Did you place this ad?

18 A. Yes.

19 Q. Is it accurate?

20 A. Yes, it is.

21 MR. WOODSON: We offer Plaintiff's Exhibit No. 1, Your
22 Honor.

23 THE COURT: Received.

24 (Plaintiff Exhibit 1 received in evidence.)

25 BY MR. WOODSON:

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1 Q. If you would, I've handed you a stack of exhibits. The
2 second is --

3 THE COURT: Excuse me just a minute. Does the ad say
4 who to contact?

5 THE WITNESS: Yes, it does.

6 THE COURT: What does it say?

7 THE WITNESS: We were going under just a cover group,
8 Second Chance Investigations, P.O. Box 55441, which was my P.O.
9 box in Malvern -- in Little Rock, Arkansas.
10 BY MR. WOODSON:

11 Q. Did you pay for Plaintiff's Exhibit No. 1?

12 A. Yes, I did.

13 Q. The second exhibit, Plaintiff's No. 2, would you identify
14 for the Court what that is?

15 A. No. 2 is an article from The Washington Times. It was one
16 of the first articles that was actually printed about this
17 story, December 11, 1998. It followed on the heels of some
18 original stories that were written in Canada earlier, in
19 September and October. But this one was important to us because
20 finally we had a columnist in the United States that was willing
21 to expose the U.S. side of the story.

22 Q. Is the article accurate?

23 A. Yes. I'll say it is accurate. He did mess up, though,
24 once. He said "Dr. Galster." I'm not a medical doctor. I'm a
25 practitioner in prosthetics and orthotics.

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1 MR. BOWDEN: I'm going to object based on hearsay to
2 this. Your Honor, I see no relevance to this. We don't have
3 this writer here to talk about what he did, when he did it. I
4 really -- there were a lot of people writing about this thing.
5 Even Dr. Galster or Mr. Galster admitted that he got the idea
6 out of a Canadian newspaper article.

7 MR. WOODSON: Judge, I'm not trying to offer it for
8 the purpose of showing that the contents are true, rather to
9 show that Mr. Galster was involved very early on, as far back as
10 1998.

11 MR. BOWDEN: Then why, Your Honor, did he ask the
12 question "is it accurate?"

13 THE COURT: Let me ask you this. I gather this Mr.
14 Paul Craig Roberts interviewed you?

15 THE WITNESS: Yes.

16 THE COURT: So he is reporting information that you
17 provided him?

18 THE WITNESS: Yes, sir.

19 THE COURT: If you say this is the information that
20 you did provide him that date, which is Friday, December 11,
21 '98, it had some incidental corroborative value about the time
22 and what you were talking about at the time, so I'm going to
23 overrule the objection, receive it for that limited purpose.

24 (Plaintiff Exhibit 2 received in evidence.)

25 MR. WOODSON: Thank you, Your Honor.
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1 BY MR. WOODSON:

2 Q. If you would, just briefly, I would like you to look at
3 Plaintiff's 3, Plaintiff's 4, Plaintiff's 5, Plaintiff's 6. In
4 that order, please, describe briefly to the Court what those
5 documents are.

6 A. These were several articles of actually dozens of articles
7 that were written in Canada by Canadian writers, Canadian
8 columnists. My book hit the shelves in September of '98. And I
9 was in Canada on a book tour, an appearance tour, trying to tell
10 the story about the book and actually to tell the story
11 underneath the novel, the true story that kind of backed up the
12 novel. And these were several articles that were written along
13 the same lines.

14 Q. Do those articles mention you specifically?

15 A. Yes, they do.

16 MR. WOODSON: Again, Your Honor, we would offer these
17 for the limited purpose of corroborating --

18 THE COURT: Yes.

19 MR. BOWDEN: Same objection, Your Honor.

20 THE COURT: They are received. That's 3, 4, 5, and 6.
21 (Plaintiff Exhibits 3, 4, 5, and 6 received in evidence.)

22 BY MR. WOODSON:

23 Q. Yes, sir. Moving on, Plaintiff's No. 7, identify for the
24 Court what this document is.

25 A. This is the handout we gave to everyone inside a press
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1 conference which I called at the National Press Club,
2 Washington, D.C., February 24th, 1999. By that point, we had
3 been snubbed for the most part by the American press. This was
4 in the middle of the Paula Jones and Monica Lewinsky scandals
5 and also in the middle of the impeachment proceedings. We were
6 having trouble getting our story out there, so I decided to pay
7 for a publicity specialist in Washington to arrange for the
8 National Press Club. And at that press club I had many people
9 show up to testify along with me.

10 Q. How much did you pay to have the press club?
11 A. The total costs overall were over \$25,000.
12 Q. How many people attended?
13 A. There were -- I think total figure was about 60 people in
14 the audience. As far as people that I brought up, there's
15 actually a listing in there somewhere. We had members of
16 parliament from Canada. We had inmates from Arkansas that I
17 provided transportation to go to Washington, D.C., for this
18 conference. We had attorneys from Canada. We had attorneys
19 from Arkansas. We had Judith Reitman, the author of a book
20 called Bad Blood, an expose. Dr. Grant Hill was a member of
21 Parliament. He was there. We had several victims and family
22 members of victims from hemophiliacs who had been contaminated
23 directly by this blood, including Michael McCarthy, who was the
24 lead plaintiff in a lawsuit brought in Canada because of this
25 contamination.

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1 Q. Did Mr. Duda accompany you on this trip?

2 A. He did. I paid for his transportation up there, his hotel
3 room and all his expenses.

4 Q. What was the purpose of Mr. Duda accompanying you?

5 A. He was there to gather any film we could shoot for the
6 purpose of our documentary, which included -- well, literally
7 anything that was available. He shot the video of the
8 conference itself. He shot anybody that was willing to testify,
9 including several members that I paid to come up there, also to
10 get B-roll footage in the Washington, D.C., area for the
11 documentary.

12 Q. Did Mr. Duda work at your direction?

13 A. Yes, he did.

14 Q. Did Mr. John Schock accompany you on this trip?

15 A. Yes, he did.

16 Q. What was the purpose of Mr. Schock's presence?

17 A. We originally wanted John to make a statement during the
18 testimony that everyone gave in front of the cameras. Because
19 of the number of Canadians that ended up showing and actually
20 several Americans that were infected, the conference was running
21 rather long. At the end of it, I invited all the news media,
22 which, by the way, included all the major networks: The BBC,
23 all the Canadian networks. I invited them to come forward and
24 talk with Mr. Schock and get his firsthand knowledge and
25 experiences, having been an inmate in the blood program in

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1 Arkansas during those years.

2 Q. Mr. Schock was a former inmate?

3 A. Yes, sir.

4 Q. Did Ms. Susan Parker company you?

5 A. Suzi Parker, yes.

6 Q. Suzi Parker. I'm sorry. What was the purpose of her
7 presence?

8 A. Suzi, she became really the first journalist of any major
9 level to write the entire story about this. We met early in
10 December, I believe it was, in 1998. She was intrigued by the
11 story. She told me she wanted to write a story about this for a
12 major publication, which was Salon magazine, which is a major
13 Internet magazine. She fell in with me, Mr. Duda, Kate Terrell,
14 and several others that were working at that point interviewing
15 people for the documentary film. She actually interviewed some
16 of the people before we shot them on film and some of them
17 immediately after we shot them on film. She viewed some of the
18 documentary clips we had that were on our source tapes so she
19 would know better what questions to ask and how to let the story
20 write itself, in other words.

21 She continued with several other follow-up articles. She
22 insisted on being at this press conference. We made sure she
23 was. And she wrote a final article, I believe, later on in --
24 it was in May of 1999 that I finally asked Suzi not to continue
25 with any articles about the story.

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1 Q. So we had Ms. Suzi Parker, Mr. John Schock, Mr. Kelly Duda.
2 You paid for the transportation for all three persons?

3 A. Yes, I did.

4 Q. And you paid for the housing or the hotel rooms for all
5 three persons?

6 A. Yes, I did.

7 MR. WOODSON: We offer Plaintiff's 7, Your Honor.

8 THE COURT: Received.

9 (Plaintiff Exhibit 7 received in evidence.)

10 BY MR. WOODSON:

11 Q. Looking at Plaintiff's Exhibit No. 8, would you identify
12 for the Court what this document is?

13 A. This is a resume of sorts that Mr. Duda gave me when we
14 first met.

15 Q. Do you recall when you received this document?

16 A. It would have been around December, around Christmas of
17 1996.

18 THE COURT: Just a minute. This is a resume that Mr.
19 Duda gave you --

20 THE WITNESS: Yes, sir.

21 THE COURT: Around when now?

22 THE WITNESS: Around December of 1996.

23 BY MR. WOODSON:

24 Q. By December of 1996, had you already conceived the idea for
25 a documentary film?

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1 A. Yes.

2 Q. Were you actively recruiting an employee for the film?

3 A. I was toying -- at that point I was actually toying with
4 the idea, yes.

5 Q. What position did you need filled?

6 A. I needed someone that could run the camera that could help
7 me gather information because of my public position in Pine
8 Bluff. We were having to collect a lot of the data in Pine
9 Bluff and Little Rock. And along with my medical duties at my
10 clinic, I not only didn't have the time, I didn't want the
11 exposure of going, for instance, to the state police
12 headquarters and to the repositories of the newspapers and
13 libraries and other public institutions trying to gather this
14 information. Mr. Duda wanted me to look at -- what he
15 approached me with first was a full length feature film that he
16 had written called Twelfth House Reckoning. That's when he gave
17 me this resume.

18 Q. Is that Plaintiff's Exhibit 9, Twelfth House Reckoning?

19 A. Yes, it is. That is the screenplay he gave me late in '96,
20 early '97.

21 THE COURT: Say again what it is. What did he say it
22 was?

23 THE WITNESS: It is a screenplay that I assume is
24 written by Kelly Duda. It is called the Twelfth House
25 Reckoning.

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1 BY MR. WOODSON:

2 Q. Did Mr. Duda represent to you at the time he approached you
3 about the job as to whether or not he had -- what qualifications
4 did he have for the job? Let me put it that way.

5 A. He told me -- he gave me the resume, said that he had a
6 degree from San Jose State, I believe it was, in filmmaking or
7 cinematography. He said he wanted to make a feature film, that
8 he had written one. He wanted me to take a look at it. I did
9 look at it. And it was actually several weeks later that I told
10 him, you know, "This is something you might be able to do in the
11 future, but I have something far more interesting. If you are
12 really interested in making a film with me, let's look at making
13 a documentary." And that's when I started laying the story out
14 for him about what I uncovered at that point and about the book
15 that I was in the process of writing.

16 Q. Did he go to work for you immediately?

17 A. No.

18 Q. When did he start work for you?

19 A. I think the first time we started any type of business
20 relationship was late in '97, early '98.

21 Q. Did you pay him as an employee?

22 A. Yes, I did.

23 Q. After you started working with Mr. Duda, did you find that
24 he did not possess the qualifications that he had initially
25 represented to you that he did have?

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Galster - Direct

1 A. Actually Mr. Duda did an extremely good job on many aspects
2 of what we were trying to do. We were trying to gather
3 information so that the leads would carry us to the next person
4 to get on tape. Kelly had a natural tact for doing that. He
5 was irritating enough to get in people's faces and get
6 information from them and friendly enough to get it for the
7 opposite reasons. It led to many leads. We gathered a lot of
8 raw data. Our typical day was talking over the phone several
9 times. I would give him ideas for questions to ask. In fact, I
10 wrote out many of them. I gave many of them to Kate Terrell.
11 She and other people went with him on shoots. He would ask
12 those questions to the interviewees on film. And he did an
13 excellent job as far as that aspect.

14 Later on, when it was time to draw the film to a close and
15 start editing and coming up with a final product, I realized
16 that he did not have the skills that I had hoped he had, and we
17 were kind of in a dilemma at that point.

18 THE COURT: You said that you hired him, that he was
19 working for you. What was the arrangement? What was the
20 financial arrangement? Tell me how you hired him.

21 THE WITNESS: When I first hired Kelly, he was working
22 for Baptist Hospital as -- I think he was scrubbing surgical
23 instruments there. I don't remember exactly what he was making.
24 I think it was around \$8 an hour. I offered that if he would go
25 in and work on this with me that I would pay him \$400 a week

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1 plus expenses, plus I would help -- I would cover his cell
2 phone, transportation costs. And I think at that time I also
3 paid him \$250 a week as kind of an office expense to help him
4 with his apartment at the time.

5 BY MR. WOODSON:

6 Q. Did you provide housing to Mr. Duda?

7 A. In that respect I did.

8 Q. Did he later come to live in one of your residences?

9 A. Yes, he did.

10 Q. Would you describe that for the Court?

11 A. At one point he and Mae Travis split up. I offered to let
12 Kelly come live in my home. He had his daughter with him part
13 of the time -- my home in Hot Springs. And he stayed there for
14 a short period of time.

15 Q. To what extent was Mr. Duda responsible for creating or
16 coming up with ideas about how the film would be produced?

17 A. We collaborated on a lot of those ideas. He supposedly had
18 more experience in it. However, I found out his experience was
19 not in documentary filming. So a lot of times the arguments we
20 would have was over the direction the film would take and what
21 our ultimate goal was, what were we trying to tell. For
22 instance, one of my stipulations that I continued to ride
23 throughout the process was that we not have a narration over and
24 above the interviews. If the interviews were done conclusively
25 and selectively and with the right questions asked and if we had

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1 enough bulk of film that the story would tell itself, we would
2 simply let people who were involved in the story tell the story.
3 Kelly kept wanting to try and put in, I guess you would say,
4 more feature film ideas to carry the story more dramatically
5 forward. I was interested in documenting this as a major part
6 of my life, that I had already lived through, especially in
7 writing the book and publishing the book and, more importantly,
8 the impact that it had on a huge number of people medically
9 around the world, but especially in Canada.

10 Q. Describe for the Court the mechanics of how you actually
11 went about trying to put this film together.

12 A. Your Honor, in digital video editing, which is the way of
13 the world now, especially in documentary films, the film is shot
14 on digital videotapes and then can be stored either on those
15 tapes, which we call source tapes, or it can be stored on the
16 hard drive of a computer or on some sort of server where they
17 have massive digital storage.

18 Q. Before you complete that thought, where do these tapes come
19 from?

20 A. These tapes come directly out of the camera. As you finish
21 an interview, you have a source tape. In our case, we ended up
22 by 2000, December of 2000, we had 107 source tapes at the
23 minimum. Each of these tapes contained one or more interviews.
24 Some tapes it would take two or three tapes to contain one
25 interview, so we had quite a collection of data. And these

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1 source tapes, to edit them down into a documentary, they are
2 then thrown into an editing program on a computer, where the
3 data can then be pulled off like a building block and laid in a
4 time line. That's an oversimplification of the editing process.

5 But also along with that, in order to make it a reasonable
6 documentary, you have to do titles for each of the people that
7 are interviewed. You have to do renderings, which is, for
8 instance, if you had a still photograph of a family and you
9 wanted to make it a moving photograph, the opening shot may be
10 of the father of the family. The camera would then pull back
11 and scan from side to side to make the photograph appear to be a
12 more interesting aspect of the film. And that's called a
13 special technique of rendering. And those rendering files
14 became part of our -- part of our data bank. It was very
15 expensive and time consuming. And for all of this, we had to
16 have special cameras, which I purchased. We had to have special
17 video editing equipment and software, which I purchased. We
18 also had to have people capable of doing it. And I paid for
19 those people as well.

20 Q. Did Mr. Duda pay for any of this equipment that you
21 described?

22 A. No.

23 Q. Was Mr. Duda himself capable of all of the tasks necessary
24 to complete the film that you just described?

25 A. No, he wasn't.

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1 THE COURT: Before you leave that, in terms of what
2 you need in the way of equipment, you say cameras, editing. Can
3 you be more precise about what you are talking about there?

4 THE WITNESS: What we purchased was a special Canon
5 digital video camera called an XL1. I think I paid \$4,700 for
6 it. The video editing equipment, I think we had to have a
7 special DV deck, which is where most of the editing occurs. I
8 think -- and we bought it used. I think we paid in the
9 neighborhood of \$3,500 for that. We had to have software to run
10 on our computers. The computers had to be Mac-type computers to
11 do the editing we wanted. I bought a G4 Mac at the time. I
12 think it was \$2,200. The software to edit all of this, several
13 different pieces, ran somewhere in the neighborhood of \$2,000
14 and so on. We had other computers we had to purchase, monitors,
15 audio equipment, lighting equipment, everything you can imagine
16 that it would take to film a documentary film.

17 BY MR. WOODSON:

18 Q. In addition to Mr. Duda, who were the other people that you
19 hired to help with the film?

20 A. On and off, there were several people involved. Kate
21 Terrell especially early on was -- she had helped me
22 tremendously on the book. She already knew the story.

23 THE COURT: What was the first name?

24 THE WITNESS: Kate, Mary Kate Terrell, T-e-r-r-e-l-l.
25 She knew the story. She actually helped me write out some of

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1 the interrogatory questions for the interviewees. She helped
2 coordinate our schedules. I was, by the way, still trying to
3 run a medical business. And I'm trying to do this on the side.
4 She went with Mr. Duda on several of the shoots. A young man
5 named Clint Black or Blake -- I can't remember his last name
6 now -- accompanied Kelly on several of the shoots. He also went
7 to Washington, D.C. We paid for him to go there as an assistant
8 on the camera. There are several other people involved,
9 including Bryon Knight, who is a local filmmaker. And he
10 assisted in several of the shoots as well.

11 BY MR. WOODSON:

12 Q. Did you hire all these folks yourself?

13 A. I did.

14 Q. Mr. Duda did not?

15 A. He did not.

16 MR. WOODSON: Before we get too far afield, Judge, we
17 would offer Plaintiff's 8 and 9.

18 THE COURT: Received.

19 (Plaintiff Exhibits 8 and 9 received in evidence.)

20 BY MR. WOODSON:

21 Q. If you would, look at Plaintiff's 10. And describe what
22 that document is.

23 A. This is just a fax from Kelly. This was typical of what
24 we -- how we would correspond back and forth. "Mike, we owe
25 Chris Case \$31 for agent guide; John Schock, a hundred dollars

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1 for phone for two months, ATT, \$57, past due bill. As soon as
2 possible. Please contact me about this." This was kind of
3 normal for the way we would correspond about what we were
4 working on.
5 Q. Did Mr. Duda rely upon you to pay the bills?
6 A. Yes, he did.
7 THE COURT: On this 6, what does it say? "To Mitch"?
8 THE WITNESS: Mike, I believe, Your Honor.
9 THE COURT: What?
10 THE WITNESS: I believe it is "Mike."
11 THE COURT: "Mike" at the top, and signed "Kelly."
12 "Mike, we owe," then itemizes several items of expense, "as soon
13 as possible. Please contact me about this," signed Kelly. You
14 are offering this as an example of how --
15 THE WITNESS: Yes, sir.
16 THE COURT: -- these expenses were brought to your
17 attention and paid?
18 MR. WOODSON: Yes, Your Honor.
19 THE COURT: Received.
20 (Plaintiff Exhibit 10 received in evidence.)
21 MR. BOWDEN: Has it been offered?
22 MR. WOODSON: It's offered, Your Honor.
23 MR. BOWDEN: We object, Your Honor. It is hearsay.
24 It is not a business record as such that proves anything. It
25 just proves that Mr. Duda may have had some contact with Mr.

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1 Galster at some time. It is not even properly dated, 602,
2 whatever that is up in the corner, looks like 60 some odd.

3 THE COURT: It looks like 6026, doesn't it?

4 MR. BOWDEN: Sure does. I don't think he was around
5 in 1906, Your Honor.

6 THE COURT: I guess I'll leave it to the witness.
7 Where did this record come from? How do you date it? When do
8 you represent it was sent to you?

9 BY MR. WOODSON:

10 Q. Mr. Galster, if you would, look in the top left-hand corner
11 of the document. Can you read for the Court what those numbers
12 are?

13 A. Looks like June the 2nd. And I think we have the original
14 somewhere.

15 Q. What year do you see there?

16 A. I can't see it on my copy.

17 THE COURT: Is it '99?

18 MR. WOODSON: I believe it is '99, Your Honor. It is
19 a little bit more legible on my copy.

20 MR. BOWDEN: Your Honor, I would invoke the best
21 evidence rule. Let's see the original if we have it here.

22 MR. WOODSON: All we have is a copy, Your Honor.

23 THE COURT: I'll sustain the objection to that. Go
24 ahead.

25 BY MR. WOODSON:

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1 Q. In addition to paying Mr. Duda's salary and paying for the
2 film itself, did you ever pick up any personal expenses for Mr.
3 Duda?

4 A. Yes, I did.

5 Q. Would you describe that for the Court?

6 A. Kelly and I were friends. I kind of took him under my wing
7 and tried to help him as much as possible. That included paying
8 ancillary bills that he had. He had some particular problems in
9 his relationship with Mae Travis. They had a child that I was
10 and still am very attached to, Raven. And during all those
11 troubles, I helped set up appointments for Kelly and for Mae at
12 Psychotherapy Associates in Little Rock for counseling. This
13 Exhibit P-11 is just one of -- there are several invoices there
14 that psychotherapy group kept sending me, because I was the one
15 that set up the appointment for them.

16 MR. BOWDEN: Your Honor, is that being offered?

17 MR. WOODSON: I haven't offered it.

18 MR. BOWDEN: I'm sorry.

19 BY MR. WOODSON:

20 Q. Does P-11 accurately reflect what you paid on Mr. Duda's
21 behalf and Ms. Travis' behalf?

22 A. Let me make it clear. The only one I paid is this first
23 one. The other ones I did not pay.

24 Q. All right.

25 MR. WOODSON: We would offer the top page of P-11,
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1 Your Honor.

2 MR. BOWDEN: Your Honor, I would object. It doesn't
3 really have any -- it doesn't show anything except for some
4 reason they thought he was responsible for a bill for Mr. Duda.
5 It doesn't show he paid it. I mean, there's no receipt here.
6 There's a handwritten note by somebody on it. We would object
7 as hearsay. We would object to relevance. We would object on
8 best evidence.

9 MR. WOODSON: Mr. Galster just testified that he paid
10 it, and it is relevant because it shows Mr. Duda was a
11 subordinate of Mr. Galster's, and even to the extent of Mr.
12 Galster paying for personal bills.

13 MR. BOWDEN: It is just not relevant, Your Honor, at
14 all to the copyright issue.

15 THE COURT: Well, it relates to the relationship
16 between the two men. I'm going to permit that one page to go in
17 on the basis of his testimony. You may continue.

18 MR. WOODSON: Thank you, Judge.

19 (Plaintiff Exhibit 11 received in evidence.)

20 BY MR. WOODSON:

21 Q. If you would, look at P-12 and describe for the Court this
22 document.

23 A. Your Honor, this is an invoice from Botco, Incorporated,
24 which is a flight service operation here in Little Rock, right
25 over by Central Flying Service. I decided that I needed some

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Galster - Direct

1 footage, some aerial footage for the documentary film. I wanted
2 particularly to get aerial footage of Cummins Prison Farm and
3 some of what we call B-roll footage, Your Honor, which is just
4 kind of decorations for a film. Instead of having faces on all
5 the time, we're looking for a little scenery. So I hired these
6 guys. The pilot and myself took off in his helicopter.

7 I used my Canon XL1 camera. I shot two rolls of what we
8 call B-roll, some of which included close-up shots over Cummins
9 Prison Farm, where I was being waved off by the guards. This
10 exact footage appeared in what I've seen of Mr. Duda's version
11 of my film. And this is the check that I paid for this service
12 with. If you will note, this is made out to me, Mike Galster,
13 Concrete Films.

14 Q. Tell us a little bit about the term "Concrete Films."

15 A. We had already started the project of filming people. Mr.
16 Duda had a production company that he formed, I understand
17 several years before this, called Willowisp Films. He wanted to
18 use that as the name for us to produce this documentary through.
19 I told him I didn't want to use that name. I thought it sounded
20 a little lighthearted, that this was a serious matter, we needed
21 something concrete. And that's where this name came from,
22 Concrete Films. I had just spent several weeks pouring a slab
23 up at my house in Hot Springs, and I was familiar with concrete,
24 so that name stuck. That was the name we decided to proceed
25 forward with.

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1 MR. WOODSON: We offer Plaintiff's 12, Your Honor.

2 THE COURT: Received.

3 (Plaintiff Exhibit 12 received in evidence.)

4 BY MR. WOODSON:

5 Q. Plaintiff's 13, please describe this document.

6 A. This is a packing slip off a Federal Express box. I think
7 this was where we ordered a CD burner for our Mac G4 computer to
8 use in processing some of the digital information. And it says,
9 "Ship to Michael Galster, Concrete Films, 2407 South Cherry
10 Street, Pine Bluff, priority overnight shipment."

11 Q. Do you actually have this box, Mr. Galster?

12 A. I do.

13 MR. WOODSON: With your permission, Judge, I would
14 like to get the box and show it to the plaintiff.

15 THE COURT: You may do so.

16 BY MR. WOODSON:

17 Q. Can you identify that box?

18 A. Yes, sir.

19 Q. What is it?

20 A. This is the box from PC Mall. It's called MacMall from
21 Shelby Drive, Memphis, Tennessee, to Michael Galster, Concrete
22 Films. As I stated earlier, this is the box. I actually just
23 found this box the other day.

24 MR. WOODSON: We would offer the box as Plaintiff's
25 13, Your Honor.

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1 MR. BOWDEN: Your Honor, I haven't even had a chance
2 to look at this box.

3 THE COURT: What did you say came in it?

4 THE WITNESS: It was a CD burner that we used in
5 processing the digital information. It was used on the Mac G4
6 computer, which was kind of the heartbeat of editing the film.

7 MR. BOWDEN: Your Honor, I don't guess -- the minimal
8 relevancy of an empty box, I won't object.

9 THE COURT: Well, he's testifying that he did receive
10 this equipment. It shows it came from that -- does it show it
11 came from Memphis? What does it show as the sender?

12 THE WITNESS: Shipped from PC Mall, Shelby Drive,
13 Memphis, Tennessee.

14 THE COURT: Well, I'm going to sustain the objection.
15 It adds nothing really to his testimony. He's already testified
16 that he purchased and used this equipment.

17 BY MR. WOODSON:

18 Q. Let's skip over, if you would, to Plaintiff's 15. What is
19 this document?

20 A. This is an e-mail. At the top is a code name Kelly was
21 using, Brass 47483, to Matt Drudge. We were trying to get in
22 touch with Matt Drudge, who was a sensational columnist at the
23 time and was covering several of the so-called scandals of the
24 time. Kelly and I both felt it would be beneficial to get this
25 information about not only the book but the underlying story

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1 that we were uncovering with the documentary. We thought he
2 would be interested in it. We thought that if he helped us
3 expose it that we could more quickly bring an FBI investigation
4 to this story. And at the top, he says, "I talked with your
5 attorney, Manny Klausner, Saturday morning in hopes of better
6 reaching you. I'm sending this e-mail. Hopefully it will reach
7 you sooner before it is too late."

8 THE COURT: It is addressed to Matt. And it is from
9 whom?

10 THE WITNESS: It is from Kelly. It says "K" at the
11 end of it.

12 THE COURT: Kelly. Then the letter was written by
13 Kelly Duda, right, to Mr. Drudge?

14 THE WITNESS: Yes.

15 THE COURT: He is sending you a copy of the letter?

16 THE WITNESS: Yes. Kelly sent me a copy of this. And
17 underneath that --

18 THE COURT: Is Manny Klausner your attorney? Was he
19 at the time?

20 THE WITNESS: He was Matt Drudge's contact and
21 attorney.

22 THE COURT: I see. Okay.

23 THE WITNESS: Kelly had established a relationship
24 with Mr. Klausner. We were hoping to use his name to get
25 through to Matt Drudge.

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1 BY MR. WOODSON:

2 Q. How did you come to possess this document?

3 A. Kelly gave it to me. Kelly and I pursued that to the point
4 that he and I booked a trip -- I paid for it -- to a conference
5 Matt Drudge was holding in the Beverly Hills Hotel in Hollywood.
6 I flew both of us out at my expense. We tried to arrange a
7 meeting with Mr. Drudge. It was relatively unsuccessful.

8 Q. If you would, I would direct your attention to the fourth
9 paragraph down below the name "Dear Mr. Drudge," the first
10 sentence. Would you read that sentence?

11 A. This is Kelly writing to Matt. He says, "The book is
12 written by an insider who has firsthand knowledge of the details
13 of the operation. I have convinced him to talk to you before he
14 goes full scale to the general press. I've explained to him the
15 power your article has for getting the word out to the American
16 public. He has explained to me the dangers his family have
17 faced and the danger I might face if I'm identified with this
18 story."

19 Q. Who do you understand "he" or "him" to be in this
20 paragraph?

21 A. He is talking about me in the firsthand. And when he says
22 "I might face" at the end, he is talking about himself.

23 Q. In that first sentence -- well, in that whole paragraph,
24 what is significant about that paragraph in what it does not
25 say?

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1 A. Well, Kelly was more --
2 MR. BOWDEN: Your Honor, I'm going to object to that.
3 It calls for speculation.
4 THE COURT: You are talking about the first paragraph
5 of this letter?
6 MR. WOODSON: The fourth paragraph down.
7 THE COURT: The one he just read?
8 MR. BOWDEN: It says what it says, Your Honor.
9 THE COURT: You know, just ask any question you want.
10 You know, it shouldn't be such as "what do you think that
11 means." It speaks for itself, I think.
12 MR. WOODSON: Yes, sir.
13 THE WITNESS: Kelly was trying to get the story
14 forward for both of us.
15 BY MR. WOODSON:
16 Q. Is Mr. Duda's name mentioned in that paragraph?
17 A. No.
18 Q. Would you agree with me that that's curious, that his name
19 is not mentioned there if he were the real author and originator
20 of this film?
21 A. Yes.
22 MR. WOODSON: We offer Plaintiff's 15, Your Honor.
23 THE COURT: It will be received.
24 (Plaintiff Exhibit 15 received in evidence.)
25 BY MR. WOODSON:

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1 Q. Plaintiff's 16, please identify that document.

2 A. This is an e-mail to me from Darma Zen -- that's Kelly's
3 e-mail address at the time -- to E. Retslag, which is my name in
4 reverse. This is his notes about a deposition that he did with
5 an ex-convict by the name of John Schock. This was some of the
6 information this inmate was giving him on the 14th of June,
7 1998. It was particularly interesting because this man had been
8 in the blood program and had some pertinent information toward
9 what we were hoping to gather on tape for the documentary film.

10 Q. How did you receive this document?

11 A. By e-mail.

12 Q. Please read the first sentence towards the top of the page
13 after the word "note."

14 A. "Note: Much of what you'll read in the first part is me
15 reiterating what John had already just told me."

16 Q. And this is Mr. Duda's e-mail?

17 A. This is Mr. Duda's e-mail to me concerning John Schock.

18 Q. So would you agree with me that the first sentence states
19 that Mr. Duda was just told by John, that being Mr. Schock, the
20 information --

21 MR. BOWDEN: Your Honor, I object. It says what it
22 says.

23 THE COURT: Objection will be sustained. It says what
24 it says.

25 MR. WOODSON: Yes, sir.

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1 THE COURT: "Much of what you read in the first part
2 is me reiterating what John had already told me. I then asked
3 him if I could tape-record our conversation so I could get the
4 facts straight." Go ahead.

5 MR. WOODSON: We offer Plaintiff's 16, Your Honor.

6 THE COURT: It will be received.
7 (Plaintiff Exhibit 16 received in evidence.)

8 MR. BOWDEN: Your Honor, at this point I would like to
9 ask that we take a break and talk with Ms. Leveritt, because she
10 has somehow or another managed to push back her appearance to 4
11 o'clock. And we probably will need a little time to visit with
12 her.

13 THE COURT: We'll have a 15-minute recess?

14 MR. BOWDEN: Yes.

15 THE COURT: We'll have a 15-minute recess. Court will
16 be in recess.

17 (Recess from 2:50 p.m. until 3:05 p.m.)

18 THE COURT: We are going to interrupt the plaintiff's
19 presentation. Mr. Bowden, have you got your witness available?

20 MR. BOWDEN: Yes.

21 THE COURT: Just tell me who the witness is, please.

22 MR. BOWDEN: Ms. Mara Leveritt.

23 THE COURT: Should she just go ahead and call her?

24 MR. BOWDEN: Yes, please.

25 MARA LEVERITT, DEFENDANT WITNESS, DULY SWORN, BY TELEPHONE
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Leveritt - Direct

1 THE COURT: Mr. Bowden will now question you. Speak
2 up as you do. And I'll ask Ms. Leveritt to speak up also.

3 DIRECT EXAMINATION

4 BY MR. BOWDEN:

5 Q. Ms. Leveritt, thank you for taking the time to be with us
6 this afternoon. Will you state your full name for the record,
7 please.

8 A. Mara Leveritt.

9 Q. What city do you reside in?

10 A. Little Rock, Arkansas.

11 Q. How long have you lived in Little Rock?

12 A. Since 1970.

13 Q. What is your occupation, please, ma'am?

14 A. Journalist.

15 Q. And do you write for any particular publication, or are you
16 a freelancer?

17 A. I'm a contributing editor to the Arkansas Times. And I
18 also write books on my own.

19 Q. Ms. Leveritt, have you met Kelly Duda?

20 A. I have.

21 Q. Have you met Michael Galster?

22 A. Not that I know of.

23 Q. Let me talk to you for a moment. As I understand it, the
24 prison system has been something of a continuing interest to
25 you. Is that true?

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- 1 A. That's true.
- 2 Q. Were you ever interviewed by Mr. Duda with regard to a
3 situation at the prison?
- 4 A. Yes. I was interviewed by him for a film he was making.
- 5 Q. Can you tell us a little bit about that, when that was, for
6 starters.
- 7 A. I believe that would have been in around early 1999. I'm
8 not certain of that, but about five years ago.
- 9 Q. What kind of film was it that you understood that he was
10 making?
- 11 A. I understood he was making a film about what is called the
12 tainted blood scandal at the Arkansas Department of Corrections.
- 13 Q. Did you have any knowledge of that blood scandal before
14 this interview?
- 15 A. I had written an article about it for the Arkansas Times.
- 16 Q. Do you know when that article came out?
- 17 A. I could not say off the top of my head.
- 18 Q. But it was before the interview?
- 19 A. Well before.
- 20 Q. Now, Ms. Leveritt, when you went to this interview, where
21 did that occur, or did the interview come to you?
- 22 A. Mr. Duda interviewed me and filmed me at my home.
- 23 Q. Who was with him at the time?
- 24 A. I don't recall.
- 25 Q. Was there more than one person present at the filming?

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- 1 A. I don't remember anyone but Mr. Duda being here.
2 Q. With regard to the technical aspects of it, did he set up
3 the camera?
4 A. I believe he did.
5 Q. Did he set up the lighting?
6 A. I think so.
7 Q. Choose the location at your home to take the shots?
8 A. Yes.
9 Q. And I take it he also asked the questions. True?
10 A. Yes, he did.
11 Q. Was he on or off camera at the time?
12 A. I think he was off camera.
13 Q. What did you briefly describe to him in that interview?
14 A. I told him about the information that I had learned in
15 preparing the article about the blood situation that I wrote for
16 the Arkansas Times.
17 Q. Okay. Tell us a little bit about what that involved, just
18 briefly. We're basically familiar with the facts. But what did
19 you tell him what you knew about it?
20 A. I told him that I had gone to the prison and had
21 interviewed some of the phlebotomists, some of the inmates. A
22 photographer for the Arkansas Times had accompanied me. We had
23 taken pictures. And I was aware of the concern about the
24 quality of the blood products being released from the prison and
25 that this was one of the last prisons in the country that was

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1 performing that procedure.
2 Q. Did you speak to him about the problems with Canadian blood
3 recipients?
4 A. I don't remember whether, when I wrote my article, whether
5 I knew about that. But I think Mr. Duda did. And we may have
6 talked about it in that context at the time that he was
7 interviewing me.
8 Q. I take it you had no contact with Michael Galster?
9 A. As I said, not that I recall.
10 Q. You've never had any contact with a Michael Sullivan, have
11 you?
12 A. No. I don't think so.
13 Q. Have you ever had any contact with anyone from Labuena Vida
14 Films?
15 A. No.
16 Q. Did Mr. Galster supply you with any of your research on
17 this article that went into the Arkansas Times?
18 A. As far as I recall, I never spoke to him.
19 Q. Did you ever receive any correspondence from him or e-mails
20 or anything of that nature?
21 A. I don't remember receiving any.
22 Q. Did Mr. Duda provide you with any new information relating
23 to the situation?
24 A. I did many different projects in the meantime between my
25 own reporting of the prison blood situation and the day that he

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1 came here and filmed me for his film. And so a lot had
2 transpired that I was unaware of. And he filled me in on some
3 of that information.

4 Q. Did you have any doubt that he was a filmmaker when he
5 interviewed you?

6 A. No.

7 Q. Did you have any further contact with him? I guess I
8 should say, what was the length of your relationship and contact
9 with Mr. Duda during that time period?

10 A. I have remained in contact with him off and on since then.

11 Q. Do you know how long he's been working on his film that is
12 currently scheduled to be shown at Slam Dance?

13 A. I know that he has edited and reedited it. And I have seen
14 at least -- I've seen one version of that. He has told me about
15 various efforts that he has made to get distribution for that
16 film. So as far as I know, he has been working on that for
17 pretty continuously since he filmed me for it.

18 Q. You saw an earlier version of this film before it was
19 finalized?

20 A. I saw one edited version of it, yes.

21 Q. Anywhere in that on any of the cuts of film did you see a
22 copyright notice for anyone other than Kelly Duda?

23 A. No.

24 THE COURT: Let me ask you. I'm the Judge. You said
25 you saw an earlier version. So am I to understand you saw an

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1 earlier version, and then you saw a later version, or how
2 many --

3 THE WITNESS: No, Your Honor. I say an earlier
4 version only because Mr. Duda told me -- when he told me that
5 the film had been admitted to Slam Dance, he told me that it was
6 a version that had been reedited since the one I have seen.

7 THE COURT: Was that conversation just very recently?

8 THE WITNESS: I don't know. I guess it's been within
9 the past two or three months.

10 THE COURT: All right. Thank you.

11 BY MR. BOWDEN:

12 Q. Ms. Leveritt, did you share any further leads with Mr. Duda
13 as to where he might go in preparing this film?

14 A. I know we had general discussions about the subject.
15 Frankly, being five years out, I don't remember that -- I don't
16 remember what I said. I do recall on this topic his information
17 seemed to me to be much broader and more current than mine.

18 Q. Was he a pretty good journalist in your opinion?

19 A. Yes, sir.

20 Q. Professional journalist?

21 A. Yes, sir.

22 Q. Let me ask you this. Did he at any time ever mention
23 anything about a book called Blood Trail?

24 A. Yes. He was aware of that book, as I was. It had been
25 reported in the paper, which was when I had become aware of it.

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- 1 And I think we noted that.
- 2 Q. Did he ever -- have you ever read Blood Trail?
- 3 A. No, I have not.
- 4 Q. Did he indicate that it was anything more than just an
5 awareness that such a book existed?
- 6 A. That was the entire context.
- 7 Q. It wasn't anything that he had borrowed from or even tried
8 to make fair use of or anything like that?
- 9 A. Nothing like that was ever mentioned between us.
- 10 Q. That's all I have, Ms. Leveritt. Thank you. There may be
11 a few questions from plaintiff's counsel.
- 12 A. Okay.
- 13 Q. Hold one second. One second.
- 14 Ms. Leveritt, have you ever had occasion to copyright your
15 work?
- 16 A. Yes, sir.
- 17 Q. Will you explain to us what is the process on that as far
18 as between the time you copyright it and the time you register
19 it? How do you protect yourself?
- 20 A. I'm sorry. I can't tell you very much about that, because
21 my books have been -- that has been handled by the publisher.
22 In my most recent case, it was Simon & Schuster. They take care
23 of that, so I've not been involved directly in that process.
- 24 Q. I understand. Thank you, Ms. Leveritt.
- 25 A. You are welcome.

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1 THE COURT: Now Mr. Woodson wants to question you.
2 Mr. Woodson.

3 CROSS-EXAMINATION

4 BY MR. WOODSON:

5 Q. Ms. Leveritt, my name is Joe Woodson. I represent the
6 plaintiff, Michael Galster. I have a few questions for you.

7 A. Okay.

8 Q. Tell me again, when was the first time that you became
9 aware of the prison blood scandal?

10 A. I cannot say precisely. I've been reporting on matters
11 pertaining to the Arkansas Department of Corrections for
12 probably 20 years. And it was, I believe, in the late eighties
13 would be my guess that I became aware of the problems with that.

14 Q. And when was the first time that you met Mr. Duda?

15 A. It was sometime after that, but I don't know -- I cannot
16 tell you when I first met him. I don't remember.

17 Q. Did I understand you correctly to testify that Mr. Duda did
18 not supply you with any new information regarding the prison
19 blood scandal?

20 A. No. I believe what I said was that we spoke. I had not
21 reported on that probably for sometime. And I believe that his
22 knowledge was broader and more current than mine by the time we
23 talked.

24 Q. Have you ever met Michael Galster?

25 A. Not that I know of.

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1 Q. Do you have any information that you can share with the
2 Court that would relate to the relationship between Michael
3 Galster and Mr. Kelly Duda?

4 A. I know nothing at all about any such relationship.

5 Q. Another way to say that is you don't have any information
6 as to whether or not Mr. Duda was or was not an employee of Mr.
7 Galster's?

8 A. No, I don't.

9 Q. You stated that Mr. Duda never told you about Michael
10 Galster when he was filming you in your interview? Is that
11 correct?

12 A. I don't think I said that. But in any event, I cannot
13 remember the full content of what was discussed on the day that
14 he came and filmed me.

15 Q. You testified -- I believe this is correct -- that you did
16 witness some video or film that Mr. Duda presented to you?

17 A. Yes. I saw one version of his film.

18 Q. Do you have any information that you can share with the
19 Court regarding where that film came from, in particular, who
20 filmed it, when it was filmed, and how they did it?

21 A. Well, I knew that he had filmed me in preparation for it.
22 And I knew that parts of it were taken from the articles that I
23 had written for the Arkansas Times, particularly photographs
24 that were reproduced that was taken the night that I went down
25 there. That was well acknowledged between Mr. Duda and myself.

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- 1 As far as I knew, the work was entirely his.
2 Q. Did you just assume that, or did he tell you that?
3 A. He told me that. He told me that.
4 Q. I'm sorry. I didn't hear the last part.
5 A. He told me that.
6 Q. How many different occasions did you view what Mr. Duda
7 represented to you or what Mr. Duda presented to you?
8 A. One time.
9 Q. One time. Other than yourself, and I believe you mentioned
10 an article a moment ago, did you witness other persons in that
11 video?
12 A. Certainly.
13 Q. Can you give us an idea of how many other people are in
14 that video?
15 A. I have no idea. Many.
16 Q. Can you just give us an approximation, like 10 or 20 or 50?
17 A. No. I couldn't say that. I would say there were more than
18 20.
19 Q. Besides the interview that you participated in with Mr.
20 Duda, were you present at any of the other interviews regarding
21 the other persons in the video?
22 A. No, sir.
23 Q. Have you ever seen any of the source tapes that the videos
24 that you saw came from? Let me phrase it another way. With
25 regard to the other individuals besides yourself that you saw in

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1 the video, have you ever seen or viewed the individual
2 videotapes of those individuals by themselves not in a
3 compilation with other persons?

4 A. No, sir.

5 Q. Would you agree with me that you do not have any way to
6 compare -- since that's the case, would you agree with me that
7 you do not have any way to compare what Mr. Duda showed to you
8 versus what, if any, difference might exist with regard to the
9 source tapes of those individuals?

10 MR. BOWDEN: Objection, Your Honor, calls for a
11 conclusion that she's not --

12 THE COURT: I'm going to sustain the objection. Let
13 me ask you, Ms. Leveritt -- this is the Judge. Do you recall
14 what you were asked about while you were being filmed by Mr.
15 Duda?

16 THE WITNESS: I think he asked me about my experience
17 as a reporter covering that topic. I was one of the first
18 reporters I think in the state to address the subject. He was
19 asking me -- this incident had occurred several years prior to
20 his filming of the story. He was asking me what my experience
21 as a reporter covering it was.

22 THE COURT: I understand he was asking you about your
23 knowledge of the blood operation down at Cummins, the
24 information about people you may have interviewed, prisoners and
25 so forth?

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1 THE WITNESS: That's right.

2 THE COURT: Now, you have seen the film at least once.
3 What you are saying on the film as you saw it, was all that --
4 was the information that you gave him on film, did it actually
5 appear in the film that you saw?

6 THE WITNESS: No, Your Honor, it did not. As a matter
7 of fact, the version that I was shown did not include the
8 interview with me.

9 THE COURT: At all?

10 THE WITNESS: No, not at all. It did include some
11 visuals which I mentioned, which were from the photographs that
12 had run in the Arkansas Times. But the interview with me was
13 not included.

14 THE COURT: Well, do you recall any questions about
15 the records of the governor and your inability to get copies of
16 records from Governor Clinton's tenure as governor?

17 THE WITNESS: I know this is a topic that I have
18 discussed with Mr. Duda. It has been a frustrating topic for
19 me. I don't know if I was discussing it in that context at that
20 time. I mean, at the time that he filmed me? Is that what you
21 are asking?

22 THE COURT: Yes. Well, I think you said you've seen
23 one version, which included not only you but others in that
24 version of the film.

25 THE WITNESS: May I correct? No. The version that I
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1 saw did not include me.

2 THE COURT: At all?

3 THE WITNESS: No. That's right. I did not appear in
4 that version. Mr. Duda has told me since that he had reedited
5 it. And I think he says that some footage of me was in the
6 newest one, but I haven't seen that.

7 THE COURT: Very good. Thank you.

8 BY MR. WOODSON:

9 Q. Do you know whether or not Mr. Galster instructed Mr. Duda
10 to interview you?

11 A. He has certainly never told me that.

12 Q. Did Mr. Duda ever show you any receipts for the equipment
13 he was using while he interviewed you?

14 A. No.

15 Q. Do you have any knowledge of any monies that were spent by
16 Mr. Duda on the equipment or the interview of you?

17 A. No.

18 MR. WOODSON: Pass the witness, Judge.

19 THE COURT: Mr. Bowden, any additional questions?

20 MR. BOWDEN: Yes, just one or two.

21 REDIRECT EXAMINATION

22 BY MR. BOWDEN:

23 Q. Ms. Leveritt, David Bowden again. I've just got one or two
24 questions for you. In the version of the film that you saw,
25 there was a series of credits; true, at the end of the film?

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- 1 A. You know, I presume there was. I have no direct
2 recollection.
- 3 Q. You have no recollection as to whether Arkansas Times and
4 Mara Leveritt were credited in that?
- 5 A. No, I don't remember.
- 6 Q. Now, with regard to the article in the Arkansas Times and
7 the photos in the Times -- and I know this is hard to estimate
8 because of the way that the Arkansas Times is circulated. But
9 do you know about what the readership of the times is?
- 10 A. That was quite a few years ago. This would just be a guess
11 on my part, because as I recall, that was during the days that
12 the Arkansas Times was a magazine. And I would say that the
13 circulation was in the neighborhood of 20,000. But I'm really
14 out of my field in talking about that.
- 15 Q. I understand. But I take it then that means that there was
16 someone or some business that at least 20,000 copies of these
17 stories went to. True?
- 18 A. Yes. It was a well circulated publication.
- 19 Q. And when was that that you wrote about the Arkansas prison
20 blood scandal?
- 21 A. As I say, I would have to look up the date of that article.
- 22 Q. Was it in the eighties? Nineties?
- 23 A. I believe it was in the eighties.
- 24 Q. Okay. Thank you.
- 25

THE COURT: Anything else?

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1 MR. WOODSON: Very briefly.
2 RECCROSS-EXAMINATION
3 BY MR. WOODSON:
4 Q. Joe Woodson again, Ms. Leveritt.
5 A. Yes.
6 Q. Do you have any information that you can share with the
7 Court that will reflect whether or not Mr. Duda's credits that
8 he showed you at the end of the film are or are not valid?
9 MR. BOWDEN: Your Honor --
10 THE COURT: She doesn't have any recollection of the
11 credits, as I recall her saying. So I'm going to sustain the
12 objection.
13 BY MR. WOODSON:
14 Q. Did Mr. Duda ever tell you about any other persons that
15 were working on the film with him?
16 A. No. I discussed the film with him several times, and I
17 don't recall him ever mentioning anyone else.
18 Q. Mr. Duda never mentioned Ms. Kate Terrell?
19 A. Not that I recall.
20 Q. Mr. Duda never mentioned Mr. DanleI Broenlng?
21 A. No, sir, not that I remember.
22 MR. BOWDEN: Your Honor, these have been asked and
23 answered in the all encompassing --
24 THE COURT: Well, I'm going to let him do that. Go
25 ahead.

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1 BY MR. WOODSON:

2 Q. Mr. Duda never mentioned Christopher Case?

3 A. I don't recall hearing that name.

4 Q. Thank you. That's all I have.

5 THE COURT: All right. Ms. Leveritt, thank you very
6 much. We're sorry to interrupt your trip. But you are now
7 excused. We will proceed with the hearing.

8 THE WITNESS: Thank you.

9 THE COURT: Is there any other telephone one?

10 MR. BOWDEN: No, Your Honor. But we do have a Mr.
11 Nick Devlin, who has to be at work at 4:30 and has come here
12 voluntarily. I anticipate that he would be very brief, and I
13 would like to take him out of order.

14 THE COURT: Mr. Woodson nods it is okay. Let's bring
15 him on. We are through with this.

16 NICHOLAS DEVLIN, DEFENDANT WITNESS, DULY SWORN

17 DIRECT EXAMINATION

18 BY MR. BOWDEN:

19 Q. Sir, would you state your full name for the record, please.

20 A. My name is Nicholas Francis Devlin.

21 Q. And where are you from, sir?

22 A. Scotland.

23 Q. Currently.

24 A. I'm sorry. I'm so used to people asking me that. I live
25 here in Little Rock.

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- 1 Q. You live in Little Rock. How long have you been with us in
2 this country?
- 3 A. It will be 15 years this fall.
- 4 Q. And how long have you lived in Little Rock?
- 5 A. For most of that time. I lived in south Texas for about
6 two and a half years, up until the summer of 2000.
- 7 Q. That's what had me fooled. I thought that was a south
8 Texas accent. Mr. Devlin, just a quick question or two. What
9 is your profession, sir?
- 10 A. I'm a musician.
- 11 Q. When you say you are a musician, do you play an instrument?
12 Are you in a band? Do you write? What do you do?
- 13 A. I do all of those things. I play several musical
14 instruments. I compose music. I play in clubs and bars and
15 stuff. I do studio sessions. I have written stuff for TV,
16 radio, et cetera, et cetera, et cetera, all kinds of things.
- 17 Q. Have you ever written a soundtrack for a film?
- 18 A. Yes.
- 19 Q. We'll get to that in a minute. Do you know Kelly Duda?
- 20 A. Yeah.
- 21 Q. How do you know Mr. Duda?
- 22 A. We became acquainted -- I don't know -- probably -- I don't
23 know exactly -- maybe eight years ago or something maybe, quite
24 accidentally through someone who is sort of a mutual
25 acquaintance, just became friends in the course of time.

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- 1 Q. Do you know who that would be?
2 A. Yeah. A man named Michael Scoggins, who is no longer with
3 us.
4 Q. So it wasn't Michael Galster or Michael Sullivan or
5 whatever?
6 A. No, sir.
7 Q. All right. Do you know Mr. Galster?
8 A. Yes, I have met him before.
9 Q. How many times have you met him?
10 A. Probably four or five times, I would say maybe, maybe not
11 that many.
12 Q. During the course of those meetings, was Kelly Duda ever
13 present at any of them?
14 A. Yes. They were informal meetings.
15 THE COURT: Speak a little louder.
16 THE WITNESS: Excuse me. I'm sorry. It was quite
17 informal. It was just happening to bump into each other type
18 thing.
19 BY MR. BOWDEN:
20 Q. Are you familiar with a film called Factor 8, The Arkansas
21 Prison Blood Scandal?
22 A. Yes. I'm very familiar with that film.
23 Q. Tell us who wrote that.
24 A. Excuse me?
25 Q. Tell us who made that film.

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1 A. Kelly Duda made that film.

2 MR. WOODSON: Objection, Your Honor. That's an
3 assumption.

4 THE COURT: Objection overruled. You can question him
5 about it.

6 BY MR. BOWDEN:

7 Q. Who wrote the music for it?

8 A. I did.

9 Q. Did you give anyone other than Kelly Duda the right to use
10 your music?

11 A. Absolutely not.

12 Q. You didn't give Michael Galster the right to use your music
13 in the film?

14 A. Michael Galster and I had never even discussed it.

15 Q. Did you ever -- what about this Michael Sullivan he goes
16 by?

17 A. I don't know anything about that.

18 Q. Now, what have been the conversations when you've been
19 around Mr. Galster? Did it have to do with this film?

20 A. No. It was small talk. The situation was that he had his
21 clinic in Pine Bluff, and Kelly was working in a building behind
22 there. And over the course of some time, weeks -- I don't
23 remember exactly. I didn't keep a record of it -- I would be
24 down there working with Kelly on the music, you know, initially
25 just to let him hear what ideas I had, whether this would work

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- 1 or that would work. You know, there was just some footage
2 there. I just got a look at how the film would look.
3 Occasionally Mr. Galster and I, we would bump into each other in
4 the parking lot really. And it was just kind of: "Hi. How are
5 you doing?" One time he had his clinic remodeled, and he kind
6 of showed me around his new clinic, you know, kind of small talk
7 sort of stuff.
- 8 Q. Did he ever mention the film to you or anything about it,
9 Mr. Galster?
- 10 A. No, not really.
- 11 Q. Was he aware of why you were there?
- 12 A. Yes.
- 13 Q. How do you know he was aware?
- 14 A. Well, there was one time I was in there working with Kelly.
15 And he came into the room where we were working, where the
16 equipment was set up. And I had been down there doing, like I'm
17 saying, just discussing the music with Kelly and stuff. I
18 actually let him hear one of the pieces of music that day, which
19 he seemed to quite like at the time.
- 20 Q. Well, did he say anything about "that will sound good in
21 Kelly's film" or anything to indicate ownership of the film
22 rights?
- 23 A. Not at all really.
- 24 Q. But he did like your music?
- 25 A. He certainly indicated that he did that day.

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1 Q. And he knew you were writing it for that film?

2 A. Yes.

3 Q. Did he ever offer to pay you anything for the film -- for
4 the music?

5 A. No.

6 Q. Have you ever been paid anything by Mr. Galster for your
7 music?

8 A. Not at all.

9 Q. And you have licensed Mr. Duda. By that, I mean you've
10 given him permission to use the music?

11 A. Yeah. We have an agreement. We've worked together on it
12 for a long time, for three years.

13 Q. When did you first start working with him on it?

14 A. Well, that's kind of difficult to say, because the
15 composition of music -- I'm not trying to be obtuse. But when I
16 still lived in south Texas, we talked on the phone a little bit.
17 He described to me -- attempted to describe to me what sort of
18 footage he had at that point, which was just bits and pieces,
19 some B-roll stuff and interviews. So I attempted in my
20 imagination to, you know, begin to think about it. You know,
21 you compose music when you are driving to the store sometimes.
22 You don't sit around and do that, you know, so much. So it was
23 quite sometime ago, when I got back from south Texas from living
24 there that it was more kind of a hands-on, you know, thing.

25 Q. Do you think it was as early as 1999?

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- 1 A. I was certainly thinking about it at that point.
2 Q. 1998 perhaps?
3 A. Possibly so. The process is so difficult to describe. But
4 while I was in south Texas, the main theme thing I came up with
5 while I was in south Texas. I remember that quite specifically.
6 Q. When were you in south Texas? From when to when?
7 A. From a little over two and a half years up until -- up
8 until the summer of 2000, so I guess it was from what --
9 Q. 1998?
10 A. Yeah, yeah.
11 Q. Now, you said that Mr. Duda was working at Mr. Galster's
12 place or in a home behind it or something or office or what?
13 A. Yes. It was a house.
14 Q. Was it a house that people were living in, or was it like
15 an office, or how was it fixed?
16 A. Kelly was there. Aside from that, during my time spent
17 there, there was no one else there.
18 Q. What was he doing for Mr. Galster at that time?
19 A. Working on this film, sitting in front of the computer
20 screen.
21 Q. He was working on this film for Mr. Galster?
22 A. As I understood, that's what was going on. I took -- I was
23 just there to do the music, you know. I didn't know exactly
24 what sort of arrangement they were using, what was going on.
25 Q. But you didn't know for sure what was going on then with

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1 that relationship?

2 A. Not exactly. All I knew is that I saw Kelly working on the
3 film, only Kelly working on the film. I mean, that's all I ever
4 saw.

5 Q. Never saw Michael Galster working on it?

6 A. No, no.

7 Q. Never saw any discussions between them about it?

8 A. No. Because Mr. Galster and I were -- I mean, we hardly
9 knew each other. I mean, like I say, I only met him four or
10 five times under the most informal circumstances.

11 Q. And he didn't hire you to do the music?

12 A. Oh, certainly not.

13 Q. That's all I have.

14 THE COURT: You may cross.

15 CROSS-EXAMINATION

16 BY MR. WOODSON:

17 Q. Did you ever meet Ms. Kate Terrell?

18 A. If I did, I'm not aware of it. Her name means nothing to
19 me. I may have met Ms. Kate Terrell, but I don't know who she
20 is from the name.

21 Q. Do you know Mr. DanleI Broenlng?

22 A. Yeah, I've met him. Yeah, I guess I know him. I don't
23 know him well. I've met him before.

24 Q. Did you ever see Mr. Broening working on the film with Mr.
25 Duda?

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- 1 A. No.
- 2 Q. Have you ever met Christopher Case?
- 3 A. No, not until -- well, no, not until today. I'd never seen
4 him before today.
- 5 Q. Did Mr. Duda ever tell you that Ms. Terrell, Mr. Broening,
6 and Mr. Case also worked on the film with him?
- 7 A. No, not really. I mean, I guess that must have happened
8 before I was involved. I wouldn't know about all that.
- 9 Q. You just admitted to Mr. Smith (sic) that your
10 understanding was that Mr. Duda was working on the film for Mr.
11 Galster. Correct?
- 12 A. Yeah. I guess he was in his building. You know, I guess
13 that's what I assumed. I mean, I didn't take to do with that.
14 It wasn't really my business, so I don't know what that was
15 exactly.
- 16 Q. You understand that building or that home to belong to Mr.
17 Galster, didn't you?
- 18 A. Uh-huh, yes.
- 19 Q. Did Mr. Duda ever tell you who was financing this film?
- 20 A. No.
- 21 Q. I'm curious. Why would you compose music for the film if
22 you were never to be paid?
- 23 A. Because Kelly is a friend of mine. We had -- sometime
24 before that, he had talked about making a completely different
25 film from a screenplay that he had written himself. And we

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1 talked about the possibility of me doing the music. I said,
2 "Yeah, I would like to get involved in a project like that."
3 Then this whole thing popped up. I guess it was just sort of
4 tacitly assumed I would do that instead since that's what he was
5 doing at the time. I mean, he's a friend. There wasn't any
6 talk of any hard financial arrangement or anything like that.
7 At that point there was no film anyway. It was just a bunch of
8 footage. I mean, I had no idea at that point whether there
9 would ever be a film. I mean, I had no reason to assume it
10 would or wouldn't. It was just something I was working on. I
11 was working on other things too at the time. So I didn't give
12 over every minute of my day to this, but I did work on it. My
13 testament to that, there's a soundtrack for the film.

14 Q. Because he was your friend?

15 A. Fundamentally, I suppose, yes.

16 MR. WOODSON: No more questions, Judge.

17 THE COURT: You may stand down. Now do we go back to
18 the plaintiff's case?

19 MR. WOODSON: Yes, Your Honor.

20 THE COURT: That is part of the defendant's case. We
21 will now go back to the plaintiff. Plaintiff is on the stand.
22 Let's resume. You've already been sworn. Just take the stand.
23 Mr. Woodson, you may continue.

24 MR. WOODSON: Thank you, Your Honor.

25 MICHAEL GALSTER, PLAINTIFF WITNESS, PREVIOUSLY SWORN
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DIRECT EXAMINATION CONTINUED

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BY MR. WOODSON:

Q. Mr. Galster, you've testified earlier about the press conference that was held in Washington, D.C. Did you all shoot any film while you were there in Washington, D.C.?

A. Yes, we did.

Q. Would you describe that to the Court?

A. If you view the film, Your Honor, you'll see lots of shots from Washington, D.C., in front of the White House, Capitol building, Senate quarters, flags of the United States and Canada flying side by side. We shot that as well as images of me giving testimony, standing on the steps of the Capitol. We shot -- a lot of that is B-roll footage that we shot.

Q. What does B-roll mean?

A. It's just background, fill-in material to help the images flow during the documentary. We shot images inside cabs, interviewing an Ethiopian cab driver. We shot images of the national Red Cross building for the obvious correlation to the story. And we filmed the entire press conference, which was well over an hour.

Q. Was this B-roll film made with the equipment you had purchased?

A. It was.

Q. Who actually made the film or carried the camera, if you will?

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1 A. Kelly Duda carried it, along with his assistant, Clint.
2 And I'm sorry. I can't remember Clint's last name.

3 Q. Did they do this at your direction?

4 A. Yes, they did.

5 Q. Tell the Court about the events that transpired after the
6 press conference.

7 A. After the press conference, we were interviewed. It was
8 kind of a frenzy actually. We were interviewed by a lot of
9 people from all around the world with cameras. And
10 subsequently, in the days following that, it stirred up a little
11 attention, so I did a lot of interviews, both in Canada and some
12 in the United States.

13 Just as a side note, not one bit of footage of the press
14 conference made it to the national news media. It wasn't shown
15 anywhere in the United States. It was pretty much a blackout on
16 our story. And that day it was the biggest story in Canada, so
17 a little bit of a conflict there. But I continued to do
18 interviews and was hoping the story was going forward. We were
19 still filming different people that were willing to testify
20 because of my boldness to hold a press conference, God forbid,
21 in Washington, D.C. So we had more people willing to be on
22 camera -- we were filming them -- right up until May 19th, 1999,
23 which was approximately three months after the press conference
24 when my main clinic in Pine Bluff was firebombed.

25 Q. Describe for the Court what happened with that.

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1 A. Mr. Duda and I were having a conference just on who we were
2 shooting, what we were doing, that night in Hot Springs. We met
3 over there. Late that evening, around midnight, I went to my
4 home at the lake house in Hot Springs. And my children were
5 there and told me the news, that the clinic in Pine Bluff was
6 burning. So, of course, we all rushed -- Kelly and I both
7 rushed back to Pine Bluff. And I think Kelly had the camera
8 with him. I know he did the next day and filmed some of the
9 aftermath of the fire. This event kind of knocked a hole in me
10 and knocked the breath out of me, losing my major source of
11 income, especially when I was underinsured. But we continued
12 on. I continued to scrape up money to fund the film project. I
13 figured it was more important than ever that we at least finish
14 that. I was scared for my life. My wife left and moved to
15 Ireland. My kids were terrified. I was terrified. The young
16 college student that lived in the apartment above my clinic was
17 blown out of bed during the explosion. We had been receiving
18 death threats. We had gotten kind of used to them, and actually
19 they had dropped off. Then this happened, so we really didn't
20 know which way to turn. But shortly after that is when I
21 brought Kelly into a house I had to buy behind my clinic in
22 order to help rebuild it. And Kelly and DanleI Broenlng, Chris
23 Case, and myself and others continued on the project, using that
24 as our central location.

25 Q. At the point in time when your clinic was firebombed, how
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1 much money had you spent on the documentary film?

2 A. I don't know exactly at that moment. In February of '98, I
3 made a hundred thousand dollar loan to make the documentary
4 film.

5 Q. You received a loan?

6 A. Yes. And by that point we had probably expended somewhere
7 in the neighborhood of 65 to 75 thousand dollars. It continued
8 after that. Expenses continued.

9 Q. Did you expend the proceeds of that \$100,000 loan?

10 A. Yes.

11 Q. So at a minimum, approximately 165 to 175 thousand dollars
12 were spent by you on the documentary film?

13 MR. BOWDEN: Objection to leading, Your Honor.

14 THE COURT: Don't lead. How much did you spend on the
15 film?

16 THE WITNESS: By the time Mr. Duda and I stopped
17 working on the film together, we had easily expended over a
18 hundred thousand dollars. I can't give you the exact number.

19 BY MR. WOODSON:

20 Q. We've already talked about your book, Blood Trail. Are you
21 the registered copyright holder of that book?

22 A. I am.

23 Q. Are you also the registered copyright holder of a film
24 called Factor 8?

25 A. I am.

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1 Q. Would you describe to the Court when you registered that
2 copyright?

3 A. I registered it yesterday in Washington, D.C.

4 MR. WOODSON: May I approach the court reporter, Your
5 Honor?

6 THE COURT: You may.

7 BY MR. WOODSON:

8 Q. I've handed you what's been marked as Plaintiff's 35.
9 Would you identify that document?

10 A. Yes. This is a receipt I received for the proper
11 application of a copyright from the copyright office yesterday
12 in Washington.

13 Q. What materials were included in that registration?

14 A. Your Honor, included in that was -- the reason we hired
15 Chris Case, the reason I paid Chris Case to come in from Los
16 Angeles was initially to do a full transcript of all 107 source
17 tapes we had made of the individual interviews. Mr. Case did
18 that. I paid him for it. It's about a 530-page document of
19 every word that was uttered during those interviews we did on
20 tape. That was one portion of this registration that I made
21 yesterday.

22 Another set was a complete listing of all the rendered
23 photographs that were left in remnant on the computers I
24 recovered from Mr. Duda in 2001. These images were put on to
25 DVDs, and I submitted them. There were also many remnant

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1 interviews in its entirety that we used to put on there, along
2 with excerpts from the film as it was when I still had complete
3 possession of it in 2001. So it was the transcript. It was
4 video clips, and it was video renderings, interviews.

5 Q. Is that document, Plaintiff's 35, the original document
6 that you received yesterday?

7 A. It is.

8 THE COURT: You say excerpts from the films as it was
9 when? You say when you had it?

10 THE WITNESS: Yes, sir. In 2001, when I still had
11 access and control, when the computer equipment and digital
12 editing equipment was still in my house in Pine Bluff, Your
13 Honor, we had a four-hour version that we kept working and
14 editing on at that point. In the year 2000, we worked extremely
15 hard to get a two-hour version together as a work in progress.
16 You can submit those to film festivals as work in progress. We
17 did submit it to the very large Toronto Film Festival. It was
18 submitted as a work in progress. It was not accepted. I have a
19 feeling that Toronto still has that on file.

20 And we continued. To get an idea of the time frame, that
21 was like August of 2000. Mr. Duda promised me we would have the
22 editing completed if I would get some specialists in. So we
23 brought Chris Case from Hollywood to come in. We brought DanleI
24 Broenlng in to do the computer renderings for all the stills and
25 all the special effects and titles. And we worked very hard on

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1 it. Two weeks later, it wasn't finished. And indeed it wasn't
2 finished in 2001. Mind you, all this time, I was trying to
3 rebuild a business, carry on a business, try to patch together a
4 marriage and hold a family together. And Mr. Duda could not
5 complete the film even with Mr. Case and Broening's help, so the
6 work became stagnant.

7 When I met Mr. Devlin, in I think it was January 2001,
8 Kelly had called him in to do some of the music. He said he was
9 a friend and he would do it for free. I told him we would try
10 to scrape some money together if he needed money. He said, no,
11 he wanted the exposure on the film. And the last time I saw
12 Kelly and Mr. Devlin together, they had me sit down at the
13 computer and listen to some of the tracks he had laid down,
14 asked my opinion. I gave my opinion. Some of it I thought was
15 very good. Some of it I thought it needed to be changed. And
16 shortly after that Mr. Duda moved to Little Rock, took all of my
17 equipment, all of the source tapes, everything, saying that he
18 needed to be up there to finish the project.

19 In June of 2001, by then Mr. Broening and Mr. Case had
20 informed me of what he was doing while I was paying him to try
21 and finish this. He was actually working on a movie script
22 about the Kelly Duda story to submit to a major filmmaker. And
23 he had had them working on that script. I was pretty furious
24 about that, to know that he didn't try to finish the documentary
25 while we had a chance to do it. He had been working behind my

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1 back on a completely different project, promoting himself,
2 instead of finishing the documentary that we were hopeful would
3 be ready for submission to the RCMP, which is Royal Canadian
4 Mounted Police, for their information, and also to the
5 hemophiliacs in Canada, who were waiting on this product.

6 The last conversation I had with Mr. Duda, other than
7 shouting, was to tell him to make sure that he sent a copy of
8 what we had at that time to the RCMP and anyone else willing to
9 follow up on the investigation.

10 THE COURT: What did he take? You said he took from
11 you there in Pine Bluff various things. What do you know that
12 he took? What are you saying he took?

13 THE WITNESS: He took the Canon XL1 video camera and
14 the stands and attachments that go with it. He took our
15 lighting equipment. He took our audio equipment. He took two
16 computers: A PC tower computer, keyboard, and monitor that we
17 did some of the rendering on with special effects and materials
18 added in that, software and hardware. He took a Mac G4 computer
19 that we did the processing of the video editing on, along with
20 the software and attachments for it, and the monitor. But more
21 importantly than all of that, he took the 107 source tapes that
22 we had accumulated over a three-year period of time at that
23 point. These are the building blocks for a film, Your Honor.

24 THE COURT: These are videotapes?

25 THE WITNESS: Yes, sir.

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1 THE COURT: Some of them had one interview on them,
2 and some had several?

3 THE WITNESS: That's right. For instance, the
4 interviews with me I think took up two and half or three tapes.
5 On some tapes, they were rather short. With inmates, we may
6 have two or three different people on a single tape.

7 THE COURT: Do you know what happened to those tapes?

8 THE WITNESS: Last time I saw them -- well, last time
9 I knew of them he told me that they were in his father's
10 security deposit box here in Little Rock at a bank. The last
11 time I saw them, they were in my house in Pine Bluff, 2412
12 Poplar, in a black briefcase.

13 THE COURT: What effort, if any, have you made to get
14 ahold of those?

15 THE WITNESS: I went with my accountant, Bill Moss. I
16 went -- when I finally figured out what Mr. Duda was doing, I
17 went and confronted him at his apartment in Little Rock here on
18 6th Street. I demanded the equipment back with -- the important
19 thing is the hard drives that were in the Mac computer contained
20 the four-hour video as we had it saved at that point. They were
21 on those hard drives. I demanded the equipment. He gave me
22 most of it. We had words together. That's when I told him
23 about getting the tapes that he had already rendered out on to
24 VHS to the RCMP and the Canadian hemophiliacs.

25 I took this equipment as it was. I did not get some of it,
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1 like the audio and lighting equipment and a couple of -- the CD
2 burner. I took it back to Pine Bluff. Mr. DanleI Broenlng, who
3 knows more about computers than I do, and who had worked on that
4 equipment in doing the special effects and rendering on the film
5 at that point, opened the Mac up. And the two Cheetah hard
6 drives were missing. This was very important, because that was
7 the rendered out four-hour portion of our film at that point.

8 I called Mr. Duda. I called him repeatedly. Finally, I
9 think it was two days later I caught him in his apartment again.
10 He told me that there was nothing doing with the film. He had
11 tried to sell it all around the country, anybody that was
12 interested. He couldn't do any more with it. And he had it
13 safely held and I didn't need to worry about it. He would let
14 me know what developed, if anything. He had other projects he
15 had to work on. He was very upset because I took my equipment
16 back. He had been using it, I understand, to do some other
17 projects in Pine Bluff -- in Little Rock. I'm sorry.

18 THE COURT: The hard drives with the four hours on it,
19 you don't have any of those?

20 THE WITNESS: I do not have them. I have a receipt
21 where I bought them. I have the shipping label where they were
22 shipped to me. I have witnesses that will testify as to where
23 they were and when they were there and what they had on them.

24 THE COURT: Let me ask. Have you seen those? At any
25 time did you see them?

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1 THE WITNESS: Actually see them?
2 THE COURT: Run them and see what was on them.
3 THE WITNESS: Yes, sir, I did, many times.
4 THE COURT: Go ahead.
5 MR. WOODSON: Thank you, Judge.
6 BY MR. WOODSON:
7 Q. Why did you wait until yesterday to copyright the materials
8 that you did in Washington?
9 THE COURT: Just a minute. When you say
10 "copyrighted," that's confusing from opening statements here.
11 You made an application.
12 THE WITNESS: Yes, sir.
13 THE COURT: So have you copyrighted it? Have you
14 registered it, or is this just an application to register?
15 THE WITNESS: According to the way I read the
16 copyright law as a layman, but also in talking to the copyright
17 people there yesterday, they told me that the copyright exists
18 when a work becomes a fixed form. And from that point, it's up
19 to the person to register it, even though it is not mandatory.
20 THE COURT: I understand.
21 THE WITNESS: But when you make the application in
22 proper form with all the proper elements in hand, at that point
23 it is considered registered with the copyright office. That's
24 why I carried this up there. You asked why I didn't do it back
25 in 2001. I really wasn't worried about where it was going. I

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1 had no idea Mr. Duda was going to take the film as it was, edit
2 it down to whatever his version was, and suddenly appear with
3 it. I had no thoughts about that until I heard him on National
4 Public Radio three weeks ago announcing that his film that he
5 had worked on for five years had been accepted into a film
6 festival in Park City, Utah.

7 THE COURT: According to the opening statements you
8 heard, apparently the defendant also apparently applied, maybe
9 before you did, in Washington for a registration. Do you know
10 anything about that?

11 THE WITNESS: No, sir.

12 THE COURT: You may continue.

13 MR. WOODSON: May I approach the witness?

14 THE COURT: You may.

15 BY MR. WOODSON:

16 Q. I've handed you what's been marked Plaintiff's 25. Would
17 you describe what that is?

18 A. This is a film, has the label Factor 8 on it. It is a VHS
19 film. This is the one I viewed that contains what is apparently
20 Mr. Duda's version of the Factor 8 film that we worked on.

21 Q. Who did you receive this tape from?

22 A. From my producer in Hollywood by the name of Elizabeth
23 Fowler.

24 Q. Did you watch this videotape?

25 A. I did.

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1 Q. What were the contents of the tape?

2 A. About 97 percent of the tape was exactly what we had
3 captured and had in hand in 2001. They were all the interviews
4 with the inmates. They were the interviews with me, interviews
5 with other people pertinent to the story, the B-roll footage
6 that I shot and assisted in shooting in Washington, the footage
7 from the helicopter that I shot myself, strapped to the struts
8 of the helicopter over Cummins Prison Farm and flying up and
9 down the Arkansas River. They were essentially all of the shots
10 that I had paid for in the previous years, except for about four
11 minutes, as I timed it, which were shots of Mr. Duda standing in
12 front of the camera telling about how this was his film and how
13 he had worked to come up with this story and produce this film.

14 Q. And the shots of Mr. Duda comprised approximately 2 to 3
15 percent of the total tape?

16 A. Well, it was four minutes out of 85 minutes, so maybe 3 1/2
17 to 4 percent.

18 Q. Of the other 96 or 97 percent, the film that you just
19 testified to regarding the shots that you all took, are you the
20 author --

21 A. I am.

22 Q. -- of that film? Are you the owner of that film?

23 A. I am.

24 Q. How does Plaintiff's Exhibit 25 compare to the source tapes
25 and the four-hour rendering that you all had finished back in

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1 2001?

2 A. The source tapes are massive. That's why the
3 transliteration of them that Chris Case did takes up 500 pages
4 of single typed information. And that is the difficulty in
5 editing a film is finding out what to leave out more than what
6 to leave in. The way ours compares at a four-hour film, it was
7 much more inclusive. My direction toward the editing would have
8 been different than this. Mr. Duda's conclusions and the people
9 he used in it are different than I would have used. The clips
10 Mr. Duda used of me in the interrogation in the film were not
11 the clips I would have used of myself. When I put myself on
12 film for this documentary, it was with the understanding that it
13 was with my direction, never for it to be under Kelly Duda's
14 direction. And that was very important to me. And certainly I
15 wouldn't have put the filmmaker and the film assistant in there
16 narrating in a dirty T-shirt telling about this important story
17 with international impact.

18 Q. How much of that film belongs to you or is material that
19 was authored by you?

20 A. About 97 percent of it.

21 Q. Would you explain to the Court why you will suffer
22 irreparable harm if Mr. Duda is allowed to show this film at the
23 Slam Dance Film Festival in Utah on or about January 17th?

24 A. Your Honor, there are people who can testify more
25 professionally than I can about that. But any time a film is

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Galster - Direct

1 produced and titled and shown, it becomes the definitive work of
2 that film. To go back and try to rerender it is almost
3 impossible. It's been done on some feature films, but not
4 often. I can't think of any time it's been done in a
5 documentary. Although there are subsequent documentaries, for
6 instance, the one about the West Memphis three, but any showing
7 of this film will permanently taint anything that I may want to
8 show in the future once I regain full custody of the source
9 tapes and the editing ability for this film.

10 This was stolen from me. I can prove that I paid for each
11 and every step of it. We have receipts. We have checks. To
12 show this film right now also would shed bad light on myself, as
13 I said. There were statements I made during my interview in
14 there that I would not have chosen to put in my final version of
15 the film. I've already suffered damage from being the author of
16 this story and the whistle-blower in this case, i.e., my
17 demolished building and practice. But to release this film in
18 his version would further focus potential harm on me and my
19 family because of statements not only that I made in here, but
20 also statements that other people made that he chose to include
21 in his version of the film.

22 MR. WOODSON: Judge, we offer Plaintiff's 35, the
23 receipt of the registration from Washington.

24 THE COURT: It will be received.

25 (Plaintiff Exhibit 35 received in evidence.)

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1 MR. WOODSON: I pass the witness, Your Honor.
2 THE COURT: Mr. Bowden, you may cross.
3 CROSS-EXAMINATION
4 BY MR. BOWDEN:
5 Q. Mr. Galster, would it be fair to say that you have no
6 formal training in film work?
7 A. That's true.
8 Q. Would it be fair to say that you have worked in other
9 disciplines than film production?
10 A. That's true.
11 Q. Would it be fair to say that none of these degrees that you
12 have in biology, as an orthotist, or anything of this nature
13 would qualify you as a filmmaker?
14 A. That's correct.
15 Q. So I take it then your efforts have been over the years,
16 with the underwater video and this sort of thing, have been from
17 the amateur aspect more or less?
18 A. That's correct.
19 Q. What kind of cameras have you used in those amateur
20 productions?
21 A. I started out with a Sony High 8 camera, one of the first
22 high digital 8 millimeter cameras. These are called amateur/pro
23 cameras. I moved up to a Sony VX 1000, which is a prechip
24 digital video camera, which we used at times during the making
25 of this -- the capture of this documentary film. And I've used

- 1 the Canon XL1.
2 Q. I believe you said you saw a small article from a Canadian
3 paper about these events. True?
4 A. What events?
5 Q. The Blood Trail, the events that have to do with the
6 Arkansas prison blood scandal.
7 A. At that time, it wasn't a scandal in 1995. I think it was
8 May the 11th I saw an article that said Canadian hemophiliacs
9 were getting sick from blood that they suspected had come from
10 Arkansas.
11 Q. Did you hear Ms. Leveritt testify that she was aware of
12 this even back into the eighties?
13 A. Ms. Leveritt testified that she was aware of a lot of
14 things --
15 Q. Could you answer my question, though?
16 A. Would you rephrase it or repeat it?
17 Q. Did you hear Ms. Leveritt testify that she was aware of
18 these problems even back into the eighties?
19 A. My answer is, I understand the way she said it, that she
20 had been familiar with the prison problems into the eighties. I
21 don't know that she was familiar, and I didn't hear her say that
22 she was familiar with the blood problems at the prison into the
23 eighties.
24 Q. So after all that, you are saying no?
25 A. That's correct.

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1 Q. Okay. All right. But it's safe to say you weren't the
2 only person in the world who knew about this situation. True?

3 A. Many people knew about the bleeding program at Cummins.
4 There were over 3,000 people involved in it. And those aren't
5 the administrators of the program. But no one made the
6 connection that this was contaminated prison plasma going to
7 Canada until I did.

8 Q. And I suppose you can show us where you made that
9 connection and made a report of it in some form or fashion on a
10 date certain?

11 A. No, I can't.

12 Q. Now, you mentioned that when you started out to do this
13 that Primary Colors had just come out?

14 A. Yes.

15 Q. Written by anonymous?

16 A. Yes.

17 Q. So you set out to write what I think what's called a roman
18 a clef. True?

19 A. That's true.

20 Q. And that's a novel, to your understanding, that does what?

21 A. That's a novel that follows either historical or factual
22 detail.

23 Q. And the people in it are real?

24 A. Not really. They are based on actual people, stories.

25 MR. BOWDEN: May I approach, Your Honor?

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1 THE COURT: You may.
2 BY MR. BOWDEN:
3 Q. By the way, do you have a contract signed in the name of
4 Michael Sullivan and something that indicates that you are, in
5 fact, Michael Sullivan?
6 A. No.
7 Q. I think you testified that because of that that Jameson
8 Publishers owned the copyright on this for a time?
9 A. Jameson Publishers held my copyright.
10 Q. Until they reassigned it to you?
11 A. That's correct.
12 Q. Now, Jameson Publishers was paid for publishing this, were
13 they not?
14 A. Yes.
15 Q. How much did you pay them?
16 A. Overall, with all the publishing, the advertising, the
17 tour, if all those figures ran through Jameson, probably in the
18 neighborhood of \$200,000.
19 Q. I'm looking at your afterword here. It says, "This is
20 purely a work of fiction. David, Ricky, Sylvia, and the others
21 are all products of a fertile imagination." Did you write that?
22 A. I did.
23 Q. Was that correct?
24 A. Yes.
25 Q. Now, did David, Ricky, Sylvia, or any of the others in this
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- 1 book, appear in Mr. Duda's film as you have it there?
2 A. They did not, no, sir.
3 Q. In fact, what was the name of the White House counsel that
4 was in your book, the one that shot himself?
5 A. Right offhand, I can't remember. We changed the name so
6 many times before the end of publishing, I can't remember. I
7 think it was Grant, G-r-a-n-t.
8 Q. Does that remind you of anybody offhand?
9 A. Yes.
10 Q. Who does that remind you of?
11 A. Vincent Foster.
12 Q. Are you saying Vincent Foster is a fictional character?
13 A. No. I'm saying Grant was a fictional character.
14 Q. But you said in here he was a product of a fertile
15 imagination.
16 A. That's correct.
17 Q. Vincent Foster was mentioned in Mr. Duda's film, wasn't he?
18 A. He was.
19 Q. The real Vincent Foster?
20 A. That's correct.
21 Q. Not an imaginary one?
22 THE COURT: Was mentioned in what now?
23 MR. BOWDEN: In the film Factor 8, The Arkansas Prison
24 Blood Scandal.
25 BY MR. BOWDEN:

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- 1 Q. In fact, that's the correct name for this work, isn't it?
2 A. The work began as a conglomeration of names like Bleeders,
3 Hemophiliac Dilemma, Blood Trail, which was the original name we
4 were going to use, after the novel. We finally settled on
5 Factor 8. Mr. Duda has added whatever it is after that in his
6 version.
7 Q. So the answer is that you never settled on the name Factor
8 8, The Arkansas Prison Blood Scandal.
9 A. No. We settled on Factor 8.
10 Q. Now, you mentioned that you found a publisher and you wrote
11 a book in 1996. True?
12 A. Wrote a book in '96. The publisher took it up in '98, and
13 it was actually on the shelves in September of '98.
14 Q. You mentioned that it did really well in Canada. So how
15 many copies did it sell?
16 A. I don't know exactly how many finally I sold.
17 Q. A hundred thousand?
18 A. No.
19 Q. 50,000?
20 A. No.
21 Q. 20,000?
22 A. I think in the neighborhood of 10 to 12 thousand.
23 Q. How many copies did it sell in the United States?
24 A. I have no idea at this point.
25 Q. Now, you wrote that under the name of Michael Sullivan.

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1 True?
2 A. Yes.
3 Q. You showed us this ad a little while ago that you placed.
4 And that was under the name of some company, wasn't it?
5 A. Yes, sir.
6 Q. What was the name of that company?
7 A. I don't have it in front of me. It was just a farce
8 company we used to place the ad.
9 Q. You can't remember the name of the company that you used?
10 A. No. It's something investigations. Last Chance, I think,
11 something like that.
12 Q. Do you have anything that proves that you and Last Chance
13 whatever that was Investigations are the same person or the same
14 entity?
15 A. No, I don't.
16 Q. So we'll just have to take your word about that too?
17 A. That and my receipts for paying for it.
18 Q. Do you have those with you?
19 A. I think so.
20 Q. Tell me who John Schock is.
21 A. John Schock was an inmate that was in the bleeding program
22 at Cummins for a number of years. I first heard about him from
23 Kelly. Kelly had wanted to cast him in this Twelfth House
24 Reckoning movie that he approached me with in the beginning, as
25 the antagonist in the movie. He thought John had the right look

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1 for the role. He showed me eight-by-ten photographs of John
2 holding pistols and looking menacing. That's when I first heard
3 the name John Schock. It was later, as we started interviewing
4 people, Kelly wanted to go to John to get names of inmates who
5 were in the bleeding program with him so we could follow up and
6 try to interview them. And that's when John told us that he was
7 in the bleeding program. And, in fact, he had contracted
8 hepatitis while he was in the bleeding program. So he became
9 kind of a focal figure for what we were filming and helping us
10 get in touch with different people.

11 Q. Now, you said that in the original story there was no
12 narration?

13 A. That's right.

14 Q. And that the story should tell itself in your opinion?

15 A. That's right.

16 Q. And I believe you said that there were titles and
17 renderings that were done.

18 A. There were.

19 Q. When you were doing the titles and the renderings and all
20 that, first of all, renderings, did you pay the Arkansas Times a
21 royalty for the photographs that were put into the video?

22 A. We did. I think Kelly handled the money, but I supplied
23 the money.

24 Q. Do you have a receipt for that?

25 A. I have receipts of monies going to Kelly for this project.

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- 1 Q. So the answer is you don't have any receipt from the
2 Arkansas Times?
3 A. I don't know that we do, no.
4 Q. Why were you funneling money through Kelly if you were the
5 big cheese in this, if you were the producer?
6 A. Well, because one reason, I wanted to keep my name out of
7 it. The other reason, Kelly was the man on the street.
8 Q. You were having some problems with the IRS along about that
9 time?
10 A. That's correct.
11 Q. About the time your clinic burned down?
12 A. Afterwards, yes.
13 Q. Now, when you did these titles -- were you involved in
14 doing the titles?
15 A. No.
16 Q. Who did them for you?
17 A. DanleI Broenlng did almost all the title work.
18 Q. Do you know what a copyright notice is?
19 A. Not particularly, no.
20 THE COURT: Say that again.
21 MR. BOWDEN: A copyright notice. Let me, Your Honor,
22 if I may step to the white board over here.
23 THE COURT: You may.
24 BY MR. BOWDEN:
25 Q. In any of these titles, did you ever once, or on any of
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- 1 these films, put a title or on a label that says something to
2 this nature? I'm terrible at writing on the board. Whatever it
3 was, 1997, '99, say, or whatever the time was -- I'm not saying
4 that's an accurate time frame. Did you ever once put one of
5 those on there?
6 A. No, I didn't.
7 Q. Did you ever once write out the word "copyright"?
8 A. No, sir.
9 Q. "Michael Galster"?
10 A. Are you talking about on these tapes?
11 Q. Not on the tapes, not on the labels on the tape, did you?
12 A. No, sir.
13 Q. Isn't that required to protect your common law copyright?
14 A. Not that I know of.
15 Q. But the answer is you don't know for sure?
16 A. That's right.
17 Q. Let me ask you this. How would you expect anyone to have
18 notice of your copyright if you didn't put something like that
19 on there?
20 A. If I paid for something and it was under my direction when
21 it was paid for, then it's my understanding that it is my
22 property.
23 Q. Let's talk about that for a moment. Did you plan the
24 shoots?
25 A. Many of them, I did.

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1 Q. Tell us specifically which ones you planned.

2 A. I wrote most of the questions for most of the important
3 shoots. Mr. Duda wrote the others.

4 Q. Well, when you say most of the important shoots, I want
5 specifics.

6 A. I don't have a list in front of me. Dr. Henderson, for
7 instance, which was our first one.

8 Q. Let me stop you right there and ask you a question. On
9 this shoot for Dr. Henderson, do you have a copy of the
10 questions that you wrote? Did you maintain that anywhere?

11 A. Actually I do, yes.

12 THE COURT: I didn't hear your answer.

13 THE WITNESS: Yes, I do. I don't know that I have it
14 with me here today.

15 BY MR. BOWDEN:

16 Q. Okay. But you didn't bring it here to help prove your need
17 for this injunction?

18 A. No, sir.

19 Q. By the way, you made a pretty drastic mistake in the
20 Henderson interview, didn't you?

21 A. There were several mistakes made in the Henderson
22 interview.

23 Q. Can you enlighten the Court as to what cinematic mistake
24 you made during his interview?

25 A. Well, for one thing, backlighting of the blinds in the
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1 scene interfered with the picture on the digital camera. I was
2 not at that interview.
3 Q. Oh, you weren't?
4 A. No, I wasn't. I wrote out the questions a day ahead of
5 time.
6 Q. You wrote it out, and you set up the shoot, did you say?
7 A. I wrote it out, and they set up the shoot.
8 Q. They being?
9 A. Mr. Duda, Kate Terrell, and I think Clint.
10 Q. So it's your testimony that Dr. Henderson had three people
11 present at the time of the shoot?
12 A. Yes.
13 Q. Now, at what page in your transcript does the Henderson
14 interview appear?
15 A. I don't understand the question.
16 Q. You said you made this humungous transcript that you gave
17 to the copyright people. Did you bring a copy of that?
18 A. Yes, sir, I have it.
19 Q. Do you have any idea what page that interview appears on?
20 A. No, sir.
21 Q. If you had it with us, would we be able to go through and
22 find it exactly on there?
23 A. Yes, sir.
24 Q. What about the video itself? If you made the transcript of
25 the video, I think there were 18 CDs that you belatedly filed

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- 1 with the copyright office?
2 A. Yes, sir.
3 Q. Did you bring any of those, copies of those?
4 A. No, sir.
5 Q. So all we have is your word that that transcript reflects
6 what's on those CDs?
7 A. Yes, sir.
8 Q. Didn't you think it was important enough to bring them, to
9 submit them in evidence?
10 A. I can get them rather quickly if we need to.
11 Q. How quickly?
12 A. An hour.
13 Q. An hour? Why don't you see if you can do that.
14 A. Okay.
15 Q. If we are still going in an hour, then that might be worth
16 knowing. Okay. Now, tell me the other interviews you set up.
17 A. There were interviews, of course, the interviews with
18 myself, many of the critical inmates, like Glick.
19 Q. Let me stop you right there. The interview with you. Who
20 was shooting the film on that?
21 A. I think Bryon Knight was shooting that one. I don't
22 remember exactly whether it was Bryon or Clint.
23 Q. Was Kelly there?
24 A. Yes, he was.
25 Q. You said that there was some things said you didn't want on

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- 1 there.
- 2 A. There were things said that I wouldn't want in a finished
3 product, that's correct.
- 4 Q. Why didn't you just holler "cut" if you are the director?
- 5 A. You roll your footage. You make your statements. Then you
6 do the editing in the editing process.
- 7 Q. Aren't you afraid that somebody might get it and see these
8 statements you made that you felt were harmful?
- 9 A. At that point I wasn't concerned with that, no, sir.
- 10 Q. Who was it? Glick you said? Inmate Glick?
- 11 A. Yes.
- 12 Q. What about him? When did you interview him?
- 13 A. I did not interview him. I helped Kelly write out
14 questions for his interview.
- 15 Q. Do you have those questions today?
- 16 A. No, I don't.
- 17 Q. Now, who did you decide to leave out of the final product?
- 18 A. We left out a lot of interviews. There was an interview
19 with a Little Rock or North Little Rock lawyer, a woman lawyer
20 that was filmed on the side of the river. We decided to leave
21 her out.
- 22 Q. Why?
- 23 A. There were many of the inmate interviews. We decided to
24 leave portions of those out.
- 25 Q. Why did you leave her out?

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- 1 A. Her information was kind of sketchy.
2 Q. What was her name?
3 A. Tonya Derrett.
4 Q. Does the name Tona DeMers --
5 A. DeMers. I'm sorry. Tona DeMers.
6 Q. What was her connection with the prison system?
7 A. Kelly had found her and somehow gotten a connection with
8 her through Mara Leveritt or someone, that she had information
9 on the video, as I remember it. She was telling she had a map
10 of where the inmates had been buried secretly years before. As
11 she rattled on, the information got more and more fantastical.
12 She said she knew all about the prison blood story. And we kind
13 of looked at it and decided that was something we didn't
14 really --
15 Q. Would it surprise you to know that she was an inmate's
16 attorney down there for several years?
17 A. No. That doesn't surprise me.
18 Q. You just don't think that was an important one to leave in?
19 A. No.
20 Q. Who else did you leave out?
21 A. We left out -- in the original version, we left out several
22 of the lawyers that were interviewed. We left out a lot of the
23 stuff that was shot in Washington, D.C. I would have to go
24 through a list of them. It's been three years since I've looked
25 at it.

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- 1 Q. Did you leave out the Ethiopian cab driver?
2 A. Yes, we did.
3 Q. You may have left out some of the shots from Washington,
4 D.C.?
5 A. Yes.
6 Q. Washington, D.C., even in this day of heightened security,
7 is a pretty open place, isn't it?
8 A. It is.
9 Q. I mean, you can wander around and take photographs or video
10 of pretty much anything in Washington. True?
11 A. Yes, sir.
12 Q. You said you met with Kelly the night of your clinic fire
13 to discuss the way that the project was going and where you
14 wanted to go with it and all this. Who else was present?
15 A. No one.
16 THE COURT: Are you talking about the meeting in Hot
17 Springs?
18 THE WITNESS: Yes, sir.
19 BY MR. BOWDEN:
20 Q. So it was just you and Kelly?
21 A. That's correct.
22 Q. Now, with regard to any other meetings like that, who else
23 has been present when you've discussed this?
24 A. Early on, Kate Terrell was present at some of the meetings
25 when we were all together discussing this. Suzi Parker, who
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- 1 wrote the telling piece, was present for about a month and a
2 half to two months, I guess, where we discussed exactly what we
3 were going to do. In fact, she and Kelly coordinated their
4 questions back to back on some of these interviews.
5 Q. For about four weeks. Right?
6 A. I think that's correct, four to six weeks.
7 Q. And when was that?
8 A. That was in December of '98 through January -- and we
9 stayed in contact with her regularly until May of '99.
10 Q. Now, obviously, because of the ever changing theory that's
11 been going on here, I have not received a full witness list. Is
12 Ms. Parker or Ms. Terrell here today to testify?
13 A. Yes, they are.
14 Q. Both of them?
15 A. Yes.
16 Q. You mentioned that you had a hundred thousand dollar loan
17 that you took out to complete this documentary. True?
18 A. Yes, sir.
19 Q. With whom did you take the loan out?
20 A. Dr. Richard Knutson.
21 Q. Dr. Who?
22 A. Richard Knutson, K-n-u-t-s-o-n.
23 Q. Is he a medical doctor?
24 A. He is.
25 Q. Is he present today?

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- 1 A. No, he isn't.
2 Q. Do you have the loan documents?
3 A. No, not with me.
4 Q. Were there any loan documents?
5 A. Yes, there are.
6 Q. At what rate of interest were you to pay it back?
7 A. He specified 6 1/2. I ended up paying back over 11
8 percent.
9 Q. But you don't have the note here with you today to show
10 that you borrowed that?
11 A. No, I don't.
12 Q. Now, I gathered you said you submitted this to the Toronto
13 Film Festival, this work in progress. True?
14 A. Yes.
15 Q. Have you attempted to get the film back from the Toronto
16 people?
17 A. I have not, but I will.
18 Q. And it was a work in progress in 2001. True?
19 A. That was 2000.
20 Q. 2000. I thought you said 2001. I'm sorry. They rejected
21 it. True?
22 A. As far as I know, yes.
23 Q. In fact, this is the first film recognition that this
24 subject has gotten anywhere other than Canada and the
25 newspapers. True?

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1 A. It hasn't been shown in Canada. And the newspapers, as far
2 as I know, don't know about it. But, yes, it has not been
3 accepted in any other festivals, although I don't know what Mr.
4 Duda has been doing with it, so I'm not sure about that.
5 Q. But certainly not through your efforts has it been accepted
6 in any film festivals?
7 A. That's correct.
8 Q. But you said he was not competent to do this work. True?
9 A. I said he was not competent in the later portions of
10 editing it to the point that we could get it out and get it as a
11 completed project.
12 Q. Who was your contact with the Royal Canadian Mounted
13 Police?
14 A. I don't remember the sergeant's name. I have it in my
15 notes, though.
16 Q. Didn't bring that either, huh?
17 A. No, sir.
18 Q. Who was your contact with the hemophiliac people in Canada?
19 A. Michael McCarthy, among others. There were several lawyers
20 and others involved.
21 Q. What is Micheal McArthur's position?
22 A. Michael McCarthy?
23 Q. McCarthy. I'm sorry.
24 THE COURT: I'm missing it too. Is it McCarthy?
25 THE WITNESS: McCarthy, yes, sir. He was the lead
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1 plaintiff in several lawsuits that were brought against
2 pharmaceutical companies, the government, and the Canadian Red
3 Cross. He was the foremost activist for the contaminated blood
4 issue in Canada.

5 BY MR. BOWDEN:

6 Q. Where did you purchase your lighting from?

7 A. I don't remember. I think it was a local company here in
8 Little Rock.

9 Q. Do you have a receipt from them?

10 A. I think we do. We have several receipts that I'm not real
11 sure what they were. Kelly told me what he needed. I gave him
12 money, and he purchased it.

13 Q. Do you have a canceled check to show that?

14 A. I'm not sure that we do on lighting.

15 Q. What about the PC? Where did you purchase that?

16 A. The PC, my father-in-law, Dennis Drew, put together for us.
17 And I don't know where he purchased all the parts. That was in
18 1998.

19 Q. Do you have a check to show that you paid for that?

20 A. No, not in particular.

21 Q. The source tapes, now, what form were they in? Were they
22 VHS tapes, or what were they in?

23 A. They were mini-DV tapes.

24 Q. Mini-DVD tapes. So you went and demanded the equipment
25 back. Is that true?

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- 1 A. That's true.
2 Q. You took your accountant, didn't you?
3 A. Yes, I did.
4 Q. Why?
5 A. He is a friend. I needed some help.
6 Q. And you were telling Kelly that you needed the equipment
7 back because the IRS wanted to inventory it?
8 A. That's right.
9 Q. So he gave you the equipment back, didn't he?
10 A. That's correct, some of it.
11 Q. Some of it. Other than these disputed hard drives, the
12 materials on it, what did he not tender you?
13 A. The source tapes.
14 Q. Okay.
15 A. A CD burner, some of the audio editing equipment and
16 microphones.
17 Q. So you don't -- if we produce evidence that he paid for
18 these things, that he had investors for his film and that sort
19 of thing, they would be, what, mistaken, lying, or what?
20 A. I would assume they would be lying, yes, sir.
21 Q. But you are telling the truth?
22 A. Yes, sir.
23 Q. Is there a difference between research and a film?
24 A. A difference between research?
25 Q. Research and a film.

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- 1 A. Yes, obviously.
2 Q. What do you hold that difference to be?
3 A. Well, doing research, you are collecting data. It can be
4 in a film form, in a film. And it can be in a research form, so
5 there is a difference. But they can also be related.
6 Q. Are you trying to copyright research or a film?
7 A. A film.
8 Q. When was it put into fixed form?
9 A. In 2000 originally, and then again in 2001.
10 Q. Do you have the pilot here that flew you around on that
11 ride in a whirlybird?
12 A. I do not. I have an invoice from his company.
13 Q. And we have your word, of course, that that's from his
14 company?
15 A. Yes.
16 Q. But you didn't think it was necessary to bring someone to
17 correlate or corroborate that?
18 A. I figured an obvious invoice and my canceled check was
19 enough to do that.
20 Q. You are a pretty talented fellow with a computer from what
21 you said. Couldn't you just make up an invoice?
22 A. No, sir.
23 Q. I'm not saying did you. I said couldn't you.
24 A. I can't. Somebody else might be able to.
25 Q. Somebody you could pay to do it?

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- 1 A. I assume that.
- 2 Q. Okay. Now, I'm a little puzzled. You said you had
- 3 Concrete Films was your film company?
- 4 A. It was a name we were using to work under.
- 5 Q. And it was never incorporated?
- 6 A. No, it wasn't.
- 7 Q. Was it a PLLC or anything like that?
- 8 A. Nothing official, no, sir.
- 9 Q. So is that why Labuena Vida, Inc., applied for the
- 10 copyright?
- 11 A. You mean as opposed to Concrete Films?
- 12 Q. Uh-huh.
- 13 A. Labuena Vida, Inc., is just a corporation that I have that
- 14 I used to apply for that one.
- 15 Q. You still didn't use your name, did you?
- 16 A. Yes, I did.
- 17 Q. Labuena Vida, Inc.?
- 18 A. Labuena Vida, Inc., was the check I wrote. It is my name
- 19 on the copyright application, if you look at it.
- 20 Q. Okay. Let's talk for a moment with you about the -- let's
- 21 talk a minute about your book, Blood Trail. I'm at a loss to
- 22 figure out how you think that that book, a work of fiction,
- 23 could give rise to fact. Would you please enlighten me on that?
- 24 A. I don't think the book gave rise to a fact. I think the
- 25 book follows fact, and it raised a lot of questions. In the

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1 book I tell, you know, although this is a fictional book, the
2 real story underneath it is a terrible story.

3 MR. BOWDEN: Your Honor, if I may borrow the book for
4 just a minute.

5 THE COURT: Certainly. Just refer to the Exhibit
6 number too while you are at it.

7 BY MR. BOWDEN:

8 Q. Plaintiff's Exhibit 26 it is labeled as. As a matter of
9 fact, in this author's afterword that you allege that you wrote,
10 it has a place where one can get the Krever Commission report?

11 A. Yes.

12 Q. Online from Yahoo, <http://headlines.com>. Sound familiar?

13 A. Yes, sir.

14 Q. So you were actually telling folks there's a lot of
15 information out there on this that you can look up.

16 A. That's correct.

17 Q. True?

18 A. We hoped to get anyone that wanted to interested in the
19 story.

20 Q. Now, I'm sure the Judge is going to read the book, and I'm
21 sure that he has seen the video. What we haven't seen are these
22 18 tapes or 16 tapes or whatever it is that you applied. Can
23 you go through each one? You say you can get them in an hour or
24 something?

25 A. Yes, sir.

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- 1 Q. Can you go through each one and show us word for word where
2 your expression has been taken? You know you can copyright
3 expression, not ideas.
- 4 A. Yes. But where it has been taken?
- 5 Q. Yes. In Kelly Duda's film.
- 6 A. What we have are the remnants that were left on the
7 computers after Mr. Duda ransacked them of the original footage.
8 And we have every transcribed word, except for Mr. Duda's words
9 that are in his film. And these were the things that we
10 copyrighted.
- 11 Q. So, in other words, you went back and recovered stuff that
12 Kelly had done on his computer?
- 13 A. No. I recovered stuff that I paid for Kelly to do on my
14 computers.
- 15 Q. Y'all originally had a deal to be partners in this, didn't
16 you?
- 17 A. Yes.
- 18 Q. You didn't live up to your end of the bargain on supplying
19 him with the things that you said you would, did you?
- 20 A. I think I did.
- 21 Q. Well, would it surprise you to know that Mr. Duda thinks
22 differently?
- 23 A. I have no idea.
- 24 Q. So you have just told us that he was your partner in this
25 originally. He was not your employee then, was he?

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- 1 A. No. He was my employee. I offered him 30 percent of any
2 monies we might make from this project, if we made any. We all
3 knew that this was a low return project.
- 4 Q. Now, which are you? Are you a partner, or are you an
5 employer?
- 6 A. I was an employer that offered him an incentive. We were
7 partners in that we were working on a project together.
- 8 Q. So that's different from what you testified to at first,
9 that he was your partner, to be your partner originally.
- 10 A. I didn't testify that he was a legal partner. I testified
11 that he was a partner in the sense we were working on the
12 project together.
- 13 Q. Certainly nothing on paper for any of this. True?
- 14 A. My copy is destroyed. I lost it in the fire, I assume. I
15 don't know if Mr. Duda has his copy.
- 16 Q. Again, we have your word for that.
- 17 A. Yes, sir.
- 18 Q. Do you have a strongbox? Safe?
- 19 A. No.
- 20 Q. Do you have a lockbox in a bank anywhere?
- 21 A. No, I don't.
- 22 Q. Have you ever?
- 23 A. I have a gun safe with guns in it.
- 24 Q. Fireproof?
- 25 A. No.

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1 Q. Was it destroyed in the fire?

2 A. No. It wasn't in the part of the building that was
3 destroyed.

4 Q. What other business records did you lose?

5 A. We lost patient files, accounting records. Many of them
6 we've recovered for this, going to the banks and trying to get
7 old checks that were destroyed.

8 THE COURT: This arrangement that you are talking
9 about, was that talked about at the initial, when you first
10 started talking about this project?

11 THE WITNESS: No, sir. Initially it was just purely
12 an employment, two guys working on a project. As we got into
13 it, Kelly was more concerned, you know, that it might actually
14 break and make some money. I said, "That's fine. You work hard
15 on it. Let's get us a deal. Let's make an arrangement."

16 THE COURT: What about -- I think you said you were
17 paying \$400 a month --

18 THE WITNESS: No. 400 a week.

19 THE COURT: A week. Then some amount --

20 THE WITNESS: 250 a month for help on his housing on
21 his apartment.

22 THE COURT: How many months or years did that go on?

23 THE WITNESS: My accountant, who is here to testify,
24 can account to that exactly. Roughly, the entirety of '98, '99,
25 2000, and part of 2001.

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1 THE COURT: About three and a half years?

2 THE WITNESS: I would say three years.

3 THE COURT: Did this arrangement that you are talking
4 about, the possibility of splitting the profits if something
5 came of this, at what point was that?

6 THE WITNESS: Yes, sir. I understand the question. I
7 think that was toward the end of '98, probably December of '98.

8 BY MR. BOWDEN:

9 Q. Mr. Galster, did you take out any FICA or income tax on
10 Kelly while he worked for you?

11 A. During part of it, we did, yes, sir.

12 Q. Do you have those figures?

13 A. Yes, sir. I don't have them with me, but my accountant has
14 them. Joe, do you have them?

15 Q. Okay. And other than making this film, he had other
16 duties, didn't he?

17 A. He helped with the investigation, with finding these people
18 and setting them up.

19 Q. He also staffed your office when you weren't there. True?

20 A. He did nothing at my office.

21 Q. He was a receptionist, wasn't he, at times?

22 A. No.

23 MR. BOWDEN: One second, Your Honor.

24 Your Honor, I know it is unusual. But would it be possible
25 for my partner to continue with this cross-examination? He will

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1 be brief.

2 THE COURT: That will be all right. Let's move it
3 along. Mr. White.

4 BY MR. SMITH:

5 Q. Mr. Galster, there may have been some confusion about who
6 is who this afternoon. Mr. Bowden has been asking you the
7 questions. I'm Steve Smith.

8 THE COURT: Excuse me.

9 BY MR. SMITH:

10 Q. Did the accountant who is here to testify today also do any
11 accounting work on the documentary project?

12 A. Yes, sir, he did.

13 Q. Do you know the extent of his work on that project?

14 A. He has the figures and some compilations. After the fire,
15 I think he approached Kelly directly and said we need a listing
16 of all this. We need to know what's been expended where. And
17 Kelly provided him with that. We have copies of it.

18 Q. About the fire, I believe you testified that you were under
19 an investigation by the IRS after the fire?

20 A. I was audited by the IRS. The fire was in May. I was
21 audited in -- I think it was February of 2000.

22 Q. Do you remember the time period covered by the audit?

23 A. I think it was a four-year period.

24 Q. Do you remember the approximate four-year interval?

25 A. It was from the current time back four years, so that would

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- 1 have been back to '96, I think.
2 Q. This project began -- the documentary project began in '98?
3 A. '98.
4 Q. Kelly was working -- Mr. Duda was working for you in '98 as
5 well?
6 A. Yes, sir.
7 Q. Did you have the same accountant in '98?
8 A. Yes, sir.
9 Q. And after the firebomb of the clinic, you continued toward
10 final production on the video project. Right?
11 A. Yes, sir. It was almost like a MASH camp. I was seeing
12 patients. I was running a hundred yards to the house, where I
13 had Kelly and everyone else, overseeing what was going on there,
14 going back, trying to organize the rebuilding of the clinic,
15 which I did. It was kind of madness.
16 Q. You said that you lost your records, patient records, in
17 the firebomb?
18 A. Some of them, yes.
19 Q. Were you able to retain most of them?
20 A. No. Most of them were water damaged to the point they were
21 all stuck together and smoked and burned. I would say we
22 retained probably 30 percent of them.
23 Q. I know Mr. Bowden asked you about a lockbox. But I'm not
24 sure he asked about this. Do you have a lockbox in your office?
25 A. No.

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1 Q. Did you have one in the firebombed office?

2 A. The office is kind of a long stretch that's strung
3 together. The part that was burned was the major part. I
4 didn't have anything in that. The part that was not burned is
5 where some of my guns are. And I do have a gun safe there. It
6 is not fireproof. We did actually put the source tapes in there
7 for a short period of time when we were moving Kelly around.

8 Q. To jump back to the audit just for a couple of questions,
9 do you know if your accountant had any contact with the IRS
10 regarding that audit?

11 A. Yes, he did.

12 Q. I understand that you are a prosthetist and not an
13 accountant. I'm not an accountant either. But let me ask, are
14 you aware that in many circumstances the payment of wages to
15 someone is a business expense that would reduce your taxable
16 income?

17 A. Yeah.

18 Q. How long have you been in your prosthetics business?

19 A. Twenty-five years.

20 Q. You had testified, I believe on direct, that you believe
21 there's a connection between the firebombing of your office and
22 your involvement in investigation in this prison blood scandal?

23 A. Yes, sir. No one has been able to prove it. But on the
24 same night my building was burned, offices in Montreal at the
25 Canadian Hemophilia Society were ransacked and information

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1 taken, computer hard drives. Kelly and I had been sharing
2 information with them for over a year at that point.

3 Q. Was this, was it after the firebombing your wife left the
4 country?

5 A. Well, I mean, she has a place in Ireland she goes pretty
6 regularly. But, yes, she left after this.

7 Q. I understood your testimony, that she left for Ireland
8 because of the firebombing. I don't want to misconstrue it. Is
9 that indeed why she left?

10 A. Yes. She was frightened.

11 Q. Does she continue to go to that place even now for -- just
12 to go?

13 A. Yes.

14 Q. Has she gone there since you began this litigation and
15 sought injunctive relief?

16 A. No.

17 Q. You said initially that you used Kelly to funnel money
18 because you wanted to keep your name out of this as much as you
19 could. Is that an accurate --

20 A. That's correct. Plus, it was just more convenient.

21 Q. Were there times that you would give him money that would
22 account for some of his wages and equipment or production
23 related expenses in a single disbursement?

24 A. That's correct. We did.

25 Q. Thank you, Mr. Galster. I appreciate it.

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1 MR. WOODSON: No questions, Your Honor.
2 THE COURT: All right, sir. You may stand down. Call
3 your next witness.
4 MR. WOODSON: Bill Moss.
5 THE COURT: Mr. Moss, come forward, please, to the
6 witness stand, to my right. When you get there, if you will
7 face me. Raise your right hand and be sworn.
8 WILLIAM MOSS, PLAINTIFF WITNESS, DULY SWORN
9 DIRECT EXAMINATION
10 BY MR. WOODSON:
11 Q. Please state your full name for the record.
12 A. William David Moss, M-o-s-s.
13 Q. Where do you live?
14 A. I live in Pine Bluff, Arkansas.
15 Q. Would you tell the Court what your profession is?
16 A. I'm a certified public accountant.
17 Q. Where is your business?
18 A. I practice primarily in Pine Bluff. We do have an office
19 in Monticello.
20 Q. What's the name of that business?
21 A. Moss, Burks, Moss & Company.
22 Q. Do you know Mr. Michael Galster?
23 A. Yes, sir, I do.
24 Q. How do you know Mr. Galster?
25 A. I met Mr. Galster in 1982 and have been a friend and his
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1 accountant since that time.

2 Q. Are you currently serving as his accountant?

3 A. Yes.

4 Q. So you've continuously been an accountant for Mr. Galster
5 from '82 until present?

6 A. That's correct.

7 Q. Describe for the Court, if you would, what functions you
8 perform for Mr. Galster as his accountant.

9 A. I prepare financial statements for Mr. Galster on request.
10 I maintain his checking accounts and other books and records and
11 also prepare his payroll tax returns and federal income tax
12 returns.

13 Q. Would you characterize those functions as pretty
14 comprehensive?

15 A. Yes, sir, I would.

16 Q. Are you familiar with the book that Mr. Galster has written
17 called Blood Trail?

18 A. Yes, sir, I am.

19 Q. Tell the Court, if you would, what you know about that book
20 and Mr. Galster's involvement with it.

21 A. Mr. Galster wrote a fictional novel entitled Blood Trail
22 under the pseudonym, I guess it is, Michael Sullivan. To the
23 best of my memory, Mr. Galster started writing that book
24 sometime during late 1996 or early 1997 and completed that book
25 during the year 1998.

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1 Q. How did you know that he started writing that book back in
2 1996?

3 A. Because he was incurring certain research expenditures for
4 it and travel expenditures for it. And also, being his friend,
5 he had informed me that he was going to write this novel.

6 Q. As his accountant, did that pique your interest as to
7 certain expenditures that were being made on the book?

8 A. Yes, sir, it did.

9 Q. Are you familiar with the film named Factor 8 that Mr.
10 Galster authored?

11 A. Yes, sir, I am.

12 Q. Describe for the Court what you know about that film.

13 A. Beginning sometime early in 1998, Mr. Galster decided to
14 prepare a documentary film that my understanding at the time
15 would be used as a vehicle to either help sales of the novel or
16 to help market the movie rights to the novel. During that time,
17 not only did I witness Mr. Galster working on the documentary,
18 but I also went on certain camera shoots with him and also
19 participated in some of the editings of the videos that were
20 shot by him and also that were shot by Mr. Duda.

21 MR. WOODSON: May I approach the witness?

22 THE COURT: Yes, you may.

23 BY MR. WOODSON:

24 Q. Do you know if Mr. Galster has any other accountants?

25 A. None to my knowledge.

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1 Q. As his accountant, are you privy to information regarding
2 his business and his personal expenditures?

3 A. Yes, sir, I am.

4 Q. If you would look at Plaintiff's Exhibit 17, please
5 describe to the Court what that document is.

6 A. That is a listing of checks written to Mr. Kelly Duda out
7 of Mr. Galster's operating bank account, Simmons account. And
8 even though I've headed it December 1997, it really begins with
9 checks written in March 1998, going through March of 1999.

10 Q. Is this something that you brought from your office?

11 A. Yes.

12 Q. Is this an accurate reflection of the record of
13 expenditures made by Mr. Galster during this time period?

14 A. Out of this account, it is an accurate reflection, yes.

15 Q. Is Plaintiff's 17 a document that's normally kept in the
16 course of your business?

17 A. Yes, sir, it is.

18 Q. If you would -- and it might be easier if we turn over to
19 some of the following pages -- explain to the Court the --

20 THE COURT: Let me interrupt just a moment. It says
21 the Blood Trail partnership?

22 THE WITNESS: Yes, sir. At the time that Mr. Galster
23 began making expenditures to Mr. Duda, he was in partnership
24 with another individual with respect to the publication of the
25 novel.

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1 THE COURT: Very well. Go ahead.
2 BY MR. WOODSON:
3 Q. It was not a partnership with Mr. Duda to your knowledge?
4 A. No, sir.
5 Q. Who was this other individual that was involved in the
6 partnership?
7 A. Dr. Richard Knutson.
8 Q. If you would, take a few moments and explain to the Court
9 what we're seeing here on the first page of Plaintiff's 17. And
10 if it's helpful, refer to the copies of checks on the back, the
11 following pages.
12 A. This is a listing of the checks written out of this Simmons
13 bank account from March of 1998 through March of 1999 that were
14 payable to Kelly Duda.
15 THE COURT: They total 31,250?
16 THE WITNESS: That is correct, sir.
17 BY MR. WOODSON:
18 Q. Were there other expenditures made by Mr. Galster to
19 persons or entities other than Mr. Duda?
20 A. Yes, there were
21 Q. This exhibit that you have in your hand only covers the
22 payments made to Mr. Duda. Is that correct?
23 A. That is correct.
24 Q. Now, what are we looking at, for example, on the second
25 page of Plaintiff's 17, the photocopies of checks?

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1 A. Those are copies of the image statements on that checking
2 account from Simmons First National Bank. And what I have done
3 is gone through those statements and pulled out the pages that
4 had these checks listed on the first page. On page 2, you will
5 see check No. 1008 for \$750 to Mr. Duda, or it's 1006. Excuse
6 me. And you will see that's the first check on my listing.

7 Q. Is there an example in the following pages of expenditures
8 made by Mr. Galster to persons other than Mr. Duda on this film?

9 A. If you will look at check 1001, there's a payment to Kate
10 Terrell. And there are other payments to Kate Terrell listed in
11 the supporting sheets.

12 THE COURT: That was for 2,500. Is that right?

13 THE WITNESS: Check No. 1001, yes, Your Honor.

14 BY MR. WOODSON:

15 Q. So as I understand your testimony, is it correct to say
16 that between December 1997 to June 18th, 1999, Mr. Duda paid --
17 I'm sorry -- Mr. Galster paid to Mr. Duda \$31,250 for Mr. Duda's
18 work on the film?

19 A. That is correct. That is my understanding.

20 MR. WOODSON: We offer Plaintiff's 17, Your Honor.

21 THE COURT: Received.

22 (Plaintiff Exhibit 17 received in evidence.)

23 BY MR. WOODSON:

24 Q. For instance, what would be the \$2,500 for this Kate
25 Terrell? What would that be for? Do you have any idea?

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1 THE WITNESS: That would be primarily for research
2 and/or scheduling interviews.

3 THE COURT: It is all in connection with this project.

4 THE WITNESS: Yes.

5 BY MR. WOODSON:

6 Q. What is your understanding of the job that Mr. Duda
7 performed for Mr. Galster?

8 A. I would consider Mr. Duda to have been an assistant on this
9 project. My witnessing of it as it occurred during this time
10 frame was that Mr. Galster was primarily the person involved in
11 purchasing equipment for purposes of preparing a documentary
12 film and also for lining up interviews and scheduling questions
13 that he wanted Mr. Duda to ask during the interviews.

14 Q. What is your understanding of the functions Ms. Kate
15 Terrell performed?

16 A. My understanding of Kate's function was that she would be
17 contacted by Mike to do research, either to go to certain, not
18 morgues, but get copies of newspaper articles related to the
19 prison system during the period that Mr. Galster was
20 researching.

21 Q. What about Mr. DanleI Broenlng?

22 A. Mr. DanleI Broenlng was brought in sometime during the year
23 2000. And when I inquired about expenditures made to Mr.
24 Broening or why he was living in Mr. Galster's personal
25 residence, he told me that Dan had been brought in to assist in

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1 the final edit of the documentary that they had been shooting.

2 Q. Then also Mr. Christopher Case?

3 A. That is the same period of time. And, yes, I was told they
4 were there to assist in the final editing.

5 Q. Were all of these people employees of Mr. Galster's?

6 A. They were paid by Mr. Galster. I would consider them to be
7 more contract labor at that time as opposed to -- that they were
8 there, you know, and he just paid them a flat fee.

9 Q. If you would, look at Plaintiff's 18. I think it's there
10 in your documents.

11 THE COURT: Do I have that? I have down to 15, 16.
12 Is it part of this new one?

13 MR. WOODSON: Yes, sir.

14 THE COURT: I see. It is right under 17. I'm sorry.
15 Here we are.

16 BY MR. WOODSON:

17 Q. What is Plaintiff's 18?

18 A. That is a copy of a W-2 statement for the year 2000 that I
19 prepared for Mr. Galster's business for payments made to Kelly
20 Duda out of his payroll checking account during the year 2000.

21 Q. And again, your understanding of Mr. Duda's job duties were
22 to help Mr. Galster with the film?

23 A. Yes. I witnessed him performing no other functions during
24 that year.

25 THE COURT: So let me just take a quick look at that.

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1 Social security tax withheld, then Medicare tax withheld, and a
2 state income tax withheld. So this shows that for the year 2000
3 that Galster's Orthopedic Labs, Inc., paid Kelly Duda \$8,000.

4 THE WITNESS: Out of the payroll checking account.
5 There were other payments made in the year 2000.

6 THE COURT: Out of the payroll checking account.
7 BY MR. WOODSON:

8 Q. Is Plaintiff's 18 an accurate copy of the W-2 issued for
9 Mr. Duda?

10 A. Yes, sir, it is.

11 Q. Is this document kept in the regular course of business for
12 you?

13 A. Yes, sir.

14 MR. WOODSON: Judge, we would offer Plaintiff's 18.

15 THE COURT: It is received.

16 (Plaintiff Exhibit 18 received in evidence.)

17 THE COURT: Let me ask you, in connection with 17,
18 which showed \$31,250, is this 8,000 part of that, or is he
19 getting this in addition to the 31,250?

20 THE WITNESS: Your Honor, that is in addition to the
21 31,250.

22 THE COURT: Is it because -- it shows it's being paid
23 by the lab, the corporation.

24 THE WITNESS: That is correct.

25 THE COURT: Galster's Orthopedic Lab, Inc. Is that
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1 for services provided to the lab?

2 THE WITNESS: That is for services performed as an
3 employee of the lab. Even though the lab primarily deals in
4 prosthetics and orthotics, their charter does not prevent them
5 from engaging in other types of business.

6 THE COURT: In other words, it is not -- the
7 corporation's charter is broad enough to cover other businesses?

8 THE WITNESS: Yes, sir.

9 THE COURT: Are you saying that this was not paid for
10 services limited to the orthopedic lab?

11 THE WITNESS: No, sir.

12 THE COURT: Are you saying it was part of the
13 compensation such as that reflected in 17 for his work on this
14 project?

15 THE WITNESS: Yes, sir. That is correct.

16 THE COURT: Go ahead.

17 MR. WOODSON: Thank you, Judge.

18 BY MR. WOODSON:

19 Q. If you would, look at Plaintiff's 19, and describe that
20 document.

21 A. 19 is, as it is headed up, an expense report history that
22 was provided to me by Mr. Duda on or around May of 1999. I had
23 discussed this with Mr. Galster. And based upon the sums of
24 money that were being spent to Mr. Duda without any
25 documentation in the company records, I requested that Mr. Duda

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1 prepare an individual listing of the amounts he was spending.

2 Q. This is what Mr. Duda gave to you?

3 A. That is correct.

4 Q. Let's go down through some of these at least and identify
5 for the Court what they represent. Just start at the top,
6 Kinko's.

7 A. Mr. Duda has identified that as faxes that he sent to the
8 health department for a \$7.35 fee on July of '98.

9 Q. The first entry there for post office?

10 A. Post office box. That's for the Blood Trail. That would
11 be the, you know, separate post office box they set up to
12 receive documents outside of Mr. Galster's either personal post
13 office box or company box.

14 Q. Arkansas Times?

15 A. Arkansas Times were for ads that they had run requesting
16 anyone who had participated in the blood plasma program at the
17 Arkansas penitentiary system to contact them.

18 THE COURT: Is that such as -- can you see it here --
19 Plaintiff's 1?

20 THE WITNESS: That's correct.

21 THE COURT: All right.

22 BY MR. WOODSON:

23 Q. The two Democrat entries?

24 A. That would be for similar ads as the Judge just showed.

25 Q. These were monies spent by Mr. Galster or paid for by Mr.

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1 Galster, and perhaps Mr. Duda was the person who actually made
2 the expenditure?

3 A. That is correct. I had requested that since we were just
4 making flat payments during the years '98, '99, he document for
5 me what those monies were being spent for.

6 Q. Did you use --

7 THE COURT: The money was going to him in the form we
8 see on Plaintiff's 17?

9 THE WITNESS: Yes, sir, that is correct.

10 THE COURT: Rounded out, \$2,600, 3,000, so large
11 numbers. Then it was, though, to cover these expenditures among
12 other things. Is that right?

13 THE WITNESS: Yes, sir. That is correct. Also, there
14 were also checks made to pay Mr. Duda's rent during that time.
15 If you will look at page 4 of that document, you will see that
16 Mr. Duda makes the comment that this listing does not count, you
17 know -- excuse me -- \$400 a week pay and \$250 a month rent.

18 THE COURT: So these four pages were submitted by him?

19 THE WITNESS: Yes, sir.

20 THE COURT: And this comment, which is "this expense
21 report doesn't include a listing of \$400 a week pay and \$250 a
22 month office rental." All right.

23 BY MR. WOODSON:

24 Q. Did you use these entries provided to you by Mr. Duda to
25 reconcile your accounts, your books, for Mr. Galster?

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- 1 A. Yes.
- 2 Q. Are there any entries on Plaintiff's 19 that identify
3 payments made to any of the persons who appeared in the film?
- 4 A. Yes, sir, there are.
- 5 Q. Could you point those out for us?
- 6 A. We have on page 2 of 4 an entry entitled "shoot," a hundred
7 dollars, a camera day rate for Henderson. And I believe that
8 signifies Dr. Bud Henderson, who is on the film that I've seen.
- 9 Q. I haven't found it yet.
- 10 THE COURT: It is down. Well, there's one on shoot
11 for Clint day rate. Then the next one is shoot for camera day
12 rate for Henderson.
- 13 THE WITNESS: That's correct.
- 14 THE COURT: Then there's one that's shoot, camera day
15 rate times three. I don't know what that means.
- 16 THE WITNESS: That would be for three days of shooting
17 for Clint.
- 18 BY MR. WOODSON:
- 19 Q. Have you had a chance to look at this document before your
20 testimony today?
- 21 A. Yes, sir, I have.
- 22 Q. How many people all total appear on this document as having
23 been paid by Mr. Galster to appear on the film?
- 24 A. I totaled eight up when I summarized it after I had given
25 this to you.

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1 THE COURT: You mean where it shows those are the
2 people who are on these films?

3 THE WITNESS: Yes, Your Honor. There are eight people
4 that are specifically identified on this listing that I
5 witnessed on the film.

6 THE COURT: Like Henderson?

7 THE WITNESS: And Byus.

8 THE COURT: There's one that's Howard.

9 THE WITNESS: Yes. Howard is on the film, and Snyder
10 on page 3.

11 THE COURT: Anyway, there are eight of them.

12 THE WITNESS: Yes, sir.

13 BY MR. WOODSON:

14 Q. When you say they are on the film, what film are you
15 referring to?

16 A. I am referring to the copy of the film that Mr. Galster
17 obtained that was listed as a Kelly Duda film, Factor 8, The
18 Arkansas Blood Scandal.

19 Q. When did you view that film?

20 A. To the best of my memory, within the last ten days.

21 Q. When you viewed that film, did it have any identifying
22 credits as to who claimed copyright or authorship of that film?

23 A. It started off with Concrete Films presents a Kelly Duda
24 film is my memory.

25 Q. In the course of your friendship and professional

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1 relationship with Mr. Galster, going back into 1998, when he
2 first started working on the film, did you ever have occasion to
3 view the source tapes that were created and compiled for the
4 original version of the film?

5 A. Yes, sir, I did.

6 Q. Can you compare what you saw over the course of '98, '99,
7 and 2000 from the source tapes and the original compilations to
8 what you saw within the last ten days?

9 A. Yes, sir. I can say that I did see certain of the source
10 tapes. I did not spend all my time down there. But I did see
11 an interview with Dr. Henderson. I did see the interview with a
12 blacked out person on the film that is identified only on the
13 film as David for reasons of his personal security. I did see
14 aerial shots made of Cummins Prison. And I also had
15 participated with Mr. Galster in making some highway shots of
16 the prison.

17 Q. All of those shots that you just testified to, did you see
18 those on the recent version that you saw within the last ten
19 days?

20 A. Yes, sir, I did.

21 Q. Can you testify under oath that they are substantially
22 similar if not identical?

23 A. Yes, sir, I can.

24 Q. Which is it? Are they identical or substantially similar?

25 A. I would say they are identical.

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1 Q. As Mr. Galster's accountant, was it your understanding that
2 Mr. Galster was the author of the documentary film?

3 A. Yes, sir, it is.

4 Q. Was it your understanding that he was the owner of that
5 film?

6 A. Yes, sir, it is.

7 Q. Did Mr. Galster ever purchase equipment for the film?

8 A. Yes, sir, he did.

9 Q. Do any of the exhibits that we have in front of us identify
10 any of those expenditures?

11 A. There is nothing on the exhibits that identifies the
12 expenditures. I do have other documents where Mr. Galster has
13 purchased camera equipment and computer equipment. But I have
14 only listed those payments to Mr. Duda for this purpose.

15 Q. But you are testifying under oath today that as his
16 accountant he did make purchases of equipment for the film?

17 A. Yes, sir, he did.

18 MR. WOODSON: Just one moment, Judge. I'm going to
19 wrap up.

20 BY MR. WOODSON:

21 Q. One more exhibit, Plaintiff's 20. Would you identify that
22 document?

23 A. That is an itemized listing by account of payments made
24 from accounts of Mr. Galster's business or his personal business
25 that were checks solely to Kelly Duda.

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- 1 Q. Let's just go through those real quickly. The first one is
2 Simmons for 31,250?
3 A. That would be the same amount as per Exhibits P-17.
4 Q. What is the second one?
5 A. The second one would be the \$8,000 W-2, which would be 18.
6 Q. The \$4,900 entry?
7 A. The \$4,900 entry is Bank of Star City, checks written in
8 1999 out of a personal account Mr. Galster maintains that were
9 made payable to Kelly Duda.
10 Q. The fourth entry?
11 A. The fourth entry would be monies paid out of that previous
12 account in the year 2000 made payable to Kelly Duda.
13 Q. The fifth entry?
14 A. That would be monies paid out of Mr. Galster's business
15 account at Bank of America in the year 2000 to Kelly Duda.
16 Q. And what is the complete time frame Plaintiff's 20
17 encompasses?
18 A. This would encompass payments to Mr. Duda from March of
19 1998. And I believe his last payment was made in February of
20 2001.
21 Q. What is the total expenditures from Mr. Galster to Mr.
22 Duda?
23 A. Out of his checking accounts, \$51,857.
24 Q. And when you -- did you get these figures from records that
25 you maintained in your office?

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- 1 A. Yes, sir, I did.
2 Q. Are those records that you keep in the regular course of
3 business?
4 A. Yes, sir.
5 Q. You created Plaintiff's 20 by your own handwriting?
6 A. That is correct.
7 MR. WOODSON: We offer Plaintiff's 20.
8 THE COURT: Received.
9 (Plaintiff Exhibit 20 received in evidence.)
10 BY MR. WOODSON:
11 Q. Did Mr. Duda live in a home provided by Mr. Galster?
12 A. Yes, sir, he did.
13 Q. Describe that for the Court.
14 A. The house behind Mr. Galster's office was purchased after
15 his fire and renovated to be a personal residence for Mr. Duda.
16 As stated on the W-2 for the year 2000, that is the address that
17 Mr. Gal -- Mr. Duda lived at in the year 2000, at 2412 Poplar
18 Street, Pine Bluff, Arkansas.
19 Q. Did Mr. Duda receive this house or the ability to stay in
20 this house rent free?
21 A. Yes, sir, he did.
22 Q. Was that compensation for his work on the film?
23 A. My understanding at the time, it was.
24 Q. Did Mr. Duda have to pay the utilities?
25 A. No, sir.

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1 Q. Did Mr. Duda have to pay for his cell phone?

2 A. No, sir.

3 THE COURT: Did you say that the plaintiff purchased
4 the house after the fire? Did you say that?

5 THE WITNESS: Based upon my memory, that was purchased
6 after the fire, because there were additional parking spaces
7 needed for city code to allow him to rebuild a larger office, so
8 he purchased the property behind his office.

9 THE COURT: So about when was it purchased?

10 THE WITNESS: I would say in the year 1999.

11 THE COURT: Do you know how long Mr. Duda occupied
12 that place?

13 THE WITNESS: Your Honor, the best of my recollection,
14 Mr. Duda was in that facility at least six or more months during
15 the year 2000.

16 THE COURT: The \$250 monthly expense, what was that
17 for?

18 THE WITNESS: Even though Mr. Duda listed it as office
19 rent, it was my understanding that during 1998, 1999 that was
20 for an apartment of his.

21 THE COURT: All right.

22 BY MR. WOODSON:

23 Q. With regard to the film you just recently viewed within the
24 last ten days, how much of that film is identical or
25 substantially similar to what you have seen previously?

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1 MR. SMITH: Objection, Your Honor. Calls for a
2 conclusion.

3 THE COURT: Well, I'm going to overrule the objection.
4 It is obviously going to have to be an estimate.

5 BY MR. WOODSON:

6 Q. You can estimate.

7 A. Mr. Galster and I sat down and timed the film one evening.
8 And out of the approximately 85 minutes of the film, there are
9 five minutes of Mr. Duda that I had not seen previously with
10 respect to Mr. Galster's tapes.

11 Q. The other 80 minutes you had seen previously?

12 A. Substantially, yes.

13 MR. WOODSON: Pass the witness.

14 THE COURT: When you say "substantially," are you
15 talking about more than half or --

16 THE WITNESS: I would say at least 75 percent of that
17 I had seen before.

18 THE COURT: Very good.

19 MR. WOODSON: Pass the witness.

20 THE COURT: Mr. Smith.

21 MR. SMITH: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. SMITH:

24 Q. I believe you testified that you think you have seen
25 approximately 75 percent of this footage in the Duda version of
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- 1 the documentary before. Is that right?
- 2 A. That's correct.
- 3 Q. Do you have any idea how many hours of raw or source tape
- 4 there is that's been assembled in connection with this
- 5 documentary project?
- 6 A. As to number of hours, no. I have been told there are
- 7 approximately a hundred plus video -- small DVDs made.
- 8 Q. How much of that raw footage have you seen?
- 9 A. I would say I have seen approximately four to six hours of
- 10 it.
- 11 Q. Was part of that four to six hours a two-hour version of
- 12 this story?
- 13 A. I do not understand the question.
- 14 Q. You said you've seen about four to six hours of this
- 15 footage. Is that the way -- did I understand your answer
- 16 correctly?
- 17 A. That is correct.
- 18 Q. Was it four to six hours of just raw footage that ran
- 19 together, or was it four to six hours of raw footage that had
- 20 been edited?
- 21 A. That would be four to six hours of me going to Mr.
- 22 Galster's residence behind his office and just standing around
- 23 watching.
- 24 Q. While you were standing around watching, was Mr. Duda
- 25 there?

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- 1 A. There were times when Mr. Duda was there, yes.
2 Q. And were you just taking breaks from accounting duties that
3 you were performing for Mr. Galster, watching?
4 A. I would say I was visiting as a friend after hours.
5 Q. And you've been Mr. Galster's accountant, in fact, since
6 1982?
7 A. That's correct.
8 Q. And y'all are friends?
9 A. Yes, sir.
10 Q. You have a long-standing business relationship?
11 A. Twenty plus years, yes.
12 Q. How often do you see him outside of the work you do for him
13 as his accountant?
14 A. There will be times when I will see him at least five days
15 out of the week. And then there will be weeks when I will not
16 see him at all.
17 Q. And if somebody asks you on the street "Is Mike Galster
18 your friend," you are going to say, "yes, he is."
19 A. I would do that, yes.
20 Q. If somebody were to ask you: "Is Kelly Duda your friend,"
21 I'm guessing your answer would be: "No, he's not."
22 A. I would say up until 2001, I would have considered Kelly
23 Duda to be a friend, yes.
24 Q. But up until -- if somebody had asked you on your way into
25 the courthouse today, your answer would have been no, wouldn't

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- 1 it?
2 A. That is correct.
3 Q. You are the only CPA as far as you know that Mr. Galster
4 has. Is that right?
5 A. Yes, sir.
6 Q. I'm going to try to ask a few questions from the exhibits
7 that were tendered here. First, let me ask you about No. 17,
8 Plaintiff's 17. That's the front page. Is this something that
9 you compiled with software?
10 A. I compiled this using Excel spreadsheet software, yes, sir.
11 Q. And did you run a search for a larger number of
12 transactions for every transaction in this particular account
13 that contained the name Kelly Duda?
14 A. I went back to the accounting records that I maintained on
15 this spreadsheet by year for Mr. Galster and searched for
16 payments that were specifically identified as Kelly Duda.
17 Q. And I don't want to get bogged down in this. What kind of
18 software do you use to keep those records? Do you keep the
19 accounting records themselves in Excel?
20 A. Yes, sir, I do.
21 Q. Do you use anything else like Peachtree?
22 A. For other clients, I use state of the art MAS 90.
23 Q. But for Mr. Galster you continue to use Excel?
24 A. Yes, sir.
25 Q. And only Excel?

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- 1 A. Yes, sir.
- 2 Q. Again, to make sure I understand, I tried to listen to your
3 testimony closely. But the copies of the checks that you have
4 from Simmons First National Bank that were appended as a part of
5 17, do they contain all of the disbursements on the front page?
- 6 A. I tried to locate all of them, yes, sir. I believe this
7 exhibit contains them.
- 8 Q. You yourself did not write any of these checks. Correct?
- 9 A. That is correct.
- 10 Q. That's really not your job. Is that right?
- 11 A. No, sir. That's not my job for Mr. Galster.
- 12 Q. And some of these checks were to Mary Kate Terrell. Is
13 that right?
- 14 A. That is correct.
- 15 Q. Do you have any exhibits? Do you have the exhibit in front
16 of you?
- 17 A. I have this, yes.
- 18 Q. Okay. I have a few questions. I would like us to go
19 through these. While I'm looking, would you tell me again your
20 understanding of Mary Kate Terrell's duties for Mr. Galster?
- 21 A. I would classify her duties as a research assistant.
- 22 Q. Was she ever present when you would go back and see work
23 being done on the video project?
- 24 A. No, sir.
- 25 Q. Did you ever see her do any research?

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- 1 A. Yes, sir. I have seen her provide notes to Mr. Galster
2 with respect to copies of newspapers that she had got for him.
3 Q. All right. Would you look at the first page of checks,
4 page 4 of 15, check 1001. Does she also go by Kate Terrell?
5 A. That is correct.
6 Q. That check, that's an NSF check. Is that right?
7 A. It originally went through as NSF, but on 5/11 the bank
8 cleared it.
9 Q. There's another check to Ms. Terrell for \$300 on page 4 of
10 4, No. 1019. On the page that's labeled 3 of 3 in the upper
11 right-hand corner, Your Honor. It's the next page.
12 A. It's check No. 1019 on page 4 of 4.
13 THE COURT: That's for \$300.
14 MR. SMITH: Yes, sir.
15 BY MR. SMITH:
16 Q. The next page has check No. 1042 in the left-hand column,
17 third from the top, for \$1,500. Is that also Mary Kate Terrell?
18 A. Yes, sir.
19 Q. In preparation for your testimony today, were you asked to
20 assemble a list of disbursements to Kelly Duda?
21 A. Yes, sir, I was.
22 Q. Were you asked to assemble a list, a similar list of
23 disbursements, to Kate Terrell?
24 A. No, sir.
25 Q. Or to anyone else that you understand might have been an
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1 employee for purposes of completing this video project?

2 A. No, sir. I would add, I did prepare a listing of payments
3 to Mr. Case and to Mr. Broening.

4 THE COURT: Mr. Case and who?

5 THE WITNESS: Mr. DanleI Broenlng.

6 MR. SMITH: Can you spell that for me, please?

7 THE WITNESS: B-r-o-e-n-i-n-g.

8 BY MR. SMITH:

9 Q. Thank you. I've been hearing that all afternoon. I was
10 unsure of how to spell it. You testified that you and Mr.
11 Galster are friends. Correct? Do you see him after hours?

12 A. Yes, sir, I do.

13 Q. How many times do you think you've seen Mary Kate Terrell
14 during the production of this video project, I guess going back
15 to 1998?

16 A. I can't remember exact numbers, but I would say at least
17 ten times.

18 Q. Do you know how long Ms. Terrell has been providing
19 research or her other employment related activities for Mr.
20 Galster?

21 A. I am aware that Ms. Terrell also assisted him on
22 researching the novel that was begun in 1997.

23 Q. And do you have any awareness as to whether or not she's
24 continuing to work for him?

25 A. I have no awareness of her continuing to work for him. And

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- 1 to the best of my memory, I have not seen any checks written to
2 her out of the company accounts within the last two years.
3 Q. Have you seen any checks written to her from non-company
4 accounts in the last two years?
5 A. No, sir.
6 Q. Without getting into it too much, approximately how many
7 nonbusiness accounts does Mr. Galster maintain?
8 A. I'm aware of a personal checking account he has at Bank of
9 Star City. And that would be the only nonbusiness account I'm
10 aware of at this time.
11 Q. Did he have that in the year 2000?
12 A. Yes, sir, he did.
13 Q. Do you know of any reason that he would have made a
14 disbursement on the personal account in Star City for the film
15 versus using the account at Simmons First National?
16 A. It would depend upon the availability of funds at the time.
17 Q. It's kind of where the money is?
18 A. Right.
19 Q. Do you have any personal knowledge of exactly what, going
20 back to the front page of your exhibits, 1006 to Kelly Duda, was
21 written for? Do you know?
22 A. I know that the amounts written to Kelly Duda with respect
23 to Exhibit 18 --
24 Q. No, no, no. I'm sorry. And we'll get to it. But right
25 now, I'm asking about 17.

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- 1 A. You are asking if I know exactly what these \$750
2 represented by check 1006 was for?
3 Q. Yes, sir.
4 A. I do not know that.
5 Q. Do you know if 100 percent of that check is wages?
6 A. I would not classify that as wages, no.
7 Q. Without going through them one at a time, for all of these
8 checks, do you know, again in the sense know, what any -- any
9 single check in this list was written for to Mr. Duda? Do any
10 of them have memos on them?
11 A. Yes, sir, they do. The memo on check No. 1040, the best
12 that I can read --
13 THE COURT: 1000 what?
14 THE WITNESS: 1040.
15 BY MR. SMITH:
16 Q. What page is that on?
17 A. That would be on the statement dated 3/19 of '98, page 3 of
18 3, check for \$400. I can read "telephone expense." I believe
19 the other part of the memo says "money."
20 Q. I agree with you. That's what it looks like to me.
21 Speaking of checks to Kelly Duda, I believe you testified on
22 direct that you understood he was paid 200 and -- was it \$400 a
23 week? Is that right?
24 A. That is correct.
25 Q. Where are those checks?

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- 1 A. Check No. 1048 of 4/98 is for \$400.
2 Q. And you are saying that's one of those weekly checks?
3 A. I would believe that would be one of the weekly checks.
4 Q. You just testified I think a second ago that you weren't
5 certain what any of these were specifically for except for this
6 one that had the memo. But you are sure about that one?
7 A. I would conclude that, sir. I would not say I'm 100
8 percent sure.
9 Q. And would you say the same thing, just looking at the front
10 page again, about check 1048?
11 A. Yes, sir.
12 Q. And there are no other \$400 checks listed on 17. Is that
13 right?
14 A. No, sir.
15 Q. There are a couple of \$800 checks, Nos. 1094 and 1095. Do
16 you have any -- do you know what those were for?
17 A. I would say they were paid to Mr. Duda with respect to
18 services he prepared in Mr. Galster's service on this Blood
19 Trail project.
20 Q. But that's what you think?
21 A. Yes, sir, that is.
22 Q. It's not -- you are not for sure, because you weren't there
23 when the checks were written. Right?
24 A. That's what I think, yes.
25 Q. And you are not sure?

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- 1 A. If I were to give a percentage, I would say I'm 95 percent
2 sure.
- 3 Q. Okay. Would you agree with me, sir, that if I can find
4 them again, that check 1015 on page 4 of 4, in the left-hand
5 column, second from the bottom, Kate Terrell, 2,500, and it was
6 written on May the 28th of '98, the check immediately beneath
7 that appears to have been written to Mary Kate Terrell for
8 another \$300 two weeks -- approximately two weeks later. Is
9 that right?
- 10 A. Check No. 1015 shows up as dated 5/28 on my copy. That's
11 6/12 on 1019.
- 12 Q. Right. That's about two weeks between those two?
- 13 A. Yes, sir.
- 14 Q. Would you say in your experience, in keeping track of
15 business expenses and the like for people, that's pretty good
16 money for a newspaper clipping?
- 17 A. I believe Mr. Galster paid her for more than a newspaper
18 clipping. I believe she did a lot of legwork on the project.
- 19 Q. Okay. I'm sorry. I didn't hear that earlier. Do you have
20 any idea what kind of legwork it was?
- 21 A. Making telephone calls to people that they thought they
22 wanted to interview with respect to the documentary film and
23 finding out if those people would be interested in testifying,
24 and not only making those calls, but obtaining documents to get
25 a list of names to find out who to call.

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1 Q. And did you see her do any of that yourself?

2 A. No, sir.

3 Q. Let's go to Exhibit 19, the four-page report that you got
4 from Mr. Duda. Is it -- except for the sticker, is it in the
5 same form now as it was when you got it?

6 A. Yes, it is.

7 Q. And you've not made any additions to it?

8 A. Not on this copy, no.

9 THE COURT: That was prepared, you understand, by Mr.
10 Duda. Was that prepared by him?

11 THE WITNESS: Yes.

12 THE COURT: Up at the top, it says, "Expense report
13 history. This is about 90 percent correct and a full accounting
14 of expenses thus far." That's his language.

15 THE WITNESS: Yes, sir.

16 BY MR. SMITH:

17 Q. Let's look at this. Is Mr. Duda's signature on this
18 anywhere?

19 A. No, sir.

20 Q. Are his initials on it anywhere?

21 A. No, sir.

22 THE COURT: Tell us again how you came -- how it came
23 in your possession.

24 THE WITNESS: After the fire at Mr. Galster's office
25 in May of 1999, not sure of what documents were destroyed in the

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1 fire, I requested that Mr. Duda prepare this listing as soon
2 after the fire so we would have something for tax purposes.

3 THE COURT: And he gave it to you?

4 THE WITNESS: Yes, sir.

5 BY MR. SMITH:

6 Q. Do you have any idea what source documents he might have
7 used to prepare this?

8 A. I have seen a faxed copy of a handwritten document that
9 apparently Mr. Duda prepared with respect to preparing this.

10 Q. Where did you see that?

11 A. I saw that in Mr. Galster's office.

12 Q. Do you have it with you?

13 A. I do not believe I have that with me. I have another
14 handwritten fax from Mr. Duda requesting certain monies.

15 Q. But requesting monies?

16 A. Yes.

17 Q. The question that I'm asking really is, what source
18 materials might Mr. Duda have used to prepare this four-page
19 statement that he gave to you and you testified in response to
20 that you've seen a handwritten fax in Mr. Galster's office?

21 A. That's correct. What Mr. Duda may have used, you want me
22 to speculate on his recordkeeping?

23 Q. Well, let me just ask you a "yes" or "no" question. I'll
24 cut it short. Do you know whether or not Mr. Duda would have
25 had records or access to copies of checks that would have been

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- 1 written by Mr. Galster for all these expenses?
2 A. Would Mr. Duda have had copies of checks written by Mr.
3 Galster?
4 Q. Yes.
5 A. To the Arkansas Times, or would Mr. Duda have had checks to
6 the Arkansas Times?
7 Q. Would he have had copies of the checks?
8 A. His checks or Mr. Galster's checks?
9 Q. Mr. Galster's checks.
10 A. He would not have copies of Mr. Galster's checks.
11 Q. And the disbursements listed in this four-page document, do
12 they represent checks written directly to these entities by Mr.
13 Galster?
14 A. No, they do not.
15 Q. Do they represent money passed from Mr. Galster to Mr. Duda
16 to the payee?
17 A. That is my understanding, yes.
18 Q. Did Mr. Duda -- how did Mr. Duda get the statement to you?
19 Do you remember?
20 A. I believe I went to Mr. Galster's office and picked it up.
21 Q. These are expenditures made, according to the statement
22 anyway, beginning July of '98, running through May 20 of '99.
23 Is that right?
24 A. That is correct.
25 THE COURT: When was the fire? Do you remember?

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1 THE WITNESS: The fire was May the 19th of 1999.
2 THE COURT: So this goes right up to the time of the
3 fire?

4 THE WITNESS: Yes.

5 BY MR. SMITH:

6 Q. If you'll look at 17 again, I notice that the second column
7 from the left has what I guess is the year that the checks
8 cleared. Is that right? '98 or '99?

9 A. The first column would be the month, and the second column
10 would be the year.

11 Q. Certainly some of the checks were written before July, when
12 Exhibit 19 begins. Is it possible, though, that some of these
13 expenses listed in the expense report history labeled as
14 Plaintiff's 19 are covered by the disbursements, at least in
15 part by the disbursements reflected in Plaintiff's 17?

16 A. I believe that the disbursements made prior to July of '98
17 represent payments to Mr. Duda for his \$400 a week pay and what
18 he has classified as office rent.

19 Q. Do you remember what office rent was supposed to be?

20 A. My understanding was that was rent on an apartment for Mr.
21 Duda.

22 Q. Do you remember how much it was supposed to be?

23 A. \$250 a month.

24 Q. Did you go on any of the shoots or interviews that were
25 done that related to this project, the video project?

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- 1 A. I went with Mr. Galster to shoot some drive-by scenes of
2 Cummins Prison.
- 3 Q. Okay. But you've not attended any interviews?
- 4 A. No, sir.
- 5 Q. Was that -- was it just you and Mr. Galster that filmed the
6 drive-bys? Was anyone else with you?
- 7 A. No, sir.
- 8 Q. You said you saw this documentary within the last ten days.
9 Did you watch it by yourself?
- 10 A. Yes, sir, I did.
- 11 Q. Where did you watch it?
- 12 A. I watched it in Mr. Galster's personal residence behind his
13 office.
- 14 Q. While he was gone?
- 15 A. Yes, sir.
- 16 Q. Do you have any idea what the checks written to Jameson
17 Publishers were for? They are part of Plaintiff's 17.
- 18 A. Those were checks written to the publisher of Mr. Galster's
19 novel.
- 20 Q. Oh, I understand they were the publisher. Do you have any
21 idea why they were written, what expense they covered or what
22 they purchased?
- 23 A. I have a detailed listing of that at my office. But those
24 were just periodic payments that were requested by Mr. Jameson
25 to cover his expenses.

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- 1 Q. I'm sorry. By Mr. Jameson?
2 A. Jameson Publishing.
3 Q. Did Mr. Galster have to pay to have the book published?
4 A. My understanding at the time is that Mr. Galster spent a
5 considerable bit of money to get the book published and that he
6 was in negotiations with the owner of Jameson Publishing to be
7 in a partnership for the publishing of the book.
8 Q. And do you have any recollection of processing a \$100,000
9 loan from Dr. Knutson? Is that how you pronounce it?
10 A. Knutson.
11 Q. Knutson. Or seeing anything about that loan in your duties
12 as Mr. Galster's CPA?
13 A. Yes, sir, I do.
14 Q. Do you have records in your possession, either here or at
15 your office, as to how that hundred thousand dollars was
16 disbursed?
17 A. I do know that the \$100,000 was deposited in this
18 particular account. And then it was used for whatever expenses
19 Mr. Galster wanted to use them for.
20 Q. And would you also have, as part of the records that you
21 keep and maintain, the source documents used to compile the year
22 2000 W-2 for Mr. Duda that is Plaintiff's Exhibit 18?
23 A. Would I have them at my office?
24 Q. Yes, sir.
25 A. Yes, sir, I do.

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1 THE COURT: I kind of hoped we could get this witness
2 behind us. But I think it is not going to be possible. So I
3 hate to have you come back. But it may be that some of these
4 documents and things they mentioned you can bring back with you
5 tomorrow. We will go ahead and recess for the evening and
6 continue the cross-examination in the morning. We'll be in
7 recess until, let's say, 9:30. We'll start at 9:30. Court will
8 be in recess.

9 (Overnight recess at 5:45 p.m.)

10 REPORTER'S CERTIFICATE

11 I certify that the foregoing is a correct transcript from
12 the record of proceedings in the above-entitled matter.

13 Date: February 12, 2004.

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15 United States Court Reporter

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

MICHAEL GALSTER,

Plaintiff,

v.

No. 4:03CV1013 GTE

KELLY DUDA,

Thursday, January 15, 2004
Little Rock, Arkansas
9:30 a.m.

Defendant.

TRANSCRIPT OF HEARING ON PRELIMINARY INJUNCTION - VOLUME 2
BEFORE THE HONORABLE G. THOMAS EISELE,
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES:

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Proceedings reported by machine stenography; transcript
prepared utilizing computer-aided transcription.
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1 THE COURT: There was a witness on the stand. If you
2 will just resume.

3 Mr. Smith, you may proceed.

4 WILLIAM MOSS, PLAINTIFF WITNESS, PREVIOUSLY SWORN
5 CROSS-EXAMINATION CONTINUED

6 BY MR. SMITH:

7 Q. Do you have your copy of the exhibit we were going over
8 yesterday?

9 A. No, sir.

10 Q. Back to Plaintiff's 17 through 20. Is that right?

11 MR. WOODSON: Yes, that's correct. May I approach the
12 witness, Your Honor?

13 THE COURT: You may.

14 BY MR. SMITH:

15 Q. And I'm going to try to move through this as quickly as I
16 can. I need to cover some ground that was covered on your
17 direct, though, yesterday, the very last page of Plaintiff's 20.

18 THE COURT: Very good.

19 BY MR. SMITH:

20 Q. Did you prepare this yourself?

21 A. Yes, sir, I did.

22 Q. My copy is a little faint. There's some shorthand that I
23 just need some clarification for. The first line, Simmons '97
24 through '99, that's for the checks that are part of Plaintiff's
25 17. Is that right?

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- 1 A. Yes, sir.
- 2 THE COURT: Excuse me just a minute. What does that
- 3 say? Is that five months or what? What's that first line say?
- 4 THE WITNESS: It says, "Simmons ('97 through '99)
- 5 \$31,250."
- 6 THE COURT: That's fine.
- 7 BY MR. SMITH:
- 8 Q. That's Simmons Bank in Pine Bluff. Is that right?
- 9 A. Yes, sir.
- 10 Q. The second line is the 2000 W-2 from Mr. Galster's
- 11 business?
- 12 A. Yes, sir.
- 13 Q. The third line, BSC, is that Bank of Star City?
- 14 A. Yes, sir.
- 15 Q. Of course, the next line is also BSC. That's the same
- 16 bank?
- 17 A. Yes, sir, for the year 2000.
- 18 Q. And the line following that I couldn't decipher.
- 19 A. That is B of A for 2000.
- 20 Q. Bank of America?
- 21 A. Yes, sir.
- 22 Q. And the final line, again, is BSC for \$37?
- 23 A. Yes, sir.
- 24 Q. And the checks that you've included as part of Plaintiff's
- 25 17, they are actually copies from bank statements. Correct?

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1 A. Yes, sir.
2 Q. And these aren't checks that you made copies of yourself.
3 Those are copies from the bank?
4 A. Yes, sir.
5 Q. And they show the date or the amount of the check, the date
6 it cleared, and the check number printed underneath each of
7 them. Is that correct?
8 A. Yes, sir.
9 Q. And the checks -- I don't know a way to reference it, Mr.
10 Moss. But after the last page of checks in Plaintiff's 17 from
11 Simmons First National Bank, there's another what I would call a
12 spreadsheet printout. The first line is Galster's Orthopedic
13 Labs?
14 A. Yes, sir.
15 THE COURT: Excuse me. Where is that?
16 MR. SMITH: Your Honor, that is the first page after
17 the bank statement copies of the checks from Simmons First
18 National Bank. It's approximately halfway through.
19 THE COURT: Is it called "page 1" at the bottom?
20 MR. SMITH: Yes, sir.
21 THE COURT: At the top, Galster's Orthopedic Labs/Mike
22 Galster?
23 MR. SMITH: Yes, sir.
24 THE COURT: I have it.
25 BY MR. SMITH:

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- 1 Q. Are those checks attached as part of this exhibit?
2 A. No, sir, they are not.
3 Q. But we have your word that you prepared this accurate
4 report at Mr. Galster's request. Is that right?
5 A. Yes, sir.
6 Q. Were checks -- pardon me -- were copies of these checks
7 unavailable?
8 A. No, sir. I have the checks out in the hall if you would
9 like them.
10 Q. Well, but you didn't make them part of your exhibit.
11 A. At the time I presented this to Mr. Woodson, I did not have
12 copies of those checks and had requested them from the Bank of
13 Star City.
14 Q. Since you didn't have them, you didn't make them part of
15 this exhibit?
16 A. Correct.
17 MR. SMITH: The next page, Your Honor, this is a page
18 of copies of checks from Simmons First National Bank.
19 BY MR. SMITH:
20 Q. Is there a similar spreadsheet detailing the numbers and
21 amounts and totals of these checks as part of the exhibit, Mr.
22 Moss?
23 A. No, sir.
24 Q. But their total is included on Plaintiff's 20?
25 A. Yes, sir. Those would be the three checks listed to

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1 Simmons for \$1,000, \$600, and \$420.
2 Q. And that totals approximately \$2,200.
3 A. \$2,020, yes.
4 Q. Okay. And the reason I'm asking, I'm trying to match that
5 up with the final line or the totals that you've written on
6 Plaintiff's 20. You said \$2,020. Okay. I'm sorry. I do see
7 it. I apologize. If you will go to the third page after that,
8 it is another spreadsheet printout, Galster's Orthopedic Labs,
9 Mike Galster, from Bank of Star City. Again, there are no
10 copies of the checks attached to verify that. Correct?
11 A. Yes, sir.
12 THE COURT: Is this the one with four entries?
13 MR. SMITH: Yes, Your Honor.
14 THE COURT: All in the year 2000?
15 MR. SMITH: Yes, Your Honor.
16 THE COURT: 3/19, 4/17, 5/17, and 6/18?
17 MR. SMITH: Yes.
18 THE COURT: Contract labor?
19 MR. SMITH: Yes, Your Honor.
20 BY MR. SMITH:
21 Q. And the next page is another spreadsheet printout with
22 checks from Bank of America?
23 A. Yes, sir.
24 Q. And there are four of those totaling \$3,450. They are also
25 reflected on Plaintiff's 20. Correct?

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1 A. Yes, sir.
2 Q. And they are labeled in a report prepared by you as
3 dividends?
4 A. Yes, sir.
5 Q. Not contract labor?
6 A. Yes, sir.
7 Q. Not wages?
8 A. Yes, sir.
9 Q. Not expenses?
10 A. Yes, sir.
11 Q. Do you prepare corporate tax returns, Mr. Moss?
12 A. Yes, sir, I do.
13 Q. And in your experience, when you are using the term "wages"
14 versus the term "dividends" in dealing with a tax return or with
15 the IRS, there's a difference, isn't there?
16 A. Yes, sir.
17 Q. There's a difference in tax treatment accordingly?
18 A. Yes, sir.
19 Q. Thank you for going through those with me. A few more
20 questions.
21 THE COURT: Let me just ask you. Tell me, what are
22 these dividends from? Is this from stock holdings? Why did you
23 call them dividends?
24 THE WITNESS: I considered some of these to be
25 personal expenditures by Mr. Galster and classified them on his
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1 S corporation return as a dividend to him.

2 THE COURT: So the checks are made out to Duda. Let's
3 see. The account is the general account. That's the
4 corporation account?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. You may continue.

7 BY MR. SMITH:

8 Q. Those were for the year 2000. Going back to Plaintiff's
9 17, the very front page, every last check you have listed in
10 that is assigned the category Blood Trail?

11 A. Yes, sir.

12 Q. And what is the name of Mr. Galster's book?

13 A. Blood Trail.

14 Q. That's right. None of them say "documentary"?

15 A. No, sir.

16 Q. Or Factor 8?

17 A. No, sir.

18 Q. Accordingly, on your spreadsheet that we just looked at
19 headed "Galster's Orthopedic Labs, Mike Galster, Bank of Star
20 City," the checks to Mr. Duda beginning in July of '99 through
21 December of '99, all say "contract labor"?

22 A. Yes, sir.

23 Q. And the checks from Simmons First National, which we have
24 copies of from statements, I've gone through them in the time
25 I've had. None of those written to Mr. Duda say "wages," do

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- 1 they?
2 A. No, sir.
3 Q. In fact, the only one with an expense memo in the bottom
4 left-hand corner is check No. 2817, the first check on the front
5 page on the right-hand column. Do you see it?
6 A. Yes, sir.
7 Q. It appears to me that the first word in that memo line is
8 probably "expenses." Do you agree?
9 A. I would agree it appears to be that.
10 Q. It's not extremely legible. I'll concede that. Of course,
11 we've established that your categorization of four of the checks
12 from Bank of America was dividends. You've attached copies of
13 those checks. Correct?
14 A. Yes, sir.
15 Q. For the year, the tax year 2000, you prepared a W-2 for Mr.
16 Duda. Do you prepare W-2s for all of the company's employees?
17 A. Yes, sir.
18 Q. Do you prepare the tax return for the business?
19 A. Yes, sir.
20 Q. Is it filed as Galster's Orthopedic Labs, Inc.?
21 A. Yes, sir.
22 Q. Do you know the primary -- as a CPA, have you assisted Mr.
23 Galster in the formation of any of his business entities,
24 incorporating him or anything like that?
25 A. No, sir.

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- 1 Q. Are you familiar with those entities?
2 A. Yes, sir.
3 Q. What's the primary purpose of the business known as
4 Galster's Orthopedic Labs, Inc.?
5 A. To operate a medical laboratory specializing in prosthetics
6 and orthotics.
7 Q. And that's his primary business. Is that right?
8 A. Yes, sir.
9 Q. In the year 2000, that business, which its primary function
10 is to operate and run a lab for the manufacture of orthotics,
11 paid Kelly Duda \$8,000 in wages?
12 A. Yes, sir.
13 Q. And it withheld social security and Medicare tax, et
14 cetera. Is that right?
15 A. Yes, sir.
16 Q. As an accountant, do you ever prepare 1099 forms?
17 A. Yes, sir.
18 Q. And are those used for independent contractors?
19 A. Yes, sir.
20 Q. Does the list of exhibits that we've been going over
21 contain any 1099 forms for Kelly Duda from Mr. Galster?
22 A. No, sir.
23 Q. Are you familiar with whether or not Mr. Galster does any
24 work via his orthotics lab for the State of Arkansas?
25 A. Yes, sir, I am aware of that.

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- 1 Q. And does he do that now?
2 A. I am not sure if he does that now. I do know that he has
3 done work for the State of Arkansas in the past.
4 Q. Do you know what branches of state government or what
5 departments, rather, he has done that work for?
6 A. I believe that would be the Department of Human Services.
7 He has also done some work for the Arkansas Department of
8 Corrections.
9 Q. Do you have any idea when he did the work for the
10 Department of Corrections?
11 A. I am aware that when I began my association in 1982 with
12 Mr. Galster he was doing work for the Department of Corrections
13 at that time, continued that for several years, and since that
14 time, to the best of my knowledge, has an on-again, off-again
15 relationship with the Department of Corrections.
16 Q. Do you know if it's been on again since the publication of
17 his book?
18 A. I'm not aware of it being on again.
19 Q. Did you prepare any W-2s for Kelly Duda for any other year
20 than the year 2000?
21 A. No, sir.
22 Q. Do you give Mr. Galster, as part of your job as his CPA,
23 tax advice on an ongoing basis and not just when you prepare his
24 returns?
25 A. Yes, sir.

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- 1 Q. How often do you update his books in your office?
2 A. Once a year.
3 Q. And do you do that in December?
4 A. I do it after the close of his fiscal year, in December. I
5 do it in January, February, and March.
6 Q. His fiscal year is running parallel to the calendar year
7 then?
8 A. Yes, sir.
9 Q. So from January of 2004 through the end of 2004, unless he
10 tells you something, you are not going to be looking at his
11 books?
12 A. I will be preparing his payroll during that year, during
13 this year. Unless he asks me, no, I would not be looking at the
14 expenditures on a monthly basis, no.
15 Q. Do you prepare 1099 forms for independent contractors for
16 any of your clients?
17 A. Yes, I do.
18 Q. What's the purpose of a 1099 form?
19 A. A 1099 form is to report to the government amounts paid to
20 individuals that are not employees but are considered to be
21 contract labor.
22 Q. Does the IRS require that those forms be made and supplied
23 to employees as well as to the Internal Revenue Service?
24 A. Yes, they do.
25 Q. Is there any penalty associated -- from the IRS associated
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- 1 with not preparing 1099s for contract laborers?
2 A. There's a \$50 per 1099 form penalty.
3 Q. That's pretty good for the IRS, isn't it?
4 A. You can say that, yes.
5 Q. That's one of their lighter penalties?
6 A. Yes, sir.
7 Q. Do you know whether or not Mr. Duda kept regular hours
8 while he was associated with Mr. Galster?
9 A. During the year 2000, when Mr. Duda was living in Mr.
10 Galster's residence behind the office, yes, he did. Prior to
11 that time, I'm not aware of him keeping regular hours.
12 Q. Do you know why he would have kept regular hours in the
13 year 2000 and not at other times?
14 A. Because he was on site, and you could tell what period of
15 time he was working.
16 Q. So you are saying there was more accountability for him.
17 Is that right?
18 A. Yes, sir.
19 Q. What was he doing in the year 2000?
20 A. My understanding is they were trying to do a final edit of
21 the documentary during the year 2000.
22 Q. And a few questions about the film itself. And I
23 understand your involvement was limited. Did Mr. Galster go out
24 with Mr. Duda on shoots?
25 A. Yes, sir.

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- 1 Q. Do you have any idea how often?
2 A. No, sir.
3 Q. Do you have any idea whether he went to every shoot?
4 A. I know that he did not go to every shoot.
5 Q. When Mr. Duda was working, throughout the term of their
6 association, was he always using Mr. Galster's equipment?
7 A. Not being there, I do not know that for a certainty. But I
8 have seen Mr. Duda with Mr. Galster's equipment.
9 Q. Do you know -- are you familiar with the term "Cheetah hard
10 drive"?
11 A. Yes, sir.
12 Q. I'm referring to two specific Cheetah hard drives connected
13 with this project. Are you familiar with them?
14 A. Yes, sir, I am.
15 Q. Do you know if those Cheetah hard drives were delivered
16 with the computers?
17 A. I know that they were not.
18 Q. And you know that because you looked in the computers?
19 A. I know I have seen a separate billing invoice for the
20 Cheetah hard drives separate from the computers.
21 Q. And you saw that as part of your duties for Mr. Galster.
22 Right?
23 A. I saw that as trying to search for that document the last
24 two weeks.
25 Q. Have you been doing a lot of searching for documents the

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- 1 last couple of weeks?
2 A. Yes, sir, I have.
3 Q. As Mr. Galster's accountant, do you have any document with
4 you reflecting that Mr. Galster and Concrete Films are two
5 separate entities?
6 A. I'm not understanding that they are separate entities. I
7 do know of two documents that we've located last week that have
8 Mr. Galster and Concrete Films related.
9 Q. Okay. The nature of my question was, of course we know Mr.
10 Galster is a natural person in legal terms and that a
11 corporation, as you understand it, I'm sure, is a legal entity
12 of itself?
13 A. Yes, sir.
14 Q. So with that explanation of my question, let me ask it
15 again just to be sure that I've asked it and gotten an answer
16 from you. Do you have any documents with you today that show
17 that Mr. Galster and Concrete Films are two distinct separate
18 legally cognizable entities?
19 A. No, sir, I don't.
20 Q. Are you familiar with Labuena Vida, Inc.?
21 A. Yes, sir, I am.
22 Q. What's the primary purpose of that corporation? Do you
23 know?
24 A. Purchase real estate for investment.
25 Q. Do you know if Mr. Galster has any shareholders in that
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- 1 corporation besides himself?
- 2 A. I'm aware of no other shareholders.
- 3 Q. Do you know who the board members are?
- 4 A. Mr. Galster is a board member. That's the only one I'm
- 5 aware of. Mr. Mike Leurs may be a board member, but I'm not
- 6 sure about that.
- 7 Q. Would you help me out? How do you spell that last name?
- 8 A. On Leurs?
- 9 Q. Yes, sir.
- 10 A. L-e-u-r-s or L-u-e-r-s.
- 11 Q. I think Mr. Galster knows. Then do you keep the books for
- 12 this corporation, Labuena?
- 13 A. I have records for the corporation, but I do not keep a
- 14 formal set of books, no.
- 15 Q. Do your records tell you whether or not they have actually
- 16 acquired and sold any pieces of real estate?
- 17 A. Yes, sir, they do.
- 18 Q. And have they done so in the last 12 months?
- 19 A. The last piece of property I'm aware of them purchasing was
- 20 an apartment building complex across from Galster's Orthotic
- 21 Labs. And I'm unsure as to whether it's been the last 12
- 22 months, but it has been within the last 24 months.
- 23 Q. The last 24 months?
- 24 A. Yes, sir.
- 25 Q. Do you have any idea how long Labuena Vida has been in

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- 1 existence?
2 A. To the best of my memory, it was incorporated in 1999.
3 Q. You testified that it's the business of Galster Orthopedics
4 to make orthotics and provide related services. Right?
5 A. That is stated in their charter, yes.
6 Q. It's not the primary purpose to make films?
7 A. No.
8 Q. To take footage?
9 A. No.
10 Q. To buy filmmaking equipment?
11 A. No.
12 Q. To do postproduction? And by postproduction, I mean
13 editing, rendering, things like that. That's not one of their
14 primary purposes either, is it?
15 A. No, sir.
16 Q. And the same would hold true for the primary purposes of
17 Labuena Vida. None of those things I just mentioned are part of
18 their stated primary purposes either, are they?
19 A. Not to my knowledge.
20 Q. I'm sorry. I understand that you don't have a copy of the
21 charter with you. Do you know whether Mr. Duda helped contact
22 the technical people that helped him with this film? Is he the
23 one who went out and found them, or was it Mr. Galster?
24 A. My understanding is that these were the people Mr. Duda
25 requested.

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1 Q. Do you know if Mr. Duda would have had the power while he
2 was still working with Mr. Galster to fire any of these people?
3 A. I do not believe that after they came on board that he had
4 the power to fire them, no.

5 THE COURT: You are talking about the two people?

6 THE WITNESS: Chris Case and Daniel Broening.

7 BY MR. SMITH:

8 Q. Did Kelly -- pardon me -- Mr. Duda help locate the
9 equipment or some of the equipment, any of the equipment that
10 Mr. Galster claimed to have purchased?

11 A. I am not aware of Mr. Duda locating the equipment.

12 Q. Do you know if he negotiated the price on any pieces of
13 equipment?

14 A. No, sir, I do not know that.

15 Q. And my questions are a little vague. By "equipment," I
16 think you understand that I'm talking about equipment that would
17 have been used in making the film. Is that your understanding?

18 A. Yes, sir.

19 Q. Okay. So it's your testimony that Mr. Galster located,
20 negotiated, and purchased all of the equipment?

21 A. I have seen invoices that were paid through Mr. Galster's
22 account for film and editing equipment, yes.

23 Q. But those invoices don't indicate who located the equipment
24 or negotiated the price, do they?

25 A. No, sir.

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- 1 Q. Did you understand at one point there was a possibility
2 that Mr. Galster would want to make this novel into a movie?
3 A. Yes, sir, I understand that.
4 Q. Has anything come of that?
5 A. I am aware that Mr. Galster does have an agent located in
6 Hollywood. But as to the exact status of the movie rights to
7 the novel, I'm unsure of it at this time.
8 Q. That reminded me of something we covered yesterday. There
9 are several checks in the list of exhibits that have come in
10 through you to a publisher. Did you have any direct contact
11 with the publisher?
12 A. No, sir, I did not.
13 Q. But it's your understanding that Mr. Galster was trying to
14 negotiate a partnership for the publishing of the novel? Is
15 that right?
16 A. Yes, sir. I do have an awareness of that.
17 Q. Do you know whether Mr. Galster ever derived any income
18 from having sold copies of the book?
19 A. Mr. Galster made some minimal sales outside or inside his
20 office that generated revenue. But as far as Mr. Galster
21 receiving any monies from the publisher, no, he has not.
22 Q. Were you privy to any of the terms of the partnership they
23 were trying to negotiate?
24 A. After the fact, yes.
25 Q. Just a moment, Mr. Moss. Did you assist Mr. Moss when --

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- 1 pardon me -- Mr. Galster when he was audited by the IRS sometime
2 while all of the filmmaking was going on?
3 A. Yes, sir, I did.
4 Q. That's because you prepare his tax returns?
5 A. Yes, sir, I do.
6 Q. Is that audit concluded?
7 A. No, sir.
8 Q. In fact, I don't remember exactly where it is. One of the
9 checks copied in your exhibits is written to the IRS. Do you
10 remember seeing that in there?
11 A. Yes, sir, I do.
12 Q. Was it written as a result of the audit, or was it for
13 ongoing tax liability at the time?
14 A. It was not written as a result of the audit. It would have
15 been for an ongoing tax liability.
16 Q. Do you know whether there are any existing unsold copies of
17 the book Blood Trail?
18 A. Yes, sir, I do.
19 Q. Are there just a few in Mr. Galster's business, or is there
20 a large quantity of them?
21 A. There is a large quantity of them.
22 Q. Where are they? Do you know?
23 A. The last place I saw the large quantity of books would be
24 in the warehouse of Bobo's Feed Store in Pine Bluff, Arkansas.
25 Q. Did they ever house any in Mississippi?

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- 1 A. I'm aware from communication from Dr. Knutson that he has a
2 large quantity warehoused in Mississippi.
- 3 Q. Do you know Dr. Henderson?
- 4 A. No, sir, I do not.
- 5 Q. I merely ask -- I think you referred to him as "Bud"
6 yesterday. Do you remember that?
- 7 A. Yes, sir. That's how it is listed in some of the documents
8 I've seen lately.
- 9 Q. You stated you've never helped Mr. Galster form any
10 corporations. Is that right?
- 11 A. To the best of my memory, no.
- 12 Q. Do you do that as part of your job with other clients?
- 13 A. I have done that. But I primarily allow attorneys to do
14 that.
- 15 Q. After Mr. Galster's business was firebombed, I believe you
16 testified yesterday he rebuilt a larger business. Is that
17 correct?
- 18 A. Yes, sir, he did.
- 19 Q. And he did this while he was under audit. Is that right?
- 20 A. Yes, sir.
- 21 Q. And just a few more questions. The \$250 a month office
22 rent, did you ever see the checks or any records for payment of
23 that?
- 24 A. I do not remember seeing any separate \$250 checks to Mr.
25 Duda for office rent, no.

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- 1 Q. Based on your years of experience as a CPA, your experience
2 with Dr. Galster -- Mr. Galster's businesses, and your job
3 training, do you have any idea how much longer this audit may go
4 on?
5 A. Within the last two weeks, I signed an extension agreement
6 with the Internal Revenue Service to leave it open for another
7 18 months.
8 Q. At that point, how long had it been open already?
9 A. When I signed the agreement?
10 Q. Yes, sir.
11 A. We would be in the third or fourth year, to the best of my
12 memory.
13 Q. In your experience with businesses the size of Mr.
14 Galster's, is that an unusually long time for an audit to be
15 ongoing?
16 A. Yes, sir. But there's another reason why it's taken so
17 long.
18 Q. What time period does the audit cover?
19 A. It covers the years 1997, 1998, 1999.
20 Q. All three years there was either work on Blood Trail or the
21 documentary going on then. Is that right?
22 A. Yes, sir.
23 Q. Does the audit -- and I'm not trying to get into Mr.
24 Galster's private business. So let me make my question narrow.
25 Does the audit cover accounts or expenditures that would have

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- 1 been related to the writing, promotion of the book, and/or the
2 documentary?
3 A. Yes, sir, it does.
4 Q. You write the payroll checks for Mr. Galster's orthotics
5 business. Is that right?
6 A. I began doing that in the year 2002.
7 Q. And you are still doing it?
8 A. Yes, sir.
9 Q. Are his employees paid weekly?
10 A. They are paid biweekly.
11 Q. All right. And how many employees does he have right now?
12 A. Approximately 12.
13 Q. Once you determine what their wages are and determine the
14 withholding, does the amount of their check, their take-home
15 pay, usually come out to a round number, as, for example, \$100
16 and no cents or \$500 and no cents?
17 A. No, sir.
18 Q. That would be a little unusual?
19 A. Yes, sir.
20 Q. Is it Mr. Galster's practice to pay these employees of the
21 clinic in lump sums: 500, a thousand, 1,500?
22 A. No, sir.
23 Q. Are they, in fact, paid a salary or an hourly wage?
24 A. Both.
25 Q. I appreciate it, Mr. Moss.

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1 THE COURT: Redirect?
2 REDIRECT EXAMINATION
3 BY MR. WOODSON:
4 Q. Mr. Moss, when was the book Blood Trail completed?
5 A. My memory is that publication was in mid to late 1998.
6 August or September is sticking in my mind.
7 Q. Do you know whether or not the draft of the book may have
8 been completed prior to that or how long prior to that?
9 A. I do know that drafts were prepared prior to publication.
10 Q. How long prior to publication?
11 A. To the best of my memory, beginning in early 1998 there was
12 edits and redrafts being done of the book.
13 Q. With respect to your testimony today, in particular
14 regarding Plaintiff's 17, 18, 19, and 20, what time frame do
15 those exhibits cover?
16 A. The first one covers the period March of '98 through March
17 of '99. Is that your question?
18 Q. Yes.
19 A. The second one would be for the year 2000. And the other
20 amounts were for years 1999, 2000, and \$137 in 2001.
21 Q. So generally speaking, the exhibits run from March of '98
22 through 2001?
23 A. Yes, sir.
24 Q. And the book was completed approximately in early '98 and
25 published later in '98?

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- 1 A. Yes, sir.
- 2 Q. Mr. Smith asked you about the entries and the payment to
3 Mr. Duda and the fact that they were designated for Blood Trail.
4 Do you recall that?
- 5 A. Yes, sir.
- 6 Q. At this point in time, was Blood Trail a reference to the
7 book or to the film?
- 8 A. At that point in time, it was a reference to all activities
9 surrounding either the book or the documentary that Mr. Galster
10 was filming.
- 11 Q. Okay. So any payment to Mr. Duda after the book was
12 published in 1998, even if it was referenced as Blood Trail,
13 would have been in regards to his work on the film. Is that
14 correct?
- 15 A. Yes, sir.
- 16 Q. Mr. Smith asked you several questions about the business of
17 Mr. Galster primarily being prosthetics. Do you recall that?
- 18 A. Yes, sir, I do.
- 19 Q. If we define a person's business not in terms of tax
20 liability or tax treatment, but if we define it in terms of time
21 and money and energy spent, would you agree with me that Mr.
22 Galster was in the business of making a documentary film?
- 23 A. During the years 1998 and 1999, I would agree with that.
- 24 Q. Has the writing of the book Blood Trail been a financial
25 benefit to Mr. Galster?

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1 A. No, sir.

2 Q. Has the making of the documentary film Factor 8 been of
3 financial benefit to Mr. Galster?

4 A. No, sir.

5 Q. In fact, it's true, isn't it, that Mr. Galster has spent
6 quite a bit of money on the film?

7 A. Yes, sir.

8 Q. Mr. Smith asked you about Mr. Duda spending time in Mr.
9 Galster's home in Pine Bluff. And you stated that more
10 accountability was required of Mr. Duda. Do you recall that?

11 A. Yes, sir.

12 Q. Would you explain a little bit further what you meant by
13 accountability of Mr. Duda?

14 A. By Mr. Duda being in Pine Bluff during the year 2000,
15 since, to my knowledge, most of the interviewing and shooting of
16 the documentary had taken place, the editing equipment was in
17 Mr. Galster's residence, and there was opportunity to make sure
18 that he was working on the editing process in a timely fashion.

19 Q. Mr. Smith asked you about whether or not you were privy to
20 any of the partnership negotiations between Mr. Galster and Mr.
21 Duda. Do you recall that?

22 A. I do not recall that question.

23 Q. As I understood your testimony, it seemed like you stated
24 that you were privy to some of the facts after the negotiations
25 had taken place with regards to their relationship.

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1 A. My memory of Mr. Smith's question was that that dealt with
2 his dealings with Jameson Publishing House, not Mr. Duda.

3 Q. Maybe I misunderstood you then. Let me sort of start over.
4 Were you ever knowledgeable of any of the negotiations between
5 Mr. Galster and Mr. Duda regarding who owned the film or who was
6 the author of the film?

7 A. Not when they were going on, just after the fact, after I
8 discussed --

9 MR. SMITH: Objection, Your Honor. That would be
10 hearsay. And if I understood the question, he is asking about
11 negotiations regarding a film. That goes outside the scope of
12 my cross, as extensive as it was.

13 THE COURT: The objection will be overruled. However,
14 he said he is not familiar with the negotiations at the time
15 they occurred.

16 BY MR. WOODSON:

17 Q. As a follow-up to that, what did you learn after that
18 occurred?

19 A. I learned from discussions with Mr. Galster that he and Mr.
20 Duda had entered into an agreement where Mr. Duda would receive
21 30 percent of any profit generated by the documentary.

22 Q. Was it your understanding that that 30 percent was
23 remuneration for Mr. Duda's services on the film?

24 A. It was my understanding that it would be for sweat equity
25 put into the production of the film in addition to the amounts

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1 that Mr. Duda had already been paid.

2 Q. Okay. You discussed the IRS audit with Mr. Smith. Has the
3 IRS ever alleged any wrongdoing against Mr. Galster?

4 A. No, sir.

5 Q. So the IRS audit is just an issue of tax liability. Is
6 that correct?

7 A. The audit on Mr. Galster started primarily with respect to
8 his involvement in Sugardine Pharmaceuticals, an extensive
9 payment which was received by Sugardine. Mr. Galster
10 participated in that payment. And there are questions as to
11 certain overseas tax treaties with Japan and deductions that
12 were taken on that return that precipitated the audit of Mr.
13 Galster for 1997, 1998, and 1999.

14 Q. But they never alleged he did anything illegal or
15 fraudulent?

16 A. No, sir.

17 Q. That's all I have.

18 THE COURT: All right, sir. You may stand down.

19 MR. SMITH: Just a very brief recross.

20 THE COURT: Please. Go ahead, Mr. Smith.

21 RECCROSS-EXAMINATION

22 BY MR. SMITH:

23 Q. This will be short, Mr. Moss. You testified on redirect
24 with Mr. Woodson that the book was completed and began to be
25 published in '98. Is that correct?

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- 1 A. Yes, sir.
- 2 Q. After that publication, Mr. Galster worked actively to
3 promote the book. Right?
- 4 A. Yes, sir.
- 5 Q. He spent money to do that?
- 6 A. Yes, sir.
- 7 Q. And Mr. Duda did some work trying to help him promote that
8 book and sell it, didn't he?
- 9 A. The activities I saw Mr. Duda performing were with respect
10 to the filming of the documentary.
- 11 Q. Is that a "no"?
- 12 A. I have seen some e-mails where Mr. Duda had direct
13 correspondence with the publisher. But this has been within the
14 last two weeks that I've seen those e-mails.
- 15 Q. But you have that knowledge now?
- 16 A. Yes.
- 17 Q. So let me ask the question again. Mr. Duda -- slightly
18 different. Mr. Duda did things or acted in ways to try and help
19 Mr. Galster sell the book Blood Trail.
- 20 A. No, sir. I do not believe that. The e-mails I saw, he was
21 requesting information from the publisher with amounts Mr. Duda
22 thought were due to Mr. Galster. I'm aware of Mr. Duda -- I'm
23 not aware of him taking any part in marketing the book.
- 24 Q. And contact with the publisher wouldn't have anything to do
25 with trying to sell the book?

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1 A. The e-mails I've seen --

2 Q. No, no, no. I'm sorry to interrupt you. If you'll give me
3 a "yes" or "no" answer to that question first, I'll listen to
4 any explanation you have. But I would like that.

5 MR. WOODSON: Objection, Your Honor. That calls for
6 speculation.

7 THE COURT: Just start over. Ask your question.

8 BY MR. SMITH:

9 Q. So what you are saying is the contact between Mr. Duda and
10 the publisher couldn't have anything to do with trying to
11 promote sales of the book?

12 A. Not in my opinion, no.

13 Q. Do you want to add anything to the answer? I didn't mean
14 to cut you off.

15 A. As I've said, the e-mails I've seen between Mr. Duda and
16 the publisher were Mr. Duda requesting payment from the
17 publisher on Mr. Galster's behalf.

18 Q. Do you remember seeing -- this is just a "yes" or "no"
19 question. Do you remember seeing an e-mail involved in this
20 project to or from Matt Drudge?

21 A. Yes, sir, I have.

22 Q. And it was Mr. Duda that had made contact with Mr. Matt
23 Drudge. Is that right?

24 A. The e-mail I saw was from Mr. Duda to Mr. Drudge, yes.

25 Q. And I'm not sure that I have seen this e-mail. But it

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- 1 involved the book Blood Trail, didn't it?
2 A. My memory of it is that it involved a story that is about
3 to break soon.
4 Q. On redirect with Mr. Woodson, you testified that Mr.
5 Galster has not realized any profit from the book or the film
6 he's done. Right?
7 A. Yes, sir. That is correct.
8 Q. Based on your long acquaintance with him, is it your
9 understanding he would like to make a profit on this if
10 possible?
11 A. Yes, sir.
12 Q. Part of your job as Mr. Galster's accountant is to help
13 protect his business interests. Is that right?
14 A. Part of my job is to represent him with respect to the
15 Internal Revenue Service.
16 Q. And I'm not even going back to the IRS, Mr. Moss. But you
17 give him advice that will help him conduct his businesses
18 without IRS entanglement?
19 A. Yes, sir.
20 Q. You try to help him avoid other potential liabilities as
21 well?
22 A. Yes, sir.
23 Q. And if you are doing that, you are doing a good job.
24 That's the beauty of your profession. Did you ever advise him
25 to register his copyright to this film?

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1 A. No, sir. Wait a minute. Let me step back. Within the
2 last week, I advised him to register his copyright.
3 Q. Okay. Thank you for completing that answer.
4 MR. SMITH: Your Honor, may I approach the witness?
5 THE COURT: You may.
6 BY MR. SMITH:
7 Q. I have a copy of Plaintiff's 10. It's a note dated June
8 2nd of some year. Have you seen that before, Mr. Moss?
9 A. Yes, sir.
10 Q. And is that from Mr. Duda?
11 A. It appears to be from Mr. Duda, and I take it as being from
12 Mr. Duda.
13 Q. Does it appear also to be to Mr. Galster?
14 A. Yes, sir.
15 Q. Does it appear that there are some bills there that need to
16 be paid and that he's asking Mr. Galster to contact --
17 THE COURT: Instead of saying "it appears," let me in
18 on it. Read the exhibit so I'll know what you are talking
19 about.
20 BY MR. SMITH:
21 Q. Would you read the exhibit?
22 A. "Mike, we owe CKs \$31 for management/agent guide; J.
23 Schock, \$100, phone times two months; ATT, \$57, past due phone
24 bills for 877 number. These ASAP. Please contact me about
25 this. Kelly."

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1 THE COURT: It's directed to whom?
2 THE WITNESS: It is headlined "Mike."
3 THE COURT: By the way, what was that exhibit number?
4 MR. SMITH: 10, Plaintiff's 10.
5 THE COURT: Plaintiff's 10.

6 BY MR. SMITH:

7 Q. I'm going to hand you what has been marked and introduced
8 as Plaintiff's 15. Is that the e-mail to Mr. Drudge?

9 A. Yes, sir.

10 Q. I would like to ask you to read the third paragraph, where
11 my thumb is, please.

12 A. "A new book is coming out in the next two weeks. Hundreds
13 of thousands of dollars are going to be spent in advertising and
14 promotions across the country, including many major newspapers.
15 This book is going to shed light on a Clinton scheme which
16 resulted in the deaths of tens of thousands of people in Canada,
17 the U.S., Italy, France, and several other countries."

18 Q. What's the date on that e-mail?

19 A. That would be August 22nd of 1998.

20 MR. SMITH: Your Honor, I'm handing the plaintiff --
21 pardon me -- Mr. Moss a copy of Plaintiff's 1.

22 BY MR. SMITH:

23 Q. Do you recognize it?

24 A. Yes, I do.

25 Q. Do you know who placed that ad?

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1 A. My understanding is Mr. Duda placed that ad.
2 Q. And that ad is to get the attention of inmates, doctors,
3 nurses, and guards involved in the Arkansas blood -- Arkansas
4 prison blood program in the eighties. Correct?
5 A. Correct.
6 Q. And are you familiar with -- the phone number on this is
7 1-877-BADBLOOD?
8 A. Yes, sir. I am aware of that.
9 Q. Do you know where that phone rang?
10 A. No, sir, I do not.
11 Q. Are you familiar with Second Chance Investigations?
12 A. Only through the documents I've seen with respect to this
13 matter.
14 Q. One last thing. You testified about sweat equity on
15 recross. If somebody comes to you, a CPA, and says that they
16 have \$30,000 worth of equity in their home, that means that they
17 have partial ownership of that home. Is that right?
18 A. Yes, sir.
19 Q. Thank you, Mr. Moss.
20 THE COURT: Anything else?
21 MR. WOODSON: No, sir.
22 THE COURT: You may stand down, sir. Call your next
23 witness.
24 MR. WOODSON: Joella Smith.
25 JOELLA SMITH, PLAINTIFF WITNESS, DULY SWORN
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Smith - Direct
DIRECT EXAMINATION

- 1
2 BY MR. WOODSON:
3 Q. Please state your name for the record.
4 A. Joella Smith.
5 Q. Where do you live?
6 A. Pine Bluff, 1403 Boston.
7 Q. Where do you work?
8 A. Galster's Orthopedic Lab.
9 Q. How long have you worked there?
10 A. Four years.
11 Q. What is your position there?
12 A. Accounts payable.
13 Q. Have you been accounts payable for all four years?
14 A. Yes.
15 Q. Describe briefly for the Court what your duties include as
16 the accounts payable person at Galster's Orthopedic.
17 A. I am in charge of paying the bills for our vendors.
18 Q. If you would, I've set a couple of exhibits before you.
19 The first one is marked Plaintiff's 30. Would you identify for
20 the Court what that -- what those documents are?
21 A. These are the health instruments for our employees.
22 Q. All right. And what time periods do these documents cover?
23 A. They are for the period of part of 2000 and 2001.
24 Q. Could you give us some months on that?
25 A. Okay. The first one is coverage for January 1st through
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- 1 February 1st of 2001.
2 Q. And then what is the ending month for this series of
3 documents?
4 A. These would end with February 2001.
5 THE COURT: So we are just talking about two months,
6 January 1, 2001, to February 2001?
7 THE WITNESS: One month.
8 BY MR. WOODSON:
9 Q. And do these documents reflect that Galster's Orthopedic
10 paid insurance benefits on Mr. Kelly Duda?
11 A. Yes.
12 Q. And I understand your testimony correctly, that that was
13 for a one-month period?
14 A. This particular one is for one month. But we started back
15 in April of 2000 paying insurance premiums for Kelly.
16 Q. Did you pay insurance premiums for Mr. Duda from April of
17 2000 up until February of 2001?
18 A. We did up until November of 2000.
19 THE COURT: This is 2001, isn't it?
20 BY MR. WOODSON:
21 Q. The top portion of Plaintiff's 30 is just for 2001?
22 A. Uh-huh.
23 Q. The next stapled set below that is from December of 2000 to
24 January of 2001?
25 A. Yes.

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- 1 Q. Then the third one backs up to October of 2000?
2 A. Yes.
3 Q. Then the next stapled set identifies November of 2000?
4 A. Yes.
5 Q. The next one is December of 2001. Is that correct?
6 A. Uh-huh.
7 Q. So it's your testimony, all total, I think -- let's see.
8 I'm third from the bottom now. There's one indicated for June
9 of 2000?
10 THE COURT: Does your Exhibit 31 summarize these or
11 not?
12 MR. WOODSON: No, Your Honor. That's a different
13 issue.
14 BY MR. WOODSON:
15 Q. I don't want to belabor the point. Have you had a chance
16 to review these documents?
17 A. Yes.
18 Q. Did you pull these documents from your records at the
19 office?
20 A. Yes.
21 Q. Is it your testimony that it goes from April of 2000 to
22 February of 2001?
23 A. Yes.
24 Q. For that time period, insurance benefits were paid for Mr.
25 Duda?

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1 A. Yes.

2 Q. Are these records kept in the regular course of business?

3 A. Yes.

4 Q. And are they identical and authentic copies of what you
5 have at the office?

6 A. Yes, they are.

7 MR. WOODSON: We would move that Plaintiff's 30 be
8 entered, Your Honor.

9 THE COURT: Received.

10 (Plaintiff Exhibit 30 received in evidence.)

11 BY MR. WOODSON:

12 Q. Now, if you would, briefly describe to the Court what
13 Plaintiff's 31 is, the document on the bottom, what you have in
14 front of you.

15 A. Okay. This is a check stub that was written out to Kelly.
16 And according to our check register for that date and that check
17 number, it was written out to him for gas. The check amount is
18 broken off, but I think it was for \$420 -- \$250. I'm sorry.

19 Q. If you would, I'm looking at the top page.

20 A. Okay. I'm looking at that.

21 Q. What does this document identify, the top page of
22 Plaintiff's 31?

23 A. Okay. These are checks that are written to Kelly. Some do
24 not have a memo. But the ones that did have a memo attached to
25 it, there was explanation over on the side. Because I did not

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- 1 have complete records for that period of time, these are the
2 checks that I did find.
- 3 Q. At the very top of Plaintiff's 31, the first page, it's
4 June 14th, 1999?
- 5 A. Uh-huh.
- 6 Q. There's a payment for \$420. Is that correct?
- 7 A. Yes.
- 8 Q. Going down to the bottom of that list, February 5th, 2001,
9 there's a payment for \$37?
- 10 A. Yes.
- 11 Q. Then the next portion of the document, April 22nd, 2000, a
12 payment for 639.57?
- 13 A. Yes.
- 14 Q. Then at the very bottom of that list, it looks like
15 September 9, 2000, was the ending date of that pay period, for
16 another \$639?
- 17 A. Correct.
- 18 Q. These were payments made to Mr. Duda through Galster's
19 Orthopedic. Is that correct?
- 20 A. Yes.
- 21 Q. Where did you get the information that is summarized here
22 on Plaintiff's 31?
- 23 A. On this, at the time that Mr. Duda was on payroll, I was
24 the person doing payroll.
- 25 Q. What is your understanding of what his -- why was he on
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- 1 payroll?
2 A. Mr. Duda came on to assist Mike Galster in doing a
3 documentary. At that time, he was in need of a place to stay
4 and funds. Therefore, he was put on payroll, put on the health
5 insurance so that he and his daughter could have insurance.
6 Q. Was he actually working in the lab?
7 A. No.
8 Q. He was working on the film. Correct?
9 A. Strictly on the film.
10 Q. In addition to having insurance benefits, in addition to
11 being put on the payroll, did Mr. Duda receive any other
12 benefits from Mr. Galster?
13 A. There were checks written to Kelly for -- he brought in gas
14 receipts. He was paid for that, reimbursed for that. And there
15 were other checks that were written to him during that period.
16 Q. Did he live in Mr. Galster's house?
17 A. Yes, he did.
18 Q. Did Mr. Galster pay those utilities?
19 A. Yes.
20 Q. How do you know that?
21 A. Because I paid the utilities for the company and for the
22 house.
23 Q. Did Mr. Duda receive the use or receive the use of a cell
24 phone?
25 A. Yes.

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1 Q. Who paid for that?

2 A. Mike Galster.

3 Q. How do you know that?

4 A. Because Mr. Duda called the facility looking for Mr.
5 Galster, wanting to know why his phone was being cut off, and
6 that he wanted the account number, and he wanted me to give it
7 to him. I told him that I did not have it.

8 MR. WOODSON: Pass the witness.

9 CROSS-EXAMINATION

10 BY MR. SMITH:

11 Q. Good morning, Ms. Smith.

12 A. Good morning.

13 Q. You testified on direct that you had a chance to go through
14 all these documents that you just --

15 A. Yes.

16 Q. Good. Because I haven't. Let me ask you first, having
17 gone through them, other than I believe the first month or two
18 of 2001, was there any month outside of the calendar year 2000
19 that Mr. Duda had benefits of any kind? By benefits, I mean
20 health insurance, payroll benefits, through Mr. Galster's
21 orthotics lab.

22 A. Health insurance and payroll began in the last of April.
23 First pay period was April 22nd through May 7th. His first
24 paycheck was on May 11th.

25 THE COURT: That's the year 2000?

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1 THE WITNESS: 2000.

2 BY MR. SMITH:

3 Q. So the only months outside the year 2000 that Mr. Duda was
4 on the orthotics lab payroll was January and February? Is that
5 right?

6 THE COURT: 2001?

7 THE WITNESS: He was on payroll. And he received his
8 last check on September the 9th, 2000.

9 BY MR. SMITH:

10 Q. And he continued to be insured through the business the
11 remainder of 2000, though?

12 A. He was insured up until November 1st, 2000.

13 Q. And I apologize for asking that. I had understood that
14 some of his insurance benefits had carried on into 2001.

15 A. He appeared on the policy. And there is, on this first
16 page, it shows where we discontinued his coverage effective
17 November the 1st.

18 Q. Of 2000?

19 A. Of 2000.

20 Q. Okay. I'm sorry. Your testimony was clear, but I was
21 trying to go through the records at the same time. Who is Donna
22 Weaver?

23 A. Donna Weaver is an office manager.

24 Q. You were doing payroll in the year 2000. Is that correct?

25 A. During that period, yes.

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- 1 Q. Your position is different now. What is it?
2 A. Accounts payable.
3 Q. Do you keep regular hours as part of your job?
4 A. Yes.
5 Q. What time are you supposed to be in the office?
6 A. Eight to five.
7 Q. Do you get an hour for lunch?
8 A. Yes.
9 Q. Do you get to take it most of the time?
10 A. Yes.
11 Q. That's Monday through Friday. Is that right?
12 A. Exactly.
13 Q. Do you ever have to work late?
14 A. No.
15 Q. What else -- let me just ask. Was your office, where you
16 do your work at the clinic, where you could see Mr. Duda working
17 or not working?
18 A. No. His work was at the house behind the facility.
19 Q. Did you ever see him in the clinic?
20 A. Yes. He did come in.
21 Q. I believe you said he would come in, for one thing, to
22 bring in receipts?
23 A. Uh-huh, yes.
24 Q. Do you have any of those receipts with you today?
25 A. No.

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- 1 Q. Do you know whether the business even kept those?
2 A. More than likely, we did, but I just don't have them.
3 Q. Were you ever working accounts payable during a time that
4 he was continuing to bring in receipts?
5 A. The last receipt I received from Mr. Duda was the one for
6 \$37. And that was reimbursement for gas for him moving.
7 Q. Okay. So I take it from that -- I'm just trying to find
8 out if you had moved into accounts payable while Mr. Duda was
9 still bringing in receipts for reimbursement. Had you?
10 A. I was accounts payable during that time, and I was doing
11 the payroll during that time.
12 Q. I'm sorry. I thought they were two distinct positions,
13 that you had moved from one set of responsibilities.
14 A. No.
15 Q. I'm going to ask you to find in your records that you
16 brought with you that Mr. Woodson spoke with you about -- well,
17 Plaintiff's 31. The top line is "payments made to Kelly Duda."
18 A. Okay.
19 Q. Would you go with me and count the number of checks under
20 the column "pay period." I count 10.
21 A. Yes.
22 Q. I have a pretty bad astigmatism, and I don't always get
23 those things right. Each of those checks was for \$639.57?
24 A. Correct.
25 Q. And that would come to a total of just under \$6,400. Is

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1 that correct?

2 A. I didn't add them.

3 THE COURT: 6,395.70.

4 THE WITNESS: That would be right, \$6,395.70.

5 MR. SMITH: I appreciate it, Ms. Smith. That's all I
6 have.

7 THE COURT: Anything else?

8 MR. WOODSON: I want to offer Plaintiff's 31.

9 THE COURT: Received.

10 (Plaintiff Exhibit 31 received in evidence.)

11 MR. WOODSON: No questions.

12 THE COURT: You may stand down. We'll have a
13 15-minute break. Court will be in recess.

14 (Recess from 10:40 a.m. until 11:02 a.m.)

15 THE COURT: Before we resume, the Court has a little
16 concern. This matter is dragging on a lot longer than I
17 anticipated. My law clerk was advised by counsel for the
18 defendant that the defendant has left the jurisdiction, gone out
19 to Utah. Is that correct?

20 MR. BOWDEN: Your Honor, I believe that to be correct.
21 I have no absolute knowledge of that. But I know that he had a
22 flight. I know that he had -- I know that he had -- it was one
23 of those flights where you couldn't get a refund and all this.
24 I haven't talked to him this morning. When I last spoke with
25 him, into getting a later flight later on today, and apparently

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1 that didn't happen. So I would assume, based on that
2 representation, that he is, in fact, in the jurisdiction of Utah
3 at the present time.

4 THE COURT: Where was he when you talked to him?

5 MR. BOWDEN: He was in Little Rock when I last talked
6 to him, last night about 7 o'clock.

7 THE COURT: Well, I just want to be reassured that he
8 doesn't do anything that would tend to moot the outcome of this
9 case, whatever it might be.

10 MR. BOWDEN: Your Honor, my understanding is that on
11 December 29th -- no one has ever asked this question before.
12 But on December 29th, the film was made available to the folks
13 at the Sundance (sic) Film Festival. They have not been named
14 as correspondents. And I do not think in Utah they would be
15 bound by a decision of this Court.

16 THE COURT: The defendant will be bound by the
17 judgments of this Court. If that film, as he claims it is his,
18 and if it's in anyone else's hands, it is because he put it
19 there. So he would have authority I think to get it back. And
20 I want to be reassured that he understands that that film is not
21 to be produced or shown pending the outcome of this proceeding.
22 In fact, do you know how to get in touch with him right now?

23 MR. BOWDEN: I have his cell phone number, Your Honor.
24 Whether I'm able to get him right at this moment or not, I do
25 not know. Certainly, if he is still in the air, I would not be

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1 able to get him.

2 THE COURT: Did he tell you where he is staying out
3 there?

4 MR. BOWDEN: No. He did not tell me that, Your Honor.
5 I don't know that he has a particular place yet to stay. Your
6 Honor, I would advise the Court that I did advise several days
7 ago that this was coming up. I did advise the clerk yesterday
8 afternoon that he was going to have to leave.

9 THE COURT: He was here to start with.

10 MR. BOWDEN: He was here to start the proceedings, and
11 we figured that it would be finished yesterday. I did advise
12 the Court about those facts.

13 THE COURT: Well, I think --

14 MR. BOWDEN: Your Honor, I'm sorry to interrupt. I'm
15 reasonably certain that if the Court orders it, that he can get
16 Sundance (sic) to withdraw the film, although that would be of
17 great harm to him.

18 THE COURT: Well, I'm not resolving this until I've
19 concluded this hearing. I don't want anything to happen in the
20 meantime that would moot the outcome of this hearing.

21 MR. BOWDEN: Your Honor, my understanding is the film
22 is scheduled to be shown on the 17th of January. I think that's
23 Saturday.

24 THE COURT: That's what was represented to the Court
25 also. I think originally it was mentioned to be the 14th.

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1 MR. BOWDEN: We did not make that representation. I
2 think that was plaintiff that said that.

3 THE COURT: I don't know who made the representation
4 to the Court as to when it was going to be done. What I'm going
5 to do is enter a temporary restraining order forthwith in which
6 the defendant is enjoined not to permit anyone to use that film,
7 not to release it or permit anyone to show it pending the
8 outcome of this hearing. Then the outcome of this hearing will
9 determine beyond that. But I want to be sure that we're not
10 wasting the Court's time and everyone else's. And I do get the
11 feeling this is dragging on. But I want to hear it out
12 completely.

13 So I am giving you that information right now. I'm making
14 that order from the bench, and a written one will be signed and
15 entered when we recess the next time. But I would like one of
16 you to get on the phone and tell him that a temporary
17 restraining order has been entered requiring him not to permit
18 the use of that film. I don't require him to withdraw it, if
19 he's turned it over, but to let those people know that it is not
20 to be used and not to be displayed or anyone else display it
21 pending the outcome of this hearing.

22 MR. BOWDEN: Your Honor, I'm not sure that he can not
23 withdraw it. I think that the way that he would have to -- the
24 way that he would have to go about that, if I understand this
25 process correctly, is to withdraw it, in which case, Your Honor,
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1 he would have been prejudiced without us having completed the
2 hearing or indeed having put on our evidence.

3 THE COURT: Well, I'm not demanding that he withdraw
4 it. I'm demanding that he tell the people not to show it, that
5 he is not giving them permission to show it, pending the outcome
6 of the hearing. It may be that he will be given permission to
7 show it. But that remains -- that's the whole purpose and
8 objective of this preliminary motion for preliminary relief. So
9 someone get in touch with him.

10 MR. BOWDEN: My partner --

11 THE COURT: Mr. Smith has already gone, I see. We'll
12 assume he's doing that.

13 MR. BOWDEN: Yes, sir. That's what he said.

14 MR. WOODSON: Just on the issue of jurisdiction, I
15 would point out to the Court 17 U.S.C. Section 502(b). "Any
16 such injunction may be served anywhere in the United States on
17 the person enjoined; it shall be operative throughout the United
18 States and shall be enforceable, by proceedings in contempt or
19 otherwise, by any United States court having jurisdiction of
20 that person."

21 THE COURT: Well, of course, I'm aware of that. So
22 let's proceed. Let's see if we can't get the evidence in so the
23 Court can resolve this issue one way or the other. Call your
24 next witness.

25 MR. WOODSON: Christopher Case.

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1 MR. SMITH: Your Honor, I was able to reach Mr. Duda
2 and conveyed the Court's temporary order to him explicitly. He
3 repeated it back to me. He does understand.

4 THE COURT: Very good. Thank you very much, Mr.
5 Smith.

6 Mr. Case, come around to the witness stand here. Face me.
7 Raise your right hand to be sworn.

8 CHRISTOPHER CASE, PLAINTIFF WITNESS, DULY SWORN
9 DIRECT EXAMINATION

10 BY MR. WOODSON:

11 Q. Please state your name for the record.

12 A. Christopher Case.

13 Q. Mr. Case, where do you live?

14 A. Los Angeles, California.

15 Q. How long have you lived there?

16 A. For seven years.

17 THE COURT: Mr. Case, speak a little louder.

18 BY MR. WOODSON:

19 Q. Prior to that, where did you live?

20 A. I lived in Arkansas, in Hot Springs, Arkansas, for one
21 year; and prior to that, in Los Angeles for three years.

22 Q. What is your current occupation?

23 A. I am a writer/producer.

24 Q. Who do you work for?

25 A. I work for a company called Media Clips currently.

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1 Q. Describe for the Judge what your duties involve.

2 THE COURT: What is the company's name? Media what?

3 THE WITNESS: Media Clips. I batch and sort
4 television clips from broadcast television programs into reels
5 for celebrities and corporate clients.

6 BY MR. WOODSON:

7 Q. How long have you been employed or engaged in the
8 television and film industry?

9 A. Since 1987.

10 Q. Describe for the Court what your educational background is
11 with regard to film and television.

12 A. I attended New York University School of the Arts dramatic
13 writing program and film production program as an undergraduate.

14 Q. Do you have a degree from that university?

15 A. No. I transferred and completed a B.A. in film and English
16 at Occidental College in California.

17 Q. A B.A. in film and English?

18 A. Yes. And I was the recipient of an Academy of Television
19 of Arts and Sciences fellowship after that, served the
20 fellowship.

21 Q. What does that mean?

22 A. It's a national competition for college students. And you
23 serve an internship in a professional setting on television
24 shows. Then I attended graduate school at Columbia University
25 in film production.

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1 Q. Describe that education.

2 A. I learned the basics of film production as well as more
3 advanced film theory, writing techniques, everything associated
4 with film and documentary filmmaking as well.

5 Q. Did you receive a degree from that institution?

6 A. No. I didn't complete it due to finances.

7 Q. Do you have any other formal degrees or certificates?

8 A. No. I attended the Louis B. Mayer Institute of Film at
9 Bard College for one summer in 1986.

10 Q. You said you've been actively engaged in this industry
11 since 1987?

12 A. Yes. That was my first professional position as a script
13 reader.

14 Q. What experience do you have in writing?

15 A. Numerous credits. I've written --

16 MR. BOWDEN: Your Honor, to expedite this, we'll
17 stipulate that he has at least some experience in the film
18 industry and in writing.

19 THE COURT: Well, the plaintiff may go into it. I
20 agree. We don't want to belabor it. Go ahead. You may
21 inquire.

22 BY MR. WOODSON:

23 Q. Would you consider yourself an expert in the film and TV
24 industry?

25 MR. BOWDEN: Objection, Your Honor. That's the
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1 determination for the Court to make on the basis of what has
2 been proffered.

3 MR. WOODSON: I was just trying to jump ahead, Judge.

4 THE COURT: I'll let him answer that question.

5 MR. BOWDEN: We will stipulate that he's an expert.

6 THE COURT: They stipulate he's an expert.

7 BY MR. WOODSON:

8 Q. Do you know Michael Galster?

9 A. Yes, I do.

10 Q. How do you know Michael Galster?

11 A. I met him through Kelly Duda, first in person in the year
12 2000. I was aware of him from the year 1997 onward.

13 Q. How were you aware of him in 1997?

14 A. Kelly contacted me about a book that Mike was writing and
15 wanted to know if I had a publisher which I might put Mike in
16 contact with. And I had just published a book with Henry Holt
17 Company in New York. And he inquired about sending a proposal
18 possibly to my publisher or my editor.

19 Q. You met Mr. Galster in the year 2000?

20 A. Yes, in person.

21 Q. What were the circumstances of that meeting?

22 A. I was hired to do a transcription work on his documentary
23 entitled Factor 8. And I was hired to do a paper edit, which is
24 the preliminary and basic production step towards a documentary
25 once you've got your transcribed footage.

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1 THE COURT: Say it again. What is the technical name?
2 THE WITNESS: Paper edit.

3 BY MR. WOODSON:

4 Q. And you were working for Mr. Galster in the year 2000?

5 A. Yes.

6 Q. Describe for the Court the fundamentals and the process of
7 editing and putting a film together of this nature.

8 A. There are different ways to pursue it. But the way I
9 suggested going about it and in the other documentaries that I
10 have produced myself or written and produced -- and Kelly agreed
11 this would be a good approach -- would be to transcribe all of
12 the footage that had been shot for Factor 8. Then once you have
13 the transcript done, you take all of the verbatim quotes from
14 that transcript. And you compile them with time codes from the
15 source tapes so that you can edit a script together. It is
16 essentially an edited documentary. Once the numbers match up
17 from the time codes in a computer editing system, you have an
18 edited version, a rough draft of the documentary which matches
19 what you've done on paper.

20 Q. Let me see if I understand this correctly. First of all,
21 you take source films or raw footage. Is that correct?

22 A. Yes.

23 Q. And this film is digitally encoded. Is that correct?

24 A. Yes.

25 Q. Then what's the next step after you have this raw film?

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- 1 A. You transcribe all of the verbiage that is on those tapes,
2 which I did. And we had over 500 pages' worth.
- 3 Q. Do you do that manually, or is it automatically done
4 somehow?
- 5 A. No. You do it by listening to the tapes and just
6 transcribing them, typing the words into a computer. And you
7 match the time codes which appear on the tapes.
- 8 Q. So you listen to it. You watch the film, listen to the
9 words spoken, turn around and type them in?
- 10 A. Yes. And intermittently write down the time codes as a
11 marking device in the interviews.
- 12 Q. So if you write down a sentence that was spoken by a person
13 on film, you will mark it with a time code?
- 14 A. Yeah, intermittently. Then it will match the time code
15 which is imprinted on all of the source tapes.
- 16 Q. Once that transcription is completed, what's the next step?
- 17 A. Then you take the source tapes. You do what's called a
18 batch import into your computer editing system. And it
19 digitally marks all of those time codes which you have specified
20 and edits only those portions into the computer system that you
21 want to be used.
- 22 Q. So you take the raw footage with these digital markings and
23 you basically load it onto the computer?
- 24 A. Yes.
- 25 Q. And the computer recognizes these time markings?

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1 A. Yes.

2 Q. And then you go back, and you say, well, I want such and
3 such sentence from this interview. And you type in that time
4 code, and the computer finds that relevant piece of film?

5 A. Yes. Then you can begin rearranging them however you
6 desire.

7 Q. That's basically the process of making the film, of taking
8 the raw footage and putting it where you want it?

9 A. Yes.

10 Q. Is that the complete picture, a basic understanding of how
11 it's done?

12 A. Yeah. You pretty much have to get a paper edit done,
13 because we would have 107 hours of footage. Without a paper
14 edit, there was no computer at that time that we had that could
15 have held that much digital information.

16 THE COURT: You had 107 hours of footage?

17 THE WITNESS: Yes.

18 THE COURT: You transcribed that into some 500-plus
19 pages?

20 THE WITNESS: Yes.

21 BY MR. WOODSON:

22 Q. Did you subsequently get a computer that was capable of
23 taking all that information and doing the editing?

24 A. We had a computer system. We had two different computer
25 systems. We purchased a new Macintosh system when I was there

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- 1 in May of 2000 that was able to handle a much larger capacity,
2 but still not the entire 107 hours of material. We had to rely
3 on the paper edit in order to cull that down.
- 4 Q. There has been some discussion that you have not heard
5 about Cheetah hard drives. Are you familiar with Cheetah hard
6 drives in this instance?
- 7 A. Yes.
- 8 Q. How did they come into play?
- 9 A. There were two Cheetah hard drives which I recommended be
10 purchased for the Macintosh editing system with an Adaptec SCSI
11 card. And, therefore, we would be able to hold 74 gigs of
12 information on each hard drive.
- 13 Q. Did these hard drives give you the capability that you
14 needed to complete the project?
- 15 A. Yes. It gave you some of the capability. But it depends
16 on the user as to whether they are able to put all the footage
17 that they want to use on that amount of drive space.
- 18 Q. You testified earlier that you began working for Mr.
19 Galster in the year 2000. What month was that?
- 20 A. Well, I originally began transcribing documentary footage
21 in September of 1999.
- 22 Q. Okay.
- 23 A. So I was being paid from that point until June of 2000.
- 24 Q. Did you work continuously through that time period?
- 25 A. Intermittently.

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1 Q. Intermittently?

2 A. As Kelly Duda would shoot footage or have it shot, it would
3 be sent on to me on a copy or a VHS with a time code. And I
4 would transcribe from there.

5 Q. Were there any other persons working on the film besides
6 yourself and Mr. Duda?

7 A. Mr. Galster was working on the film. And there were a
8 number of different photographers, directors of photography, who
9 we had used to shoot different interviews. I'm not aware of all
10 their names.

11 Q. Was Daniel Broening working on the film during this time?

12 A. Yes, he was. He was doing graphics and some camera work.

13 Q. What does that mean, graphics? And you said some camera
14 work?

15 A. Yes. I believe he ran the camera on a few of the
16 interviews. I'm not sure about that. But he performed a lot or
17 all of the graphics that were in the documentary that I was
18 working on using different graphics programs for motion control
19 graphics, still photos and other media.

20 THE COURT: What do you include in the area of
21 graphics?

22 THE WITNESS: Still photos from old newspapers, in
23 kind of visual credits for people, or lower thirds they call
24 them, CGI.

25 THE COURT: In other words, someone will be talking,
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1 and they will put down below the name, chief of something, or
2 identify his job?

3 THE WITNESS: Yes. Also, the opening graphic
4 sequence, I believe, he created. I'm not aware of the other
5 things he did as far as graphics. But he was in charge of all
6 of the graphics on the documentary as far as I knew.

7 BY MR. WOODSON:

8 Q. Who paid you during the time period from September '99
9 through June 2000?

10 A. Michael Galster.

11 Q. Did Mr. Galster control the work that was being done on the
12 film?

13 A. Yes.

14 Q. How did he do that?

15 A. Kelly Duda told me that Mike was giving him the information
16 with which he went and got interviewees, that all of the source
17 material had come from Mike's book, Mike's information that he
18 had used in his investigation for the book Blood Trail, and then
19 subsequent to that for the documentary. Everything was coming
20 from there and that all of the people that I was transcribing
21 interviews from were people that Mike had known or people that
22 Mike had found. Possibly not all of them, but I was told that
23 Mike was the source for most of the material, if not all.

24 Q. Was it Mr. Duda that first contacted you to work on the
25 film?

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- 1 A. Yes.
- 2 Q. Why did Mr. Duda ask you to work on the film?
- 3 A. Because I had been an adjunct professor at the University
4 of Arkansas at Little Rock when I met him. And he knew that I
5 knew quite a bit about documentary production. Subsequent to
6 that, I began working in celebrity documentaries. And he felt I
7 could help him out a great deal in the subject matter he didn't
8 know regarding production.
- 9 Q. What was that subject matter he didn't know?
- 10 A. How to do a paper edit, how to compile all of the interview
11 footage correctly, manage it, organize it, and basically produce
12 the documentary.
- 13 Q. Is it your testimony that Mr. Duda was not capable of doing
14 what he hired you to do, at least at this point in time?
- 15 A. I believe so. I think he was learning. He knew some
16 basics, but didn't know a lot of other aspects that documentary
17 producers and news producers, a lot of techniques they use.
- 18 Q. Who provided the tools and equipment all of you used in the
19 making of this film?
- 20 A. Mike Galster.
- 21 Q. What was this film called?
- 22 A. It was called Factor 8. And at times it was referred to as
23 Blood Trail. But it was called Factor 8 for almost every
24 purpose that I know.
- 25 Q. Did you ever witness Mr. Galster assigning Mr. Duda or
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1 yourself or any of these other folks that were working on the
2 film projects or assignments to go do?

3 A. Could you repeat that?

4 Q. It was a poor question. I apologize. Did you ever witness
5 Mr. Galster giving instructions to any of you who were working
6 on the film as to what you should be doing at that particular
7 time?

8 A. Yes.

9 Q. Describe maybe an example of that.

10 A. When I would have problems with going forward with
11 different aspects of the documentary, I discussed with Kelly
12 what I thought we should do, and he would consult with Mike,
13 bring Mike into the house that we were working in; or, if I was
14 in California, we would converse over the phone or through
15 e-mails about different aspects of that. We always had to
16 consult Mike, because we had to know that we were going to get
17 paid for what I was going to be doing, certainly. And we had to
18 know that we had the equipment to accomplish what we were trying
19 to do. And when I first got involved, we didn't have all of the
20 proper equipment. The first computer editing system that was
21 purchased didn't work particularly well. So that's why there's
22 more equipment ordered, and Mike paid for all of that.

23 Q. You testified earlier that you were paid up through June of
24 2000. Is it correct that you no longer worked on the project
25 after that point in time?

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1 A. Yes. I don't believe -- I corresponded about the project a
2 bit. But I didn't work physically on the project after June of
3 2000.

4 Q. What was the status of the film Factor 8 at that point in
5 time when you left?

6 A. Completely unfinished except for a paper edit.

7 THE COURT: Excuse me. What was the status?

8 THE WITNESS: Completely unfinished except for a paper
9 edit.

10 BY MR. WOODSON:

11 Q. What existed at that point in time in terms of the film
12 itself?

13 A. A great deal of raw footage which was in unedited form, and
14 some footage -- a minor amount of footage which was imported
15 into the Macintosh computer editing system which was on its way
16 to being edited. And then there was the 500-plus pages of
17 transcripts which I had performed, and a paper edit -- a
18 FileMaker database of every single quote in the entire
19 documentary, which could be manipulated to help facilitate
20 producing the documentary.

21 Q. Had these 107 source tapes at least been loaded onto the
22 computer, although they hadn't been edited at that point in
23 time?

24 A. No.

25 Q. They were just in their raw form?

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1 A. Yes. Portions of a few of the tapes had been imported, and
2 editing had begun. But it was very far behind at the point that
3 I left.

4 Q. Have you had the opportunity to view in the past few weeks
5 a film that Mr. Duda claims credit to?

6 A. Yes.

7 Q. What did you view?

8 A. I viewed a VHS copy of a documentary entitled Factor 8, The
9 Arkansas Prison Scandal -- Arkansas Canada.

10 THE COURT: Repeat that. He has a different caption
11 that's called Factor Eight, the Arkansas what?

12 THE WITNESS: Arkansas-Canada Prison Scandal. I can't
13 remember the exact title.

14 THE COURT: By the way, that's an exhibit. I've seen
15 it.

16 MR. WOODSON: Yes, sir.

17 THE COURT: What exhibit number is it? Do you know?
18 Just tell us.

19 MR. WOODSON: 25.

20 THE COURT: You might hand it to him and ask him if
21 that's --

22 BY MR. WOODSON:

23 Q. Is Plaintiff's 25 what you viewed?

24 A. Yes. That's the exact copy that I viewed.

25 Q. What was on that film that you viewed, Plaintiff's 25?
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1 A. A completed documentary which had new footage which I had
2 not seen of Kelly Duda, claiming that he was the initiator of
3 the entire story and that he had -- there were a number of
4 claims Mr. Duda made which I was not aware of previous to that,
5 new footage with him saying these claims.

6 Q. How long was that tape?

7 A. I believe that tape was 85 minutes. I'm not certain about
8 that.

9 Q. With respect to the footage of Mr. Duda, had you ever seen
10 that footage before?

11 A. I had seen all of the other footage except with Mr. Duda's
12 additions.

13 Q. You say the film --

14 THE COURT: Excuse me just a minute. You had seen all
15 of the footage except what?

16 THE WITNESS: Except with Mr. Duda's additions with
17 himself as a narrator. I believe 90 percent of it I recognized.
18 BY MR. WOODSON:

19 Q. You say the film lasted approximately 85 minutes?

20 A. Yes.

21 Q. How long did Mr. Duda's portion last?

22 A. I'm not certain. But I believe about four to five minutes
23 in addition, possibly more.

24 Q. Having been the person who transcribed all of the original
25 raw footage, by definition that means that you actually

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1 witnessed all of that raw footage. Correct?

2 A. Yes.

3 Q. When you viewed that tape, Plaintiff's 25, those scenes
4 that you saw, were they identical -- other than what Mr. Duda
5 added in, were those scenes identical to what you had previously
6 witnessed?

7 A. Yes. And the words spoken in them matched verbatim what I
8 had transcribed in my database in my transcription document.

9 Q. So Plaintiff's 25 is an exact copy of portions of the film
10 that you saw back in 2000, except for what Mr. Duda added in
11 about himself. Is that correct?

12 A. I would say it is an exact copy of raw footage that I saw
13 that was not edited at that time.

14 Q. We've established you as an expert in the area of film and
15 television. In your opinion, would a release of what Mr. Duda
16 is claiming to be his film harm Mr. Galster's reputation?

17 A. Yes.

18 MR. BOWDEN: Your Honor, objection. We have
19 stipulated that he was an expert in making of films and
20 television. I don't think we stipulated that he was an expert
21 in marketing and psychology and all these other things that that
22 question touches upon.

23 MR. WOODSON: If he's an expert, Judge, he should be
24 able to give his opinion.

25 THE COURT: I think he has indicated a broad
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1 experience in the field. For what it's worth, I'll hear his
2 opinion on the issue.

3 BY MR. WOODSON:

4 Q. What is your opinion as to whether or not release of Mr. --
5 what Mr. Duda claims to be his film would harm Mr. Galster?

6 A. I believe it would harm Mr. Galster's original intentions,
7 specifically as Mr. Duda stated them to me, which was to put
8 forth a story that helped the victims and told the true story as
9 I knew it to be. What I see here on this particular tape is a
10 truncation of that with additional commentary that is
11 contradictory to what I knew to be the truth prior.

12 Q. Okay. If you would, look at what I've put there in front
13 of you, Plaintiff's 24. Would you identify for the Court what
14 that document is?

15 A. It's a Writers Guild of America registration, Writers Guild
16 of America West.

17 Q. What does that mean?

18 A. It's a registration of a screenplay for the material
19 entitled Factor 8.

20 Q. What's the date on that registration?

21 A. The effective date is August 11th of 2000.

22 Q. What's the purpose of this registration?

23 A. To establish authorship for a particular draft of the
24 material entitled Factor 8 in my name, Christopher Scott Case.

25 Q. So this means that you drafted a screenplay for the film

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1 Factor 8?

2 A. Yes.

3 Q. And it was registered in August of 2000?

4 A. Yes.

5 Q. Does Mr. Galster's name appear also on the documents that
6 you filed with the Writers Guild?

7 A. It appeared on the documents as I submitted them, but it
8 did not appear on the certificate. I'm not sure why, if that's
9 a clerical error, or what.

10 Q. In general, why is a registration with the Writers Guild
11 important for any project?

12 A. Because it establishes the authorship of a particular draft
13 in case it should be called into question at a later date of a
14 particular screenplay.

15 THE COURT: In other words, you have adapted this into
16 a screenplay?

17 THE WITNESS: Yes.

18 THE COURT: And that is what they are registering here
19 in this certificate?

20 THE WITNESS: Yes.

21 BY MR. WOODSON:

22 Q. And what material did you take this screenplay from?

23 A. Mr. Duda asked me to write a screenplay which was basically
24 the telling of the making of the documentary and the publication
25 of the book Blood Trail. And it was to be he and Mike's story,

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1 but particularly Mike's story initially. But at a later date, I
2 was asked to redraft the script so that it favored Mr. Duda's
3 participation in the story. And I disagreed with that, so I
4 registered the draft to establish that my draft at least was at
5 least acknowledged somewhere legally.

6 Q. Why did you disagree with that?

7 A. Mr. Duda had asked me to write a draft so that he could
8 present it to a motion picture producer for consideration of
9 purchase. And I was not aware that Mr. Galster was not aware of
10 Kelly asking me to do this until I arrived in Arkansas to work
11 physically on the documentary. At that time, I realized that
12 Mr. Galster did not know about the draft of the screenplay. And
13 when Kelly Duda asked me to redraft the screenplay so that it
14 favored his character or his -- the character based on his
15 actual life story, I began to suspect that the truth was being
16 distorted or there was an intent to distort the truth.

17 Q. So Mr. Duda asked you to redraft the screenplay without the
18 knowledge of Mr. Galster?

19 A. Yes.

20 Q. And what was the purpose of Mr. Duda asking you to redraft
21 the screenplay?

22 A. So that it would favor his character better, so that it
23 would make his character the protagonist, and therefore his life
24 right sales to a Hollywood production company would become more
25 valuable, would be the first intent. And he made the assertion

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1 that it told a better story to tell it from his point of view.
2 Q. What was it that you took the screenplay from? What was
3 the source of all of this?

4 A. The true-life story of how Michael Galster wrote the book
5 Blood Trail, exposed the scandal which Blood Trail is inspired
6 by, but also the true life story of his trip to Canada and the
7 subsequent exposure of material related to the Arkansas-Canada
8 prison blood scandal.

9 Q. I've handed the original of Plaintiff's 24 to the Court.
10 Is that the exact document that you received from the Writers
11 Guild?

12 A. I believe that that is a scan of the original document.

13 Q. Okay.

14 A. A digital scanning of it.

15 Q. To your knowledge, that is an identical copy of the
16 original?

17 A. Yes. That is the scan that I made.

18 MR. WOODSON: We offer Plaintiff's 24, Your Honor.

19 THE COURT: Received.

20 (Plaintiff Exhibit 24 received in evidence.)

21 MR. WOODSON: Pass the witness.

22 CROSS-EXAMINATION

23 BY MR. BOWDEN:

24 Q. Hello, Mr. Case. I'm David Bowden. How are you doing
25 today?

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- 1 A. Fine. Thanks.
- 2 Q. I'm Kelly Duda's attorney. I want to visit with you a
3 little bit about some of the things that you have brought up on
4 your direct examination, talk to you a little bit about what you
5 know about as an expert and just generally visit for a while.
6 You are a screenwriter. True?
- 7 A. Yes.
- 8 Q. Do you ever write anything else other than screenplays?
- 9 A. I've written a reference book entitled The Ultimate Movie
10 Thesaurus that was published.
- 11 Q. Who published that?
- 12 A. Henry Holt and Company.
- 13 Q. Have you ever written any articles or learned treatises
14 other than that?
- 15 A. I've written a number of newspaper and magazine articles.
- 16 Q. How do you go about marketing those?
- 17 A. I send query letters in, book proposals.
- 18 Q. How do you know where to send them?
- 19 A. I use the Writer's Market. I use other source materials
20 such as that.
- 21 Q. You mentioned this book right here, Writer's Market?
- 22 A. Yes.
- 23 Q. Does this appear to be the 2004 edition of Writer's Market?
- 24 A. Yes.
- 25 Q. Tell us what kind of materials that Writer's Market -- and
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- 1 this is an authoritative book in the area of writing?
2 A. Yes.
3 Q. Tell us what kinds of things you can find in Writer's
4 Market.
5 A. You find publisher information, editor's information,
6 agency information, literary agent information.
7 Q. So if you looked up a publisher's book, say Jameson Books,
8 Inc., you would find something on them. True?
9 A. Yes.
10 Q. You might even find the name of the person who does the
11 acquisitions for Jameson Books, Inc. True?
12 A. Yes.
13 Q. Now, you said that you got involved with this through Kelly
14 Duda. True?
15 A. Yes.
16 Q. How did you meet Kelly?
17 A. He approached me at the University of Arkansas at Little
18 Rock.
19 Q. When did you teach at UALR?
20 A. 1995 and 1996 school year.
21 Q. 1995-'96 school year. I didn't realize they had a film
22 department at UALR.
23 A. It is technically called the radio/TV/film department.
24 Q. Okay. You didn't know Kelly before then?
25 A. No.

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- 1 Q. What did Kelly tell you at that time was the project that
2 he wanted you to undertake?
3 A. At the time that I met him?
4 Q. Yes.
5 A. He asked me to help him write a treatment to submit a
6 proposal for a film idea based upon the cartoon Scooby Doo.
7 Q. What is a treatment? Would you tell us?
8 A. It is a short, a brief article style summary of what a
9 screenplay would encompass if it were written. It is much like
10 a proposal.
11 Q. So it's kind of like a query letter to a magazine or a
12 publisher. True?
13 A. Yes.
14 Q. Now, as I remember, they've recently made a movie based on
15 the Scooby Doo cartoon. True?
16 A. Yes.
17 Q. Did you have anything to do with that?
18 A. No.
19 Q. Do you know if anything that Mr. Duda did had anything to
20 do with that?
21 A. No.
22 Q. Did you ever help him write the treatment for it?
23 A. Yes.
24 Q. With what success?
25 A. None.

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1 Q. Did y'all -- who did you submit it to?

2 A. I submitted it to a friend of mine who worked at Dreamwork
3 Studios at the time, just as a draft, to get a response. And it
4 was fairly negative, because we didn't have the rights to Scooby
5 Doo, which is what I told Kelly Duda from the beginning. But it
6 was a fun exercise to write the treatment with him.

7 Q. Now, when did you get involved with the prison blood story?

8 A. I was aware of a project that he was working on with
9 Michael Galster as early as December of 1997. But I did not
10 know the subject matter until January of 1999.

11 Q. Were you involved in any of the discussions initially
12 between Mr. Galster and Mr. Duda about what his role was to be?

13 A. No.

14 Q. Did Kelly work more or less independently in getting you to
15 come on board?

16 A. Independently in what sense?

17 Q. In a sense that he was the one that made contact with you?

18 A. Yes.

19 Q. He was the one that told you you were needed. True?

20 A. Yes.

21 Q. He was the one that you worked through when you were
22 talking about buying these computers and things. True?

23 A. Yes.

24 Q. How much contact did you have with Michael Galster during
25 this early period, say, the first six months you were on board?

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- 1 A. None.
- 2 Q. How much did you have in, say, the first year that you were
3 on board?
- 4 A. None.
- 5 Q. How much did you have in the first two years would you say?
- 6 A. Other than peripheral references through Kelly Duda, none.
- 7 Q. How many times have you actually met with Mr. Galster to
8 talk about the making as opposed to just transcribing, but the
9 making of the film?
- 10 A. I first met with Mr. Galster in May of 2000, when Kelly
11 asked me to come to Arkansas from California to take the
12 transcripts that I had produced and then try and help him
13 produce the documentary with Mr. Galster.
- 14 Q. How were you paid by Mr. Galster?
- 15 A. I was paid by check.
- 16 Q. From him?
- 17 A. Yes.
- 18 Q. What was the styling on the check? What was the name on
19 the check as far as the company?
- 20 A. I don't recall.
- 21 Q. Would it have been Galster Orthopedic Labs?
- 22 A. Possibly.
- 23 Q. Would it have been Labuena Vida, Inc.?
- 24 A. I don't recognize that name.
- 25 Q. Or would it have been Michael Galster?

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- 1 A. Possibly.
2 Q. Or could it have been all of the above?
3 A. I don't believe so.
4 Q. How many different checks did you receive from him?
5 A. I'm only aware of one check. I was paid in cash in
6 exchange for a plane ticket another time.
7 Q. How did you get here today as a matter of fact? Aren't you
8 living in Los Angeles?
9 A. Yes.
10 Q. You have to fly back?
11 A. Yes.
12 Q. Is Mr. Galster paying your way back?
13 A. Yes.
14 Q. Are you being paid anything for your testimony today and
15 your time?
16 A. No.
17 Q. You are testifying as an expert. I didn't know for sure.
18 THE COURT: Let me ask you, did you say that you were
19 only paid by one check? The rest was paid in cash, or did I
20 misunderstand?
21 THE WITNESS: Yes, sir. I received some amounts in
22 cash for basic expenses as a stipend.
23 THE COURT: Expenses in cash?
24 THE WITNESS: During the time that I was in Arkansas.
25 BY MR. BOWDEN:

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- 1 Q. Who handed you the cash that you received?
2 A. Kelly handed me a small amount of cash, and Mike handed me
3 I believe \$200 a time.
4 Q. So their participation in seeing that you got money was
5 more or less equal. True?
6 A. I wouldn't say that. I would say that Kelly facilitated my
7 being paid, but I don't believe that Kelly was the one who paid
8 me, no.
9 Q. I'm not saying that. I'm saying, as far as seeing that
10 money got into your hand, I think I understand your answer to
11 that to be a "yes." As far as seeing that money got into your
12 hand, Kelly handed you money. True?
13 A. Yes, for food.
14 Q. And Michael handed you money?
15 A. Yes, for travel expenses.
16 Q. Travel expenses. Okay. And that was in cash?
17 A. Yes. I received a check also.
18 Q. Did you receive a 1099 on any of these funds?
19 A. I don't recall.
20 Q. Well, did you have to fill out a W-2 on any of them?
21 A. I don't recall.
22 Q. Now, you mentioned something that I found interesting a
23 little while ago. You said you made some suggestions on the
24 computer, on the Cheetah hard drives. True?
25 A. Yes.

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- 1 Q. Who did you make those to?
2 A. To Kelly Duda and also to Mr. Galster.
3 Q. Did you make them to him in person or through Kelly Duda?
4 A. I spoke to both of them on the phone.
5 Q. Who did you raise it with first?
6 A. Kelly.
7 Q. Why?
8 A. Because I was dealing with him in trying to convince Mr.
9 Galster that that was what we needed. I suggested that that
10 would be the better computer system to purchase.
11 Q. And it was your understanding they were working together on
12 this as partners. True?
13 A. I understood that Kelly was working for Mr. Galster. He
14 had told me that he was being paid in advance against
15 participation in the project.
16 Q. And that he had 30 percent of the profits. True?
17 A. He never specified the exact amount.
18 Q. But that wouldn't be unusual for him not to discuss that
19 with you?
20 A. No.
21 Q. In your expert experience?
22 A. No.
23 Q. Okay. Now, there was something else that was interesting.
24 You mentioned talking about the editing of these tapes. Okay.
25 You suggested how to do it, and Kelly agreed. Why didn't you

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1 suggest how to do it to Michael Galster?

2 A. We did suggest to Michael Galster that we should do it this
3 way. And that is why he allowed the purchase of the computer
4 editing system and the FileMaker computer program.

5 Q. But you did it through Kelly. True?

6 A. Actually, I believe Michael Galster gave me \$50 to buy the
7 FileMaker program.

8 Q. But you said earlier, in your earlier testimony, that you
9 suggested how the editing should be done. And it was Kelly that
10 agreed. True?

11 A. Yes.

12 Q. He was the one that okayed that we would do the editing
13 through that process. True?

14 A. It was not okay in the sense of being finalized through Mr.
15 Duda. It had to be cleared through Mr. Galster first. And we
16 had to wait three weeks at least before we would have the
17 system, the Macintosh system.

18 Q. This is going to sound a little off the wall, but I'm going
19 to ask you, because I'm about to make a point. Did you ever see
20 Shakespeare in Love?

21 A. No.

22 Q. Well, then I can't make my point. Let me do it this way.
23 Is it unusual for the talent and the people with money to work
24 on something together, one person in the movie industry, one
25 person provide the money, one person provide the talent, and

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- 1 they do it as a partnership? Is that unusual?
2 A. No.
3 Q. It happens all the time, doesn't it?
4 A. Yes.
5 Q. They have sweat equity, so to speak, in the film. True?
6 A. Yes.
7 Q. You recommended the procuring of the Cheetah hard drive
8 because they have, I think you said, a great capacity. Is that
9 true?
10 A. Yes. Relative to that time in history, they had great
11 capacity.
12 Q. What computer system did they have before they bought this
13 Mac with the Cheetah hard drive?
14 A. They had a PC system operating on DV Rex.
15 Q. Do you know who bought that?
16 A. I was told Michael Galster bought it.
17 Q. By?
18 A. Kelly Duda.
19 Q. For?
20 A. Completion of the documentary and for operation in his
21 medical clinic.
22 Q. So it was something that was being used in the medical
23 clinic as well?
24 A. Not at that time. I just know that when I suggested we
25 purchase a Macintosh system, he said, well it could be used in

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- 1 the medical clinic as well, the DV Rex system, so it wouldn't go
2 to waste.
- 3 Q. Was the Mac ever used in the medical clinic?
- 4 A. Not to my knowledge.
- 5 Q. Did Kelly ever provide any services to the medical clinic
6 other than related to this film, such as maybe answering the
7 phone or whatever, kind of baby-sitting the rebuilding of the
8 clinic after it was firebombed?
- 9 A. I'm not aware of any.
- 10 Q. But you don't know for sure?
- 11 A. No.
- 12 Q. Okay. Now, as I understand it, you said that Michael
13 Galster was actively involved in this process of shooting this
14 film. True?
- 15 A. Yes.
- 16 Q. How many of the shoots did he plan?
- 17 A. I'm not aware of that. But Mr. Duda told me that he went
18 to a number of interviews at Mike's direction and with Mike on a
19 number of them. I heard Mike's voice in a number of the tapes
20 which I transcribed from.
- 21 Q. How many specifically out of the 107?
- 22 A. I'm not aware. I would guess at least six or seven.
- 23 Q. Six or seven?
- 24 A. Six or seven different interviewees. But some of the
25 interviewees are spread over three or four different tapes, so I

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1 couldn't hazard a guess.
2 Q. So it could be less than six or seven occasions is what you
3 are saying, if it was the same interviewee on a couple of
4 different tapes.
5 A. Yes.
6 Q. Okay. So something less than seven times. True?
7 A. Yes. That I can remember.
8 Q. Now, out of 107 tapes?
9 A. 107 hours of tapes, yes.
10 Q. 107 hours of tapes.
11 A. Not 107 interviews, no.
12 Q. I've been understanding that this was 107 tapes.
13 Physically how many tapes were there that you remember?
14 A. 107. Interviews appear on multiple tapes. Some tapes have
15 the same person for the entirety of each tape, three different
16 volumes of tapes.
17 Q. Got you. Now, are these tapes an hour apiece? Is that
18 what you are saying, roughly?
19 A. Most of them are an hour apiece. I believe some of them
20 are 90 minutes.
21 Q. So, roughly, we're talking about 107 hours on 107 tapes?
22 A. Yes.
23 Q. Of those, he appears on less than seven particular
24 interviews. How many interviews were there?
25 A. I believe in total, I don't recall the exact number of the
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- 1 individual interviews.
- 2 Q. Do you remember Tona DeMers?
- 3 A. Yes.
- 4 Q. Was she included in what you were editing?
- 5 A. Not what I was editing, but she was included in what was
- 6 being transcribed.
- 7 Q. Okay. How much time was there on hers? I mean, how long
- 8 was that?
- 9 A. No more than one tape.
- 10 Q. And Kelly decided to leave her contribution out, didn't he?
- 11 A. From what?
- 12 Q. From what was going to be edited down into the final tape.
- 13 A. At that point in time, she was included in the paper edit.
- 14 There were quotes from her included. But most of her -- the
- 15 interview that she gave was relative to prison corruption and
- 16 not relative to the majority of the story we were to tell.
- 17 Q. She knew a lot about that, didn't she?
- 18 A. Specific instances of the history of prison corruption,
- 19 yes.
- 20 Q. She used to be an inmate attorney down there, didn't she?
- 21 A. Yes.
- 22 Q. So she was an insider in the Department of Corrections that
- 23 had left. True?
- 24 A. Yes.
- 25 Q. Do you think that she might have had some independent

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1 sources of information for Kelly?
2 A. Possibly. But as far as I recall, they didn't relate
3 directly to the story that we were trying to tell.
4 Q. That's fine. But did Mike Galster direct Kelly to her?
5 A. I can't say. I don't know that.
6 Q. How about Mara Leveritt? Did he direct Kelly to Mara
7 Laveritt?
8 A. I can't say.
9 Q. Did he direct him to James Lovel, I think his name is, who
10 writes for the Democrat-Gazette?
11 A. Kelly told me that Jim Lovel had been in contact with Mike
12 prior to the first interview they did on tape, that they had
13 discussed it at length before interviewing him.
14 Q. And Lovel is also a reporter. True?
15 A. Yes.
16 Q. He's done a lot of stories on the prison system. True?
17 A. Yes.
18 Q. As has Ms. Leveritt?
19 A. Yes.
20 Q. So he talked with Ms. Leveritt. He talked with James
21 Lovel, and he talked with Tona DeMers. But we don't know for
22 sure whether Mike ever referred him to any of those people, do
23 we?
24 A. I only know that Kelly spoke of them before the interview
25 in conjunction with Mike's material and how it related to what

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- 1 he had for Mike that he was going on to conduct interviews.
2 Q. Now, with regard -- were you there when any of this footage
3 was being shot?
4 A. Only the last probably four tapes of that 107 series.
5 Q. Who shot the last four?
6 A. I shot part of one interview.
7 Q. Who was directing?
8 A. Well, I don't know how -- I suppose I was a cameraman. I
9 was shooting along with a man named Bryon. I don't recall his
10 last name. And Kelly Duda was reporting the story, interviewing
11 this particular man.
12 Q. Now, did Michael Galster ever hire anybody to do the
13 lighting on these shoots?
14 A. Specifically the lighting, I'm not aware of hiring someone
15 to do the lighting. I'm aware of him hiring cameramen, a number
16 of cameramen, who also performed lighting as part of that
17 service.
18 Q. Sometimes Kelly was the cameraman too, wasn't he?
19 A. I'm not aware of him being just the cameraman. It is very
20 difficult to interview someone and run the camera at the same
21 time.
22 Q. I understand. But he did that a time or two, didn't he, or
23 did he not?
24 A. I'm not aware of that.
25 Q. So your answer is you don't --

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1 A. No.

2 Q. Now, you told us in 2000 that this film was completely
3 unfinished. True? Would you agree with me there's a difference
4 between a film and raw footage?

5 A. Yes.

6 Q. Would you define that difference for the Court in your
7 expert knowledge?

8 A. Raw footage is the totality of all of the footage that
9 you've shot that you are going to use for your project that you
10 are producing. And the final cut is the final step of the
11 production that you are going to be producing.

12 MR. BOWDEN: May I approach the witness, Your Honor?

13 THE COURT: You may.

14 BY MR. BOWDEN:

15 Q. With regard to this film that's listed as Plaintiff's
16 Exhibit No. 25, what is the title on that?

17 A. Factor 8.

18 Q. Do you know what the title on Kelly Duda's film is?

19 A. I believe so.

20 Q. Why don't you give it your best shot. I understand you may
21 not, but from earlier testimony.

22 A. Factor 8, The Arkansas-Canada Prison Scandal or The
23 Arkansas Prison Scandal. I'm not sure which.

24 Q. Does Factor 8, The Arkansas Prison Blood Scandal sound
25 about right?

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- 1 A. Possibly. I've heard various versions over the years that
2 he intended to use.
- 3 Q. Now, with regard to that title, Factor 8, that's a medical
4 term, isn't it?
- 5 A. Yes.
- 6 Q. You can't copyright a title anyway, as I understand it. Is
7 that true in your expert knowledge?
- 8 A. You can register a title with the Writers Guild. I'm aware
9 of being able to do that.
- 10 Q. Do you have to be a member of the Writers Guild to register
11 something?
- 12 A. No.
- 13 Q. So I guess the question is, when you registered this, why
14 doesn't -- this Factor 8, why didn't Michael Galster's name
15 appear on it?
- 16 A. Because I had placed on it "based upon a story by Michael
17 Galster." And apparently they didn't consider that to be the
18 sole author.
- 19 Q. So you considered this a derivative work then of Blood
20 Trail?
- 21 A. No. I consider it to be a derivative work of the life
22 story of Michael Galster and Kelly Duda.
- 23 Q. So there's another document out there. This Factor 8 is
24 different from that Factor 8. True?
- 25 A. Yes.

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- 1 Q. This Factor 8 is a story, I believe you said, of the making
2 of the documentary. Is that correct?
- 3 A. Yes.
- 4 Q. I notice you are looking over at Mr. Galster while you
5 answer that. This was in August of 2000?
- 6 A. Yes.
- 7 Q. And the film was kind of languishing at some point in
8 there, wasn't it?
- 9 A. The documentary film?
- 10 Q. Yeah. Did Mr. Galster more or less lose interest in it for
11 a time?
- 12 A. I believe he was having financial difficulties and it was
13 delayed.
- 14 Q. Were you able to be paid during that period of time while
15 he was having financial difficulties?
- 16 A. Yes.
- 17 Q. Do you know if Kelly was paid during that time when he was
18 having financial difficulties?
- 19 A. Yes.
- 20 Q. How were you paid? I mean, in lump sums? Weekly checks?
21 How were you paid?
- 22 A. I was paid in one lump sum check and in cash and in
23 exchange for a plane ticket.
- 24 Q. Now, as I understand it, you said that this was -- your
25 sworn testimony was that this was, with exception of Kelly's

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- 1 narration, 100 percent the material that you had transcribed,
2 leaving out those four or five minutes of Kelly's narration.
3 Was that your testimony, that it was 100 percent the same?
4 A. The same as --
5 Q. Same footage.
6 A. It was not compiled in the same manner, no. But I
7 recognized all of the footage except for portions of new footage
8 which Kelly has added regarding narration.
9 Q. Did you notice anything else being added when you watched
10 this?
11 A. Nothing specific comes to mind.
12 Q. Do you know who Nick Devlin is?
13 A. Yes.
14 Q. Who is he?
15 A. He is a musician who lives in Little Rock.
16 Q. Did he make any contribution to this film?
17 A. I believe he provided music for this particular film.
18 Q. So that's a bit of a change in what you said earlier,
19 because there was music added to it, wasn't there?
20 A. Yes. It was an audio track added, also included narration.
21 Q. Now, I believe your exact words -- in fact, even on cross I
22 believe you said that the treatment that you did that went to
23 the Writers Guild was the story of Michael Galster and Kelly
24 Duda, Mike and Kelly, Mike and Kelly together. Right?
25 A. Yes. But it was not a treatment. It was a screenplay.

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1 Q. Screenplay. I'm sorry. These terms of art, when you get
2 out of magazine articles, I don't know them. Okay. But it was,
3 in fact -- it was, in fact, had to do with their
4 co-investigation of all of this. True?

5 A. Yes.

6 Q. Did you bring a copy of your screenplay with you by any
7 chance?

8 A. No.

9 Q. Did you bring a copy of your transcription of the film with
10 you?

11 A. I believe, yes, I did bring a transcription of all the
12 documentary footage that I did.

13 Q. Okay. Okay. Now, one second.

14 Just a couple more questions, and then we're done. Okay?
15 How long was the paper edit pages?

16 A. It was done in a database, so I'm not exactly certain how
17 long the printout of the database was. But I believe it was
18 somewhere in the neighborhood of 105 pages.

19 THE COURT: Speak a little louder.

20 THE WITNESS: I believe it was in the neighborhood of
21 105 pages.

22 BY MR. BOWDEN:

23 Q. Maybe this is a very simplistic question. And I apologize
24 if I'm missing something here. But if it's done in a database,
25 why is it called a paper edit?

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- 1 A. Because you print it out after you've done it in the
2 database.
- 3 Q. Do you do anything to it after you print out with the
4 paper?
- 5 A. Yes.
- 6 Q. Describe what you do.
- 7 A. You can use it as a reference to what you are coordinating
8 between the paper edit and the time codes on it, what is
9 imported into the computer to be edited into the video.
- 10 Q. Typically, in your expert knowledge and background, how
11 many subsequent edits does it take to get a paper edit into the
12 final form?
- 13 A. It takes many edits. It can take as long as you want it to
14 take before you are finished. It's a very arduous work, from
15 107 different tapes to organize and coordinate. It was a very
16 daunting task.
- 17 Q. How many hours did it take you on this project?
- 18 A. It took me approximately 10 hours each day for two weeks to
19 complete a paper edit.
- 20 Q. Ten hours a day, two weeks. Is that seven-day weeks or
21 five-day weeks?
- 22 A. I would say six-day weeks. I worked nearly every day on
23 the project over two weeks.
- 24 Q. So we would say 120 hours roughly?
- 25 A. Roughly, yes, that would be accurate.

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- 1 Q. Give or take?
2 A. Yes.
3 Q. Do you consider editing a creative process?
4 A. Yes.
5 Q. Would it be fair to say that editing of raw footage sets
6 the pace of the finished work?
7 A. Could you repeat that?
8 Q. When you edit raw footage, you set a pace for whatever work
9 you come out with, the edited version. True? The pacing level
10 is telling of the story?
11 A. If you have performed a paper edit, you have already set a
12 pacing with the deliberate editing of quotes from the
13 documentary, so you've already produced basically a blueprint
14 for the finished project on video. So you set the pacing in the
15 paper edit. And we wanted to keep quotes as short as possible,
16 so that was part of the pace we were setting in the paper edit,
17 I was setting, along with Kelly, helping me try and figure out
18 the information that was included.
19 Q. And you set a tone for that. True?
20 A. Yes.
21 Q. A feel, if you will, for the entire work?
22 A. Yes.
23 Q. You were working with Kelly on doing that. Correct?
24 A. I consulted Kelly. But I did the transcription work all by
25 myself. And the paper edit I performed all by myself in the
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1 database, because he did not know how to use the FileMaker
2 database.

3 Q. I understand. But as far as setting pace, tone, feel, an
4 editorial view, if you will, Kelly was right there doing that,
5 wasn't he?

6 A. Not at that time, no. That would have come in the second
7 phase.

8 Q. Was he consulted on all such matters?

9 A. Yes. As was Mr. Galster at that point.

10 Q. How many times did you consult with Kelly?

11 A. On a daily basis.

12 Q. How many times did you consult with Michael Galster?

13 A. On a daily basis, skipping several days. I would say
14 during that two-week period, six times.

15 Q. So on less than a daily basis?

16 A. Less than a daily basis.

17 Q. Let me just ask you one other thing. Then I'll sit down.
18 One other series, short series of questions. How many hours
19 altogether of footage did you end up with once the editing was
20 finished?

21 A. I was not present when the video editing was finished. But
22 when the paper edit was finished -- which edit?

23 Q. Actually I'm talking about the video edit. You don't know.
24 I mean, how far did they chop this 107 hours down in the editing
25 process? Do you know?

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1 A. I wasn't present when the current Factor 8 version sitting
2 before me, Exhibit 25 -- I wasn't present when that was edited
3 down.

4 Q. I understand.

5 A. I'm not able to say.

6 Q. And Exhibit 25 purports, at least, not having seen this
7 particular exhibit, but it purports at least to be Kelly Duda's
8 work. True?

9 A. Yes.

10 Q. Now, that's not what I'm talking about. I'm talking about
11 when it was edited down, all of these 107 source tapes were
12 edited down, you had, what, four hours roughly of videotape,
13 four hours of play time?

14 A. That was subsequent to my involvement in the project, I
15 believe.

16 Q. Let me, hypothetically, if there were about four hours of
17 play time in a documentary, would that be a positive or a
18 negative as far as trying to market that -- market that film?

19 A. That would be a negative.

20 Q. Why?

21 A. Because there are very few documentaries of that length
22 which have ever been successfully released in theaters or
23 television.

24 Q. What is the usual length of a documentary?

25 A. For television, the usual length is 105 minutes, for a
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1 two-hour window on a television broadcast. But I would say
2 around a hundred minutes is usual for a documentary.
3 Q. It is not usual for a documentary to have a protagonist, is
4 it?

5 A. No.

6 Q. Telling the story, is it?

7 A. In the past, it was unusual. But in present times, it is
8 much more common.

9 Q. Did Michael Galster ever express to you that he was fearful
10 to have his name exposed in public on any of this stuff?

11 A. Did Michael Galster?

12 Q. Yes.

13 A. Tell me that?

14 Q. Yes.

15 A. No.

16 Q. Even after his clinic was firebombed by persons unknown?

17 A. No. He did not tell me that.

18 Q. Okay. That's all I have.

19 MR. WOODSON: Briefly.

20 REDIRECT EXAMINATION

21 BY MR. WOODSON:

22 Q. Mr. Bowden asked you about the film languishing in the year
23 2000. Do you recall that, him asking you that?

24 A. Yes.

25 Q. Despite the fact that Mr. Galster was having financial
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1 difficulties in the year 2000, could the film have been finished
2 in 2000?

3 A. Absolutely.

4 Q. Why was it not finished?

5 A. I believe because Mr. Duda was not expedient about doing
6 his portion of the production. And I left the production,
7 because I had done all I could do in cooperation with him to
8 meet a deadline for the Toronto Film Festival in June 2000.

9 Q. Please more fully describe what you mean by Mr. Duda not
10 being expedient.

11 A. He was not working on the physical production of the
12 documentary during the entire month of May. He was making phone
13 calls to interviewees who were asking why the documentary was
14 not completed. I found myself doing the paper edit almost all
15 by myself without being able to consult him on a lot of the
16 information. I had to be able to consult him and Mr. Galster
17 when need be to choose quotes to be used in the paper edit.

18 Q. Were you and Mr. Duda supposed to be working on the film
19 and getting it to a final finished edit form?

20 A. Yes.

21 Q. And what was Mr. Duda doing during this time?

22 A. He was talking on the phone a lot to interviewees and other
23 people who were asking why the documentary was not completed
24 yet, while I was working on the paper edit. He did not
25 understand how to perform a paper edit. He did not understand

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1 how to operate a Macintosh computer editing system at that time.

2 Q. Why was he talking on the phone to interviewees?

3 A. They were calling frequently during that period of time
4 wanting to know why the documentary had not been completed. And
5 he continually promised that it would be completed soon, prior
6 to that. And we had a deadline of, I believe, June 24th. I'm
7 not sure about that deadline. But that's what we were trying to
8 reach. And I wasn't getting much help from Mr. Duda at the
9 time.

10 Q. And it's your testimony that's why you ultimately left the
11 project, because Mr. Duda was not helping you as you thought he
12 should?

13 A. Yes. And as I began to try and get him to be more involved
14 with the project, we had a number of conflicts.

15 Q. What were those conflicts?

16 A. Arguments about why he had not completed work. I came
17 first to Arkansas for two weeks to work on the paper edit. Then
18 I returned to California for two to three weeks. Then I
19 returned. And our agreement was that when I returned the
20 footage that was in the paper edit should have been imported
21 into the Macintosh computer editing system and that we would
22 have a rough cut of the production at that time in which to edit
23 further.

24 Q. When you returned, had Mr. Duda done that?

25 A. He had done nothing.

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1 Q. Do you know why he hadn't?

2 A. No.

3 MR. BOWDEN: Briefly, Your Honor. Very briefly.

4 THE COURT: Very good.

5 RECCROSS-EXAMINATION

6 BY MR. BOWDEN:

7 Q. I think I just heard you change your testimony. You said
8 Mr. Duda wasn't available. And when I was cross-examining you,
9 you said he was available every day during that paper edit. You
10 consulted with him daily. Now, which is it?

11 A. He was unavailable to make judgments and decisions about
12 editing in the paper edit that I needed to proceed. So I wound
13 up making a lot of judgments and decisions on my own. He was
14 available physically, and he was talking about the project on
15 the phone. But he was not answering specific questions that I
16 was pursuing with him.

17 Q. People called and wanted to talk to him about why this
18 project wasn't ready. Right?

19 A. Yes.

20 Q. And I suppose that's because he was the man they knew to be
21 making the film. True?

22 A. I believe so. I believe that he had interviewed them and
23 told them that he was making the film, that he was the contact
24 for all of the interviews.

25 Q. I would suppose that if he was talking to them on the

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- 1 phone, that meant you didn't have to stop and talk to them?
2 A. No.
3 Q. Correct?
4 A. No.
5 Q. So you could continue working?
6 A. Yes.
7 Q. And I believe you said that -- I believe you also said that
8 he didn't have the skills at that time to do the editing on the
9 Macintosh. True?
10 A. True.
11 Q. So it's a little much to expect him to tell you how to do
12 your job when he didn't have those skills. Isn't that correct?
13 A. I was trying to teach him the skills that I knew and which
14 Daniel Broening knew, which we could coordinate and proceed with
15 the project.
16 Q. But instead of you guys having to talk -- having to talk to
17 the interviewees, he was over on the phone salving their
18 feelings and all this so you guys could work. Isn't that right?
19 A. I wouldn't characterize it that way, no.
20 Q. No. If he hadn't been there, would you have had to talk to
21 them?
22 A. No.
23 Q. Who would have to talk to them?
24 A. No one would have, not in the great length as he did during
25 that period of time.

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1 Q. The phone would have just been ringing while you are there
2 working. True?

3 A. Possibly.

4 Q. That's all I have.

5 THE COURT: All right, sir. You may stand down.
6 We'll be in recess, let's say, until 1:30. Court will be in
7 recess.

8 (Recess from 12:15 p.m. until 1:30 p.m.)

9 THE COURT: We are ready to proceed. As you are
10 probably aware, I entered a temporary restraining order pursuant
11 to the comments I made earlier and directed defense counsel to
12 make the contents of that known to the defendant. You may want
13 to fax a copy, because he might want to use it in connection
14 with the other people out there to show, to justify his action.
15 Of course, when it is over, he may be under no restraint. But I
16 don't want actions out there to moot what we are doing here.

17 MR. BOWDEN: Your Honor, let the record reflect my
18 cocounsel, Mr. Steve Smith, is in the hall at this moment
19 contacting Mr. Duda to advise him of the order of the Court. As
20 far as the fax copy, Mr. Duda's housing arrangements fell
21 through at the last minute when he got out there. He is
22 currently trying to find a hotel or whatever there is in Park
23 City, Utah, that he can stay at with this festival going on. As
24 soon as we know of a fax machine, we'll sure fax him a copy.

25 THE COURT: Very good. So are we ready to proceed?

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1 MR. WOODSON: Yes, sir.
2 THE COURT: Have we finished recross? Where are we?
3 MR. WOODSON: We're finished.
4 THE COURT: Call your next witness.
5 MR. WOODSON: Daniel Broening.
6 DANIEL BROENING, PLAINTIFF WITNESS, DULY SWORN
7 DIRECT EXAMINATION
8 BY MR. WOODSON:
9 Q. Please state your full name for the record.
10 A. My name is Daniel Bearden Broening.
11 Q. Spell your last name.
12 A. Last name is spelled B-r-o-e-n-i-n-g.
13 Q. Mr. Broening, what do you do for a living?
14 A. I work at Gallery 26. I do framing and also sell my art as
15 an artist and some web page design.
16 THE COURT: And what?
17 THE WITNESS: Web page design.
18 BY MR. WOODSON:
19 Q. How long have you worked there?
20 A. I've been at Gallery 26 since November of 2000.
21 Q. Are you familiar with a documentary film called Factor 8?
22 A. Yes, I am.
23 Q. Would you please describe to the Judge how you are familiar
24 with that film?
25 A. I worked on the film from 1999, probably about August of
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- 1 1999, through January the 15th of 2001.
- 2 Q. Describe to the Judge what your duties were with regard to
3 that film.
- 4 A. With the film, primarily it was scanning in images, which,
5 you know, for B-roll, which are basically for documents, any
6 documents that pertain to the blood scandal or the blood
7 tragedy. These were newspaper -- these were like newspaper
8 headlines, photographs of people who were actually involved with
9 the scandal and head shots and also atmospheric photographs.
10 Like there was a book entitled Killing Time that had pictures of
11 life in a prison. And I would scan these into the computer.
12 And then I would make animations out of them. The animations
13 were pretty simple. It was just like you would slowly push into
14 the image or pull out, just to put a little movement into it.
15 These would be then inserted into the documentary so when
16 somebody referenced a particular headline, you know, they could
17 show that headline in the documentary. And if someone
18 referenced, you know, if they were talking about like anyone in
19 question in the documentary, like, you know, John Lockhart, you
20 know, I had a picture of John Lockhart that I scanned in.
- 21 Q. Who were you employed by?
- 22 A. I was employed by Mike Galster.
- 23 Q. Did he pay you?
- 24 A. Yes, he did.
- 25 Q. How did he pay you?

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- 1 A. He paid me with a check.
2 Q. Do you recall what account that came out of?
3 A. The account, no. No, I don't remember what. I mean, it
4 was just a check from Mr. Galster. I don't remember what the
5 bank or anything like that.
6 Q. Did you have any fellow employees?
7 A. Yes, I did.
8 Q. Who were those people?
9 A. There was Kelly Duda, and there was Chris Case. Those were
10 the two main ones that I interacted with.
11 Q. What did Kelly Duda do on the film?
12 A. Kelly Duda, he filmed the interviews. You know, he would
13 go and interview, you know, whoever was going that he needed to
14 appear in the film. He would make an interview. Then he
15 would -- that was the main portion. That was what I -- that was
16 what I understood, is he would go out, collect documents, do
17 some research, do interviews, and then come back, collate with
18 Mike about what happened on the shoot, what some of the answers
19 to the questions were.
20 Q. What would Mr. Case do?
21 A. Mr. Case was responsible for doing transcripts. I guess
22 the tapes were sent to Chris. And he would make a transcript
23 out of them. And then from a transcript, he was to create -- he
24 was to help create a paper edit, which would then be used to
25 make a final version of the product.

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1 Q. Was it primarily the three of you employees who worked on
2 the film?

3 A. Yes, primarily.

4 Q. Were there any other persons who worked on the film?

5 A. Well, let me see. The only other people that I remember,
6 there was -- I know there were cameramen involved, but I
7 never -- I never had any interaction with them. And there was a
8 gentleman by the name of Bryon, who I remember we purchased some
9 equipment from at one time. It was a DV deck that we used to
10 help get the images from the interview and the film from the
11 interview into the Macintosh.

12 Q. Were the three of you preparing this film for Mr. Galster?

13 A. Yes, we were.

14 Q. Did Mr. Galster have the -- well, let me put it this way.

15 Did you witness Mr. Galster exhibiting control of the work
16 overall?

17 A. Yes, yes.

18 Q. Did Mr. Galster have the authority to tell you and/or Mr.
19 Duda and/or Mr. Case which direction to go and how you should be
20 doing what you were doing?

21 A. Yes, he did.

22 MR. BOWDEN: Your Honor, I'm going to object. I think
23 that calls as to a conclusion. And I don't think there's been
24 any foundation laid for how he knows -- what he knows about Mr.
25 Duda's relationship with Mr. Galster.

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1 THE COURT: He's not being called upon to make a
2 statement as to the law. He can observe. He can tell us
3 whether, in fact, the plaintiff directed the work of these
4 people, gave instructions or not as a factual matter.

5 BY MR. WOODSON:

6 Q. Did you, in fact, observe that?

7 A. Yes. Well, let me see. Really --

8 Q. Let me put it this way.

9 MR. BOWDEN: Can he finish his answer, Your Honor?

10 THE WITNESS: Well, one of the things that I observed
11 in terms of control was Mike trying to impress the need on to
12 Kelly to finish this in a timely fashion.

13 BY MR. WOODSON:

14 Q. What kind of equipment did you use for the portion of the
15 job that you were doing?

16 A. All right. For what I initially started doing, I was
17 actually using my own. It was a Dell 450. And that was what I
18 was using to scan the images on. I would scan them into the
19 Dell. I would use Photoshop to make any sort of -- to clean up
20 the image, you know, make newspaper headlines a little bit more
21 legible, change the contrast of people, because how images
22 appear in broadcast is different than how they appear in print.
23 Then I would take these images. And I would render some out of
24 my computer. But at Mike's they had another PC. It was a
25 little bit faster than mine. And it was set up. And I would

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1 render out animations on those.

2 Q. Who did that PC belong to?

3 A. Oh, that PC was Mike Galster's. Then how the process
4 worked is then, after I finished rendering them, I would render
5 them out to tape onto the camera. I think it was an XL. And
6 then from that tape, you would put the tape in the DV deck that
7 we purchased. And then from the DV deck, it would go into the
8 Macintosh. The Macintosh is what had the editing software on
9 it. It was Final Cut, Final Cut Pro.

10 Q. Besides the pay that you received from Mr. Galster, did you
11 receive any other employee benefits from him?

12 A. Yes. Good grief. From May, I guess it was mid part of May
13 of 2000 through to August, I lived in a house provided by Mr.
14 Galster. This was where the project was being put together.
15 And it was in behind his clinic, which he was in the process of
16 rebuilding. While I was there, you know, I didn't have to worry
17 about rent, utilities. Everything was provided for.

18 Q. Did anyone else live there in the house with you while you
19 were there?

20 A. Yes. Chris Case was there two times for a short period of
21 time, and Kelly Duda was there through the entire stay.

22 Q. In the course of your work on the film and scanning the
23 images, did you have occasion to look at the film, the
24 interviews that had been made?

25 A. Yes. They were always, because initially once we got the
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1 computer set up, the first thing you had to do, is you have to
2 capture all, you know, there were like a hundred tapes with all
3 these interviews on them. So you have to capture them and put
4 them in the computer, so there was always tapes running. There
5 was always the drone of the documentary in the background. Then
6 after that, of course, and initially showing Kelly how to use
7 the editing software, and then helping him get started with it,
8 he would -- I would also, we would sit down. He would show me
9 what transition that he did or, you know, point out a
10 particular, you know, something in the documentary that he
11 thought was relevant that he was excited about.

12 Q. Why did you show Kelly how to use the editing software?

13 A. Well, at the time, after -- I learned how to use it just
14 mainly out of curiosity. Kelly was -- I think he was just
15 reading the entire time. Until we got the computer set up, he
16 was always reading through Chris's paper edits, you know. So
17 once I got everything set up, I just went through the tutorials
18 and learned the basics, you know, because I had -- I have a
19 little bit of an aptitude, which mainly lies in the fact that I
20 can hit F12, which is the help menu. So anytime there's like a
21 question or a problem with the computer, I just look and read
22 the help menu and do that instead of panicking or cursing. And
23 then I went through a couple of tutorials and then just showed
24 Kelly how to do it. He had already worked a little bit with
25 Premiere. And this is like a much better version of Premiere.

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1 Q. Why did you leave the employ of Mr. Galster in January of
2 2001?

3 A. Well, at first, mainly I was done with everything that I
4 could possibly do with the documentary. I mean, by August, all
5 of my -- all the animations that I needed to render out were
6 done. And there was like about a two-month period where I left
7 and I went out to New Mexico, left in August, then came back in
8 October. There was a few things, like they needed a map
9 rendered of the route that the blood was being shipped in the
10 United States.

11 Q. Briefly, what does rendering mean?

12 A. Okay. Rendering means when you take an image and you are
13 trying to --

14 Q. A still image?

15 A. A still image. And you are rendering out to an animation.
16 Rendering is the process of the computer will actually sit and
17 draw each individual frame, you know. That process is called
18 rendering. Then when the rendering is done, you will have a
19 file which is anywhere from a hundred to 200 stills. And each
20 still is a sequence. And when that sequence is aligned, you get
21 like a three-second animation, you know, like a headline panning
22 from left to right or pushing into a photograph or pulling out
23 of a photograph.

24 Q. What was the status of the film when you left in January of
25 2001?

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1 A. When I left in 2000, it was kind of disarray.

2 Q. 2001?

3 A. Yeah, yeah. See, I left -- I really, once I left the
4 residence in Pine Bluff, I was really kind of at a point where I
5 was really done with the project. My friendship with Kelly was
6 suffering. And so it was just a good thing to get out at the
7 time.

8 Q. Why was your friendship with Kelly suffering?

9 A. Well, we had some disagreements basically on ethics about,
10 you know, what an employee and what a responsibility that a
11 person has to someone who has taken them under their wing and
12 given them a great opportunity and paid, you know, money to when
13 you are working for someone.

14 Q. Tell the Judge what that disagreement was.

15 A. In May of 2000, there was a brief time before Kelly moved
16 in to Pine Bluff, he stayed with me. He had broken up with his
17 wife. And so I let him stay at my apartment. By this time, we
18 had already been working on the documentary, you know. I was
19 still learning myself the 3-D animation software. I was putting
20 everything together, so I had contact with Kelly and had been
21 working on it.

22 Well, there was a situation that developed where Kelly Duda
23 took a contact that Mike Galster had, a gentleman by the name of
24 Steven McEveety, who was a producer, like a producer in
25 Hollywood. And Kelly started at this time to promote what I

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1 would call the Kelly Duda Story.

2 Q. Is this without Mike's knowledge?

3 A. Yes. It was without Mike's knowledge. And from what I
4 understood, this was the connection that Mike had, that Mike
5 wanted to save until the documentary was completed. Kelly began
6 to want to pursue a film treatment of his life based on Kelly's
7 involvement in the documentary to the exclusion of actually
8 finishing the documentary.

9 Q. Is that different than the documentary itself?

10 A. Oh, yeah, yeah. It is completely different. This is kind
11 of like, you know, this is like a movie drama adaptation of a
12 man coming into contact with a story that is bigger than himself
13 and bigger than anyone else and takes it on. Of course, my
14 problem that I started having is that the documentary wasn't
15 even started in terms of, you know, editing and putting it
16 together. And he was already on Mike's time running off to
17 Chicago to meet up with Steve McEveety on the set of -- it was
18 Mel Gibson. I remember. It was Mel Gibson's movie, What Women
19 Think. And I remember being on the set and watching a door get
20 slammed in Mel Gibson's face about 20 times as they did the
21 take.

22 Now, initially my main problem was that I felt that Kelly
23 can get easily distracted, just from my observations of working
24 with him. And I felt that it was important that the
25 documentary, you know, if you wanted to do this, fine. But I

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1 felt that, you know, this was just going to be another level of
2 distraction from him actually working on to the documentary.
3 And as time went on, there was kind of an underlying tension
4 that I was beginning to get from Kelly, mainly because, you
5 know, I was aware of this fact. And he did warn me never to
6 talk about, you know, the fact that he went to Chicago to Mike.

7 Q. What was the part that was unethical to you?

8 A. Well, first, in terms of unethical, you know, you have -- I
9 mean, I have been in business where if you are in a business and
10 there are leads and there are clients that you get privy to
11 while you are working at that business, you can't go in and
12 start, you know, working side deals with those clients, you
13 know, in order to garner more money.

14 Q. Is that what he was trying to do?

15 A. That's what I felt he was trying to do. But again, it was
16 really mainly practicality. I mean, why waste so much time
17 pursuing this? But yet, you are writing a story that you don't
18 know the conclusion to. So let's go ahead and get the
19 documentary to conclusion and finish that. Then you can worry
20 about this other stuff.

21 Q. Back to January 15, 2001, what was the last version, if you
22 will, of the film that you saw before you left?

23 A. Okay. My primary contact with Kelly after I left Pine
24 Bluff was mainly e-mail and some face to face, because he
25 followed me down to Gallery 26, which I started working at in

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1 November. So the last time I actually saw the documentary was
2 in October of 2000.

3 Q. Of 2000?

4 A. Yes, October of 2000.

5 Q. How long was that documentary?

6 A. By then, it was two hours and 45 minutes. I can remember
7 this, because I did the labels that would appear. I did a
8 series of labels that you would actually put on the tape. Kelly
9 sent it to Sundance at that time. He was trying to get it
10 submitted to Sundance. That was the last -- that was the
11 last -- that was the last time I saw it.

12 THE COURT: Tell me again, what did you put on it? It
13 was two hours and 45 minutes at that time?

14 THE WITNESS: Yes, yes. That's what I put on the
15 label, because they want the running time on the label.

16 THE COURT: You understood he was going to send it to
17 Sundance?

18 THE WITNESS: Yes, Sundance. I remember the logic was
19 he thought he could have a good in at Sundance because since he
20 had been talking to Steve McEveety he felt that McEveety could
21 pull some strings and get it in.

22 BY MR. WOODSON:

23 Q. Did Mr. Galster know about the Sundance submission?

24 A. You know, I don't think he did.

25 Q. Prior to the Sundance submission, did Mr. Galster ever
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1 submit Factor 8 to any other film festival?

2 A. There was a submission to the Toronto Film Festival. And
3 that happened in August. Again, I remember this because I have
4 the label that I did. At that time, the running time was 85
5 minutes.

6 THE COURT: It was how long?

7 THE WITNESS: Eighty-five minutes.

8 THE COURT: Have you seen the latest one?

9 THE WITNESS: Yes, I've seen the latest one.

10 THE COURT: Is that the same?

11 THE WITNESS: Yeah. No. It's not the same as the one
12 on Toronto, but it was, in terms of -- there was some stuff
13 added to it, some monologue scenes that Kelly had filmed.

14 THE COURT: Just happened to be the same length?

15 THE WITNESS: Yeah. Just happened to be the same
16 length. But all the clips were pretty much the same. The
17 layout was pretty much coherent in terms of what I saw.

18 BY MR. WOODSON:

19 Q. Is Plaintiff's 25, which is right in front of you, is that
20 what you recently viewed?

21 A. This one, yes. That's the one I recently viewed.

22 Q. When did you view that?

23 A. About three weeks ago.

24 Q. How long was that one?

25 A. Eighty-five minutes. No. Wait, wait. This one was a
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1 hundred. This one was like a hundred and something minutes
2 long.

3 Q. How much of what you viewed on Plaintiff's 25 was the same
4 as what you viewed back in 2001 and the years prior to that?

5 A. And prior to it, you mean, in terms of video and what's in
6 there? Everything that I saw on this tape --

7 Q. Which is Plaintiff's 25?

8 A. Which is Plaintiff's 25. Except for the monologues that
9 Kelly -- you know, the shots, because I don't remember ever
10 filming those while I worked on it. The shots that Kelly at the
11 beginning and the end, and there were -- there was -- looks like
12 a little cellular animation thing that they have that I wasn't
13 familiar with. I would say probably about 90 percent.

14 Q. So to make the record clear, 90 percent of what you saw on
15 Plaintiff's 25 is the same as what?

16 A. The same as what I witnessed as the documentary as I saw it
17 in Pine Bluff.

18 Q. Was it the same film -- was it the same film edited in the
19 same sequence, or was it the same film maybe rearranged?

20 A. There's actually a lot of sequences are set up as I
21 remember them, particularly the sequences from the overflight of
22 the prison and then going into the first inmate, the African
23 American who was wearing the stocking cap and a lot of
24 aggression. So there were a lot of sequences in how they were
25 linked up were the same. But some of them -- in this one some

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1 were mixed up, and they weren't quite in the order that I
2 remembered them.

3 THE COURT: So let me ask you, you mentioned that at
4 one point you said it was about two hours and 45 minutes?

5 THE WITNESS: Yes.

6 THE COURT: Is the material in Exhibit 25, this latest
7 version, about 90 percent of that comes from --

8 THE WITNESS: Yes.

9 THE COURT: This 2 hour and 45 minute?

10 THE WITNESS: Yes, it did.

11 BY MR. WOODSON:

12 Q. On Plaintiff's 25, were you given credit for any work?

13 A. I was given credit for graphics.

14 Q. Was any other person given any other credit?

15 A. Let me see. From the credits from here?

16 Q. Yes.

17 A. Kelly Duda.

18 Q. What credit was he given?

19 A. Well, he gave himself everything.

20 Q. What was everything?

21 A. Writer, director, producer, I think researcher. I think
22 those were -- I think that's what I kind of remembered.

23 Q. Is Kelly Duda, in fact, the writer, director, and
24 researcher of Plaintiff's 25?

25 A. No. From what my understanding is, I would say he's the

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- 1 director of it, but not the writer. As I understand, a producer
2 pays money.
3 Q. And he's the director why?
4 A. Oh, because he edited the final version. It was really his
5 call on how, you know, how to kind of put the editing together.
6 And he also -- he was also the director in the sense that he
7 would hand me stuff to scan in. So I guess he's directing me to
8 scan in the headline of the Toronto, you know, Toronto headlines
9 or any of the other material that I scanned in.
10 Q. Is Kelly Duda the owner of Plaintiff's 25?
11 A. No.
12 Q. Is he the author of Plaintiff's 25?
13 A. No.
14 Q. When you scanned in your images, where were they stored?
15 A. Let me see. My images, they were stored in two places.
16 They were stored on my computer, and they were stored on Mr.
17 Galster's PC, the computers that I was using for the renderings.
18 And after I was done with everything, I made sure that there
19 were backup copies to all the files on Mike's PC. These were
20 done on the external hard drives on the PC. It was probably
21 somewhere along the lines of four gigabytes just worth of
22 information.
23 Q. Can you identify those hard drives?
24 A. Yes, I can.
25 Q. What are they?

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1 A. The hard drives, those are the Raid hard drives. They are
2 for the PC. They are external hard drives, they are actually,
3 and a cable connected through a card interface onto the PC.

4 Q. Do you know where those hard drives are now?

5 A. Those hard drives are still with Mike Galster on the PC.
6 All that information is still on the hard drive.

7 MR. WOODSON: Pass the witness.

8 CROSS-EXAMINATION

9 BY MR. BOWDEN:

10 Q. Hello, Mr. Broening.

11 A. Hello.

12 Q. How are you doing this afternoon?

13 A. I'm doing good.

14 Q. David Bowden. I'm the attorney for Kelly Duda. And I'm
15 going to ask you a few questions. First of all, as I understand
16 it, you had no particular background in film prior to this
17 project. True?

18 A. True.

19 Q. As I understand it, you contributed to this process of
20 rendering through what a computer literate friend of mine calls
21 the RTI method, read the instructions?

22 A. Read the instructions, yeah.

23 Q. True. So you had no particular knowledge in the operation
24 of doing these renderings when you came on board this project.
25 True?

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- 1 A. False.
- 2 Q. Where did you go to school to learn how to do it?
- 3 A. Well, I went to the school of hard knocks. Oh, you mean,
- 4 do I have a degree?
- 5 Q. That will do for starters.
- 6 A. No. I don't have a degree. I didn't go to school to learn
- 7 what I did. I'm just curious, and I pick it up on my own.
- 8 Q. How many hours did you apprentice with somebody that knew
- 9 what they were doing?
- 10 A. I had friends that I always asked questions when I came --
- 11 when I had problems I didn't understand, I would ask questions.
- 12 I didn't keep a running tally of time I spent learning.
- 13 Q. So we are safe to say that -- we're safe to say that you
- 14 didn't have any formal education in this, but you educated
- 15 yourself?
- 16 A. That's correct.
- 17 Q. That's an honorable way to do it.
- 18 A. No. It's the cheap way to do it.
- 19 Q. It's the cheap way to do it. That's true. Something that
- 20 most anybody can do if they take the time and effort. True?
- 21 A. If they apply themselves.
- 22 Q. If they apply themselves. How much did the photo
- 23 animation -- I think you said you used Adobe Photoshop and
- 24 something else. What did that cost?
- 25 A. I used Adobe Photoshop, and I used 3D Max.

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- 1 Q. You work in a framing store at the present time. Is that
2 what I understood you to say?
- 3 A. That's correct. Well, it's a gallery. It does framing,
4 and it also represents artists.
- 5 Q. I understand. Now, how much did you say those programs
6 cost for the Mac and for the PC?
- 7 A. Well, Adobe Photoshop is like a \$400 program. 3D Max is
8 like 2,000.
- 9 Q. So we're talking about \$2,400 worth of software?
- 10 A. Easily.
- 11 Q. How much were you paid for doing this?
- 12 A. I was paid in total for all the animations and rendering
13 about \$2,000, about \$2,500 altogether.
- 14 Q. How were you paid? Were you paid over a period of time?
- 15 A. I was paid in a lump sum.
- 16 Q. You weren't paid with any -- you weren't paid with any
17 taxes being taken out?
- 18 A. No, no.
- 19 Q. Did you get a 1099?
- 20 A. No, I didn't. I didn't file that year because I was
21 unemployed at the time. American Communications Technologies
22 was the last place that I worked closed down. We were all laid
23 off, so I had a period of time where I was garnering
24 unemployment, was using it to just kind of work on my own stuff,
25 and this came along. I thought, well, this would be good

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1 experience to help out and possibly add to a resume.

2 Q. I'm not trying to be critical. But I think the IRS
3 requires you to file, if you make more than something under
4 \$2,000 a year, doesn't it?

5 A. I thought if you didn't make more than \$5,000 you didn't
6 file.

7 Q. Did you include your free rent for utilities and all of
8 that into your income?

9 A. No, I didn't.

10 Q. Okay. All right. Now, how did you get in touch with Mr.
11 Galster?

12 A. I got in touch with Mr. Galster through Kelly Duda.

13 Q. How did you know Kelly Duda?

14 A. I knew Kelly Duda from way back, from like early 1990. I
15 met him through a mutual friend of ours, a gentleman by the name
16 of Christopher Weems, who went by the stage name of Toff. He
17 was an artist and a musician.

18 Q. Okay. Mr. Galster was doing -- well, let's strike that.
19 When you worked with -- when you worked with Kelly, or when he
20 first contacted you, how did you come to find out about this
21 project relating to the Arkansas prison blood scandals?

22 A. Through Kelly Duda.

23 Q. What did Kelly -- when did Kelly first contact you?

24 A. Let's see. About the project?

25 Q. Yes.

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- 1 A. This would have been in the summer of 1999.
2 Q. What exactly did Kelly tell you about this project when he
3 contacted you?
4 A. Initially he said that he was working with a gentleman who
5 had written a fictionalized account of a story. The guy, at
6 first it was like he wrote this fictionalized account because it
7 was such a big story and so dangerous, but to protect himself he
8 wrote this. And now they were trying to do a documentary to
9 further the story along. He told me all the ins and outs and
10 all the details of it.
11 Q. Good. All right. Let me stop you right there as we talk
12 about the ins and outs and details of it.
13 A. Sure.
14 Q. So he told you, "I have been employed by Michael Galster to
15 do this. He's paying me a salary to do this."
16 A. Yeah.
17 Q. Is that what he said?
18 A. Like he was a patron, you know, yes.
19 Q. They were partners in this, weren't they?
20 A. Yes. I would assume it would be a form of partnership.
21 Q. So when you say a patron, it's somebody that I take funds a
22 work of art?
23 A. Or funds a project, yeah.
24 Q. Because they don't have the skill to do it themselves
25 generally. True?

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- 1 A. Yeah. They generally know what they want. Then they come
2 to you. They say, "This is a project that I want, and this is
3 how it needs to be." And, you know, like, for instance, "do a
4 portrait of my husband." If you come in and the husband doesn't
5 look right, they will say, "Well, look. I'm paying you money.
6 Make him look a little less fat, or make him more happy." And
7 then you do that.
- 8 Q. Or say a sculpture, for instance? You could do that with a
9 sculpture too, couldn't you?
- 10 A. You can alter a sculpture to suit a client's need.
- 11 Q. That doesn't mean the guy is standing there every minute of
12 the day saying "you do this and you do that" on the sculpture,
13 "take this bump off, and make the nose a little thinner," that
14 kind of thing.
- 15 A. Yeah. In sculpture, you know, it either looks like the
16 person or it doesn't.
- 17 Q. I understand. But that doesn't imply the patron has direct
18 control over that process, does he? He pays for it.
- 19 A. Yeah. He pays for it. But if he doesn't like it, he
20 doesn't pay for it.
- 21 Q. If he ultimately doesn't like it, he doesn't pay for it.
22 Okay. Now, I take it that Kelly entered a relationship with Mr.
23 Galster sometime before you became involved with this. Is that
24 correct?
- 25 A. Yes. That was the impression I got.

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- 1 Q. And you weren't privy to any of the conversations between
2 Kelly and Mr. Galster, were you?
3 A. No, I was not.
4 Q. So you don't know what their arrangement was to know as far
5 as what they had talked about, about how they would split the
6 credit or the money or anything else on these works, did you?
7 A. The only thing that I witnessed in terms of that was that
8 Mike was trying to get Kelly to create a budget. That was one,
9 and I believe Kelly telling me that they had like, if any
10 proceeds, if there was any profit made from the documentary, it
11 was like I think a 30/70 split, with Mike getting 70 and Kelly
12 getting 30.
13 Q. He wanted a budget for production costs, I take it. True?
14 A. He was always trying to get Kelly to give him an idea of
15 how much Kelly needed to spend in order to get this thing
16 finished.
17 Q. Because he was the money. Right?
18 A. He was the money.
19 Q. Kelly was the talent. Right? Part of the talent?
20 A. Part of the talent.
21 Q. And he was the go-to guy. He was the guy that was
22 directing the creative end of it. Isn't that correct?
23 A. Yes.
24 Q. You called him a director?
25 A. He's a director.

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- 1 Q. I guess in your terms that would make Mr. Galster at best a
2 producer?
- 3 A. You could say that. But that's with my relationship. I
4 mean, my relationship with Mike during this entire time was very
5 limited. It was mainly because I felt, you know, because of my
6 preknowledge of what Kelly had done, and so it made me kind of
7 uncomfortable to be around Mike.
- 8 Q. Has your relationship improved any significantly since that
9 time with Mr. Galster?
- 10 A. Yes, it has.
- 11 Q. Are you a friend of Mr. Galster now?
- 12 A. Yes, I am a friend of Mr. Galster's.
- 13 Q. How often do you see Mr. Galster?
- 14 A. I see Mr. Galster about once maybe every other month or
15 once a month.
- 16 Q. We're talking about this fellow sitting at counsel table
17 over here with Mr. Woodson. True?
- 18 A. Yes, I am.
- 19 Q. The fellow with the Van Dyke beard and glasses. True?
- 20 A. True.
- 21 Q. That's Mr. Galster?
- 22 A. Yes, it is.
- 23 Q. Would you look at that blackboard over there?
- 24 A. That's his name.
- 25 Q. G-a-l-s-t-e-r?

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1 A. Yes.
2 Q. Is that not Galster or Galster?
3 A. I would say Galster. But I always call him Galster.
4 Q. So you are not even sure what his name really is?
5 A. Well, no. I guess I'm not sure what the pronunciation of
6 his name. I run into that problem with Broening. Some people
7 say Broening and Browning.
8 Q. But your friends don't have that problem, do they?
9 A. Well, they only know the version I tell them.
10 Q. Right. Now, tell me again when you worked on this project
11 for Kelly Duda.
12 A. What time frame?
13 Q. Yeah.
14 A. August of, I guess, mid 1999 up until 2001.
15 Q. I'm sorry. 2001?
16 A. Uh-huh.
17 Q. When did Kelly or anybody stop doing interviews and camera
18 shoots? When did that happen?
19 A. Let me see.
20 Q. Or did it happen?
21 A. No. Well, yeah, the major bulk of all the interviews of
22 the 100 and so tapes was done by the time I got involved with
23 it. I did go on -- there were three -- there were actually
24 three shoots that I went on, that I accompanied Mr. Duda on.
25 That was the interview of the Cecil Boren family. There was a
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- 1 gentleman by the name of -- I can't remember his name. I drew
2 his picture. His name was Riable, I believe. I think that was
3 his name.
- 4 Q. A one-armed gentleman. Right?
- 5 A. Excuse me?
- 6 Q. A one-armed gentleman?
- 7 A. Yes. Accident with dynamite. And then there was a lawyer
8 in Little Rock whose name escapes me.
- 9 Q. Would that be Jimmy Clouette, perhaps?
- 10 A. If he is anything in relationship to Rolf Kaestel, yes,
11 that would be.
- 12 Q. So you went on those. Did Mr. Galster go with you?
- 13 A. No, no. I just accompanied.
- 14 Q. Did Mr. Galster, did he make out a list of questions for
15 y'all to take?
- 16 A. I did not know Mr. Galster at the time. He was just the
17 man behind the curtain, so to speak.
- 18 Q. Okay.
- 19 A. I did not meet really Mr. Mike Galster until there was one
20 time he came by the apartment. And then there was one time, I
21 guess early in -- it must have been 2000. But I remember Kelly
22 taking me to visit the clinic, and I met him briefly there. So
23 I never witnessed any exchange like that.
- 24 Q. So he didn't offer any control or anything at that
25 particular point over the film?

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- 1 A. No. I was not privy to witness anything like that.
2 Q. Okay. Now you said that -- you said your friendship with
3 Kelly had suffered?
4 A. Yes.
5 Q. Do you still consider him a friend?
6 A. No.
7 Q. But you do consider Mr. Galster a friend?
8 A. Yes.
9 Q. You would like to see Mr. Galster come out of this well,
10 out of this procedure doing well. Right?
11 A. I would just like for justice to be done.
12 Q. In your opinion, that's that Mr. Galster should win. True?
13 A. True.
14 Q. Now, I think you said that Kelly wanted to make something
15 you called rather disdainfully the Kelly Duda Story?
16 A. Yes.
17 Q. Was there ever anything by that title?
18 A. It was actually -- I think the working title of the script
19 was Factor 8.
20 Q. But there was never anything where he called it the Kelly
21 Duda Story?
22 A. No.
23 Q. That's your opinion?
24 A. That's my opinion, yes, sir.
25 Q. Now, you knew this was going on. True?

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1 A. True.

2 Q. You knew Michael Galster was the money?

3 A. True.

4 Q. And you knew that he was paying for what you were doing.
5 True?

6 A. True.

7 Q. But you never went to Mr. Galster and told him about what
8 Kelly was up to at that time, did you?

9 A. No, I did not. I had to wait until 2000 before I did that,
10 2001. Excuse me.

11 Q. I assume that's because you would have lost your living
12 place and all of this. True?

13 A. Well, no. The main reason was is that I was hoping that
14 what Kelly was doing would not become the sole consuming drive
15 behind his effort. And I still at that time believed that Kelly
16 could finish the documentary in a timely fashion, by at least
17 August, and if not August, hopefully by the end of 2000. And it
18 was still a project that I believed in, so I stayed and worked.
19 And I had been friends with Kelly for a long time. So I was
20 caught in a dual, you know, relationship between here was an old
21 friend of mine that I see heading toward a precipice and gets
22 very indignant, you know, when this is pointed out, to a man
23 that I really don't know anything about, other than the fact,
24 yeah, I'm living off of his means. So it wasn't something --
25 that's what caused the drift primarily, again, in my

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1 relationship with Kelly.

2 Q. You had an old friend who you felt was doing wrong, who you
3 knew had 30 to 70 percent of this film at least, as I understood
4 your earlier testimony.

5 A. What's that?

6 Q. I understood you to say earlier that he had a 30 percent to
7 70 percent interest?

8 A. He had 30 percent. Mr. Galster had 70 percent.

9 Q. That's right. 70 percent and 30 percent. So it was part
10 Kelly's film?

11 A. Right.

12 Q. And he could promote it for his own advantage and Mr.
13 Galster's, could he not?

14 A. Well, they were working together to promote the film,
15 because that's what the whole thing was -- everyone was pitching
16 in to try to help promote the film. My initial was to actually
17 try to put up a website on behalf of the film.

18 Q. Did you meet with anybody, with Mr. McEveety or any of his
19 people yourself personally?

20 A. Yeah. I met McEveety. I never really talked to him. I
21 sat at the table when Kelly was giving the dynamics of the story
22 and handed Steve the script.

23 Q. That story involved the Arkansas prison blood scandal.
24 True?

25 A. The script that he had involved the fictionalized account
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1 of Kelly's movie adaptation that he wanted to sell. But he did
2 inform Steven roughly generally of the dynamics of what the
3 actual tragedy or scandal was about.
4 Q. Told him about Blood Trail. True?
5 A. Yes.
6 Q. Told him about Michael Galster, a/k/a Michael Sullivan?
7 A. Well, he didn't have to tell Steven about Mr. Galster,
8 because Steven had already, as I came to understand and learn,
9 was already aware of Mr. Galster and had already, I think, opted
10 on a movie right to Mr. Galster's book, the Blood Trail.
11 Q. Okay. Let me ask you a question about the submission to
12 the Sundance Film Festival. That's different from Slam Dance,
13 isn't it?
14 A. Yes, it is.
15 Q. It's a much bigger deal in some circles, because Robert
16 Redford started it. True?
17 A. Yes, it is.
18 Q. Now, you've submitted something that was two hours and 45
19 minutes?
20 A. Yes.
21 Q. Was that complete with credits and music and all that
22 stuff?
23 A. You know, I don't think it was near as completion as I
24 think it could have been. But it wasn't -- I would not call it
25 a refined product.

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- 1 Q. Did it have credits?
2 A. Yeah, yeah. Of course, it had credits, yeah. He was very
3 good at credits.
4 Q. Sure, sure. So did it list Michael Galster as a producer?
5 A. You know, I can't remember. I don't remember. You know,
6 the thing is, all this, what I'm focused on, trying to help
7 Kelly get, you know, the film off to Slam Dance -- I mean
8 Sundance that first time. I remember that the deadline was
9 coming up. We were really frantic and something -- the computer
10 would render, and there's always some problem. There's always
11 something that was being juggled. So my main focus was just to
12 try to make sure everything was working.
13 Q. So you didn't read what you were putting on the credits?
14 A. Well, I showed -- Kelly knew how to put credits on. I
15 didn't render out credits. I rendered out the animations of
16 like people and documents. The credits you could put on in the
17 computer. I didn't have to have anything to do with that.
18 Q. I have to follow up on something you just said a minute
19 ago. You said, "I didn't help him present it to Slam Dance."
20 Did you work on the copy that's going to Slam Dance at all?
21 A. No, sir, I did not.
22 Q. I just wanted to be sure. It went to the Toronto Film
23 Festival?
24 A. Yes, it did.
25 Q. How long was that copy?

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- 1 A. The running time was listed at about 85 minutes.
2 Q. Did it have credits that you worked on?
3 A. It had credits on it. Again, I didn't render the credits.
4 Q. Was the film submitted to other film festivals?
5 A. The only two that I was aware of was Toronto and Sundance.
6 Q. So you don't know if it was submitted to one in California?
7 A. No.
8 Q. You don't know if it was submitted to Hot Springs, which is
9 probably the biggest documentary film festival in the country?
10 A. Kelly had a prejudice against Hot Springs that I really
11 couldn't understand. But he wasn't very big on Hot Springs.
12 Q. But you don't know whether it was submitted there?
13 A. No, I don't.
14 Q. No, you answered emphatically that Kelly was not the owner
15 of this film?
16 A. No.
17 Q. Now you've just told us that he had a 30 percent interest
18 in the film. Would that not make him part owner?
19 MR. WOODSON: I object to the extent it calls for a
20 legal conclusion.
21 THE COURT: I think that's correct. He can just tell
22 the facts. The Court will make a legal conclusion.
23 MR. BOWDEN: Okay.
24 BY MR. BOWDEN:
25 Q. You said he wasn't the author either, didn't you?

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- 1 A. No. No, he was not the author.
2 Q. As a matter of fact, did he write the questions for the
3 interviews, or do you know?
4 A. At the time, I did not know.
5 Q. But you've been told later on?
6 A. Yes.
7 Q. So you don't have any personal knowledge of that?
8 A. No.
9 Q. You do know that there was narration in there that was not
10 in the other version. True?
11 A. No. The narration was always kind of developing in one
12 form or another, even from Toronto on, you know.
13 Q. So the story wouldn't just tell itself. It had to have
14 some narration?
15 A. The story that I worked on, yeah, they were including
16 narration. Whether or not you could have made the story tell
17 itself through use of the film clips just standing on their own
18 merit, I don't know. But the version we worked on, yes.
19 Q. Who did the narration?
20 A. Kelly Duda did the narration.
21 Q. How was the narration that was in this other film different
22 from the one that was in the film you said you worked on?
23 A. It looked pretty much, from what I saw, the same. The only
24 additional narrations that I saw added were Kelly's, again, some
25 Kelly monologues, where the camera is focused on him.

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- 1 Q. He did some work at your house. True?
2 A. Yes, yes. He was a roommate over on East 6th.
3 Q. He who?
4 A. Kelly Duda. I would think from about maybe the end of
5 February or March through May.
6 Q. He still lives on East 6th, doesn't he?
7 A. He actually lives next door to where we originally stayed.
8 I lived at 504 6th, Apartment 1. And he is currently at 504
9 East 6th, Apartment 6.
10 Q. You shared a room?
11 A. He had his own room.
12 Q. Had his own room. Was he in the apartment that he's in now
13 and you were next door?
14 A. No, no, no. He stayed in my -- the apartment was pretty
15 spacious.
16 Q. Two bedroom? Three bedroom?
17 A. Yeah. It was two bedrooms, a living room, a dining room,
18 two baths. It wasn't in the best shape. But for 400 bucks a
19 month, it was pretty good.
20 Q. When did you move out?
21 A. We moved out in, I guess, mid May of 2000.
22 Q. I take it we didn't move out. Kelly is still there.
23 A. No, no. Kelly moved out, went to Pine Bluff. He left Pine
24 Bluff in, I think, January or February of 2001. And then they
25 moved him to the apartment where he now stays.

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1 Q. Why did y'all have to move out?

2 A. Well, let me see. I moved out. Initially, when I moved
3 out, my impression was that Mike was trying to light a fire
4 under our butts to get this thing done in a timely fashion. I
5 was done with everything, so really I had no reason to stay
6 there. And I just met Renee Williams, who was the upstairs
7 neighbor of a really good friend of mine. Her name is Karen
8 Nelson. And she was working at a gallery. And she knew that I
9 was an artist and had some previous framing experience. And she
10 asked me if I would like to have a job there, so I took her up
11 on it. I moved out from Pine Bluff at the end of October and
12 started working for her in November of 2000.

13 Q. Just out of curiosity, other than framing and computer
14 work, what kind of art do you do?

15 A. Right now I'm into figurative work. You know, I'm really
16 getting into the human form. For a long time I did
17 abstractions, kind of biomechanical, naturalistic looking,
18 almost like you would see under an electron microscope. I was
19 fascinated --

20 Q. Are you trained in any of that, or is that something you
21 picked up on --

22 A. I went to a commercial arts school: Houston Art Institute,
23 graduated back in '87. And I really wasn't too interested in
24 pursuing a commercial career, so it's pretty much all my own
25 work.

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1 MR. BOWDEN: Your Honor, that's all I have at this
2 time.

3 THE WITNESS: Thank you very much.

4 REDIRECT EXAMINATION

5 BY MR. WOODSON:

6 Q. During the time that all the employees were at Mr.
7 Galster's house in Pine Bluff doing the renderings and the
8 editing and all that, how often would Mr. Galster come into the
9 house where all of you were working?

10 A. Every day.

11 Q. What would he do when he came in?

12 A. Well, generally, you know, kick Kelly out of bed, and then,
13 you know, see where the state of the project was.

14 Q. Was he interested in seeing what had been done?

15 A. Yeah, yeah, he was interested.

16 Q. Did you witness him exhibit oversight of the project?

17 A. Yes.

18 Q. You stated to Mr. Bowden that they moved Mr. Duda to Little
19 Rock. Who is "they"?

20 A. It was Mr. Galster's sons. That was Gabe and the youngest
21 son. I forget his name right now.

22 Q. Thank you.

23 A. It was Mr. Galster's sons that helped him move.

24 Q. Thank you.

25 A. You are welcome.

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1 THE COURT: All right, sir. You may stand down. Call
2 your next witness.
3 MR. WOODSON: Renee Williams.
4 THE COURT: How many more witnesses does the plaintiff
5 have?
6 MR. WOODSON: One after this one, Your Honor, two
7 total.
8 MR. BOWDEN: Your Honor, I would be tickled to death
9 to hear what this witness is going to have to say. We haven't
10 had a chance to do any discovery. Apparently, from the last
11 testimony, she's just someone's girlfriend.
12 MR. WOODSON: For the sole purpose of stating that she
13 witnessed in 2001 the four-hour version of the film. And she's
14 going to testify that it's substantially similar, if not
15 identical, to Plaintiff's 25.
16 MR. BOWDEN: Cumulative, Your Honor. Objection.
17 THE COURT: Objection overruled. It shouldn't take
18 long.
19 ELLEN RENEE WILLIAMS, PLAINTIFF WITNESS, DULY SWORN
20 DIRECT EXAMINATION
21 BY MR. WOODSON:
22 Q. Please state your name for the record.
23 A. Ellen Renee Williams.
24 Q. Ms. Williams, where do you live?
25 A. I live at 108 1/2 Pearl Street in Little Rock.
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- 1 Q. What do you do for a living?
2 A. I own an art gallery and frame shop.
3 Q. Where is that?
4 A. It is on Kavanaugh.
5 Q. Are you familiar with a documentary film called Factor 8?
6 A. Yes. But when I saw it, it was called Factor 8 with the
7 subtitle The Arkansas Prison Blood Scandal.
8 Q. When did you see that?
9 A. I saw that. Kelly Duda showed it to me at Mike's house in
10 Pine Bluff on December 17th of 2000. I saw a four-hour version.
11 Q. Mr. Duda took you to Pine Bluff to view a four-hour version
12 of the documentary film. Is that correct?
13 A. Right.
14 Q. How did you know Mr. Duda?
15 A. I met him through having hired Daniel Broening earlier in
16 November of 2000.
17 Q. What was your relationship with Mr. Duda?
18 A. We went out for a period of about three months.
19 Q. It was during this period that you were going out that he
20 took you to see this film?
21 A. Yes.
22 Q. There's a videotape in front of you labeled Plaintiff's 25.
23 Have you had an opportunity to view that film?
24 A. Yes, I have.
25 Q. What is on that film?

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1 A. Everything that I saw in December of 2000, except for Kelly
2 having added himself in and his narration.

3 Q. Approximately how long is Plaintiff's 25 that you viewed?

4 A. About a hundred minutes.

5 Q. How much new material had been added by Mr. Duda?

6 A. I would say about five minutes.

7 Q. The rest of that film is material that you had seen back in
8 2000 in Pine Bluff?

9 A. Yes.

10 Q. At Mr. Galster's house?

11 A. Right.

12 MR. WOODSON: Pass the witness.

13 CROSS-EXAMINATION

14 BY MR. BOWDEN:

15 Q. Ms. Williams, I'm David Bowden. I'm the attorney for Kelly
16 Duda. I have a few questions for you. First question: Who
17 have you talked to about this film, its length, and that sort of
18 thing?

19 A. Who have I talked to about --

20 Q. That have been here today, and other than Mr. Woodson, who
21 have you talked to?

22 A. The stolen film or the four-hour version?

23 MR. BOWDEN: I move to strike, Your Honor. There's no
24 proof in the record that it was stolen.

25 THE COURT: That it was what?

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1 MR. BOWDEN: She said the "stolen" film. I object to
2 that characterization.

3 THE COURT: Yes.

4 THE WITNESS: Are you talking about the 100-minute
5 version or the four-hour version that I saw?

6 BY MR. BOWDEN:

7 Q. I'm talking about the 100-minute version that had five
8 minutes of Kelly Duda in it, as you said.

9 A. And who have I spoken to about it?

10 Q. Yes. Who have you talked to about that?

11 A. Mike Galster and his lawyer.

12 Q. Have y'all agreed that it's about a hundred minutes and
13 about five minutes of Kelly in it?

14 A. No. I was able to draw that conclusion on my own.

15 Q. Along with everybody else that was there.

16 THE COURT: No comments. Just ask your questions.

17 MR. BOWDEN: I'm sorry. Okay.

18 BY MR. BOWDEN:

19 Q. Now, it's interesting. I was just talking with Mr.
20 Broening. He said about the time that he and Kelly split up
21 that he met you. True?

22 A. About the time that who split up?

23 Q. He and Kelly Duda as far as living in the same apartment
24 together, that he met you. True?

25 A. I don't know when they split up.

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- 1 Q. Are you dating Mr. Broening?
2 A. Pardon me?
3 Q. Are you dating Mr. Broening?
4 A. No.
5 Q. Have you been dating Mr. Broening?
6 A. No.
7 Q. But you dated Kelly Duda?
8 A. Yes.
9 Q. Why did you stop?
10 A. Because I found his actions alarming, and he was verbally
11 abusive.
12 Q. So it would be fair to say that you are not his friend at
13 this point?
14 A. No, I am not.
15 Q. It would be fair to say that you think that Mr. Galster
16 ought to win this case. True?
17 A. I think that the person who stole the tape should be found
18 guilty.
19 Q. And you don't know -- again, you don't know that it was
20 stolen, do you?
21 A. It is my opinion, yes.
22 Q. Your opinion is not what I asked. You do not know for a
23 fact what the agreement between Mr. Galster and Kelly Duda was.
24 Let me specify. You were not there when it was made as far as
25 the agreement, were you?

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1 A. I was not there when it was made.

2 Q. Thank you.

3 THE COURT: Anything else of this witness? You may
4 stand down. You are excused.

5 MR. BOWDEN: I have no use for this witness, Your
6 Honor.

7 THE COURT: Call your next witness.

8 MR. WOODSON: Susan Parker.

9 MR. BOWDEN: Again, Your Honor, at this late stage, I
10 would be tickled to death to know what Ms. Parker is going to
11 testify about and how it is not cumulative or how it is
12 relevant.

13 MR. WOODSON: Ms. Parker is the author of several
14 magazine and newspaper articles, two of which I have with me
15 here today. She won some awards for them. They all concern the
16 prison blood scheme. Ms. Parker is going to testify that she
17 viewed Plaintiff's 25 and that the narration on Plaintiff's 25
18 is suspiciously similar to an article she wrote that I have here
19 in my hand, and that it appears to her the narration had been
20 taken from her article that she wrote.

21 MR. BOWDEN: He is not accused of plagiarizing from
22 Ms. Parker. That would be other wrongs that are outside the
23 scope of this hearing, Your Honor. I would object to her
24 testifying.

25 THE COURT: I think the objection will be overruled.

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SUSAN PARKER, PLAINTIFF WITNESS, DULY SWORN
DIRECT EXAMINATION

1
2
3 BY MR. WOODSON:
4 Q. Please state your name for the record.
5 A. Susan Parker.
6 Q. Ms. Parker, where do you live?
7 A. Little Rock.
8 Q. What is your occupation?
9 A. I'm a journalist.
10 Q. Describe for the Court what type of journalism you do.
11 A. I cover politics. I'm an investigative journalist. I
12 write for U.S. News & World Report, the Dallas Morning News, the
13 Economist, Salon.com, and several other regional and national
14 magazines.
15 Q. And you've had your work published in those publications on
16 a routine basis?
17 A. Yes. Since 1997.
18 Q. How long have you been a journalist?
19 A. Since about 1987.
20 Q. What are you doing these days?
21 A. I cover politics. I'm covering the Wesley Clark campaign,
22 cover lots of Arkansas issues.
23 Q. What are the mechanics of how freelance journalism works?
24 A. Well, I'm under contract with a lot of these publications
25 to cover different whatever events, plane crashes. You name it,
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1 I cover it. I went into business as a freelance journalist in
2 1997.

3 MR. WOODSON: May I approach the witness, Your Honor?

4 THE COURT: Yes, you may.

5 BY MR. WOODSON:

6 Q. Are you familiar with a book called Blood Trail?

7 A. I am.

8 Q. Tell the Judge what you know about that book.

9 A. I know that I received a copy of it in 1998. It's a
10 fiction book written by Michael Sullivan, which was a pseudonym
11 for Mike Galster.

12 Q. Are you familiar with the documentary film called Factor 8?

13 A. I am.

14 Q. Do you know the plaintiff, Mr. Galster?

15 A. I do.

16 Q. Tell the Court how you know Mr. Galster.

17 A. He was a source of mine for the story that I wrote in 1998,
18 this story.

19 Q. How did you come to meet the plaintiff?

20 A. I met him through a friend of his. I had done a story on
21 Hot Springs, Arkansas. And I met Lorraine Benninni, and her
22 husband is an artist. I had brunch with them. They were
23 friends of Mr. Galster's. And they kind of told me about this
24 book that he had written and told me that I should meet him.

25 Q. And that piqued your interest, I guess?

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- 1 A. It did as a journalist, yeah. The story, they told me kind
2 of what the book was about. And at that time, I thought the
3 book was fiction, and so it piqued my interest as a journalist
4 to see, you know, if it was fiction, if it was based on any, you
5 know, reality. And so I believe that they gave me his phone
6 number, and I contacted him.
- 7 Q. And you met with Mr. Galster?
- 8 A. I did.
- 9 Q. What happened at that meeting?
- 10 A. It was about a two-hour preliminary interview that I did
11 with him where he told me that, yes, he had written that book
12 and that the book was based on real issues that was happening in
13 the prison system of Arkansas.
- 14 Q. What do you mean by real issues?
- 15 A. The tainted -- the prison plasma program.
- 16 Q. That those were factual occurrences?
- 17 A. Exactly.
- 18 Q. Then what happened after this meeting?
- 19 A. Well, I was very interested in the story. And I told him
20 that I thought I wanted to write a more -- an in-depth piece not
21 on his book, but about the real issues going on in the prison
22 system, and I wanted to use him as a source for that piece.
- 23 Q. What was the date of that first meeting?
- 24 A. It was sometime in October, late October 1998.
- 25 Q. If you would, give the Judge a brief time line of the
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1 events that transpired after that with regard to you writing the
2 article.

3 A. Okay. It was late October 1998. And we met for the
4 preliminary interview that was two hours, maybe three hours on a
5 Wednesday afternoon. From there, I did some investigative work
6 to find out if what he had told me was indeed true. And I
7 realized, yes, it was, that there was a prison plasma program.
8 There were people involved in that program that were well known
9 in Arkansas politics. From there, I e-mailed an editor of mine
10 at Salon.com and said I thought I wanted to do the story. She
11 gave me the go-ahead.

12 And over the course of November into December, I
13 interviewed extensively Mr. Galster, people involved that's
14 quoted in this story. I did my own research, both at the
15 library, at the historic -- the Arkansas History Commission,
16 tons of research that a reporter would do to piece together a
17 story, met for hours with Mr. Galster, who gave me tons of
18 documents that he had gotten, and wrote the piece. And it was
19 published on December 24th, 1998.

20 Q. Would you look at what's been marked as Plaintiff's 28. It
21 may be underneath. It is paperclipped there with what you have.

22 A. 28? I have 27.

23 Q. Take your paper clip off there. I think it is stapled
24 below.

25 A. I have it.

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1 Q. Is Plaintiff's 28 the article that you wrote as a result of
2 your investigation and meetings with Mr. Galster?

3 A. I believe it is.

4 Q. What is the --

5 THE COURT: That's the one that's captioned "Blood
6 Money"?

7 THE WITNESS: Yes, sir.

8 BY MR. WOODSON:

9 Q. And it is your testimony that you wrote Plaintiff's 28?

10 A. Yes.

11 Q. And this was published in Salon.com or Salon magazine?

12 A. Salon.com. It is an online magazine.

13 Q. What is the substance of this article?

14 A. The substance of this article is the story of the prison
15 system, of some of the history of the Arkansas Department of
16 Correction. It's also a story of the prison plasma program and
17 who was involved, how it was all tied together with President
18 Bill Clinton, who was then governor. That's how the plasma went
19 to Canada, went to Japan, to Spain. It's the whole story.

20 Q. Did you win an award for writing this article?

21 A. I did.

22 Q. What was that award?

23 A. The Society of Professional Journalists award that was
24 given to me in San Francisco in October of 1998.

25 Q. And what is the organization that gave that?

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- 1 A. The Society of Professional Journalists.
2 Q. If you would, also look at Plaintiff's 27. Did you write
3 that article?
4 A. Yes.
5 Q. What's the title of it?
6 A. "Blood Money."
7 Q. When was it published?
8 A. That's the same one, December 24th, 1998.
9 Q. This is an identical article. It is the same as
10 Plaintiff's 28?
11 A. Well, this doesn't have all of it.
12 THE COURT: 27 is a shorter version of 28?
13 THE WITNESS: No. What happened was apparently 27
14 didn't get printed, the whole story. If you had clicked at the
15 end of page 4, it would have continued on to another web page
16 and given the whole story. It's about 5,000 words, I think, is
17 the piece. But this is the start of this story.
18 BY MR. WOODSON:
19 Q. It was my mistake. It was my understanding that
20 Plaintiff's 27 was a different article.
21 MR. WOODSON: Judge, we move to offer Plaintiff's 28.
22 THE COURT: 28 is received.
23 (Plaintiff Exhibit 28 received in evidence.)
24 BY MR. WOODSON:
25 Q. Besides Plaintiff's 28, did you write any other articles on
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1 the prison blood scandal?

2 A. Yes. I wrote another one for Salon in February of 1999. I
3 wrote one for the Memphis Commercial Appeal in March of 1999 and
4 one for The Economist magazine that's based in London, also in
5 March of 1999.

6 Q. There's a videotape in front of you labeled Plaintiff's 25.
7 Have you had occasion to view that film?

8 A. I have.

9 Q. When did you view that?

10 A. I viewed it about two weeks ago.

11 Q. What were the contents of that film?

12 A. It's about the tainted prison plasma that came out of
13 Cummins, interviews with prisoners, interviews with some
14 politicians. It attempts to outline the story of what happened
15 with the tainted prison plasma program.

16 Q. Prior to viewing Plaintiff's 25, were you ever familiar
17 with the making of that film or any other film called Factor 8?

18 A. I was.

19 Q. Tell the Court what knowledge you had of that.

20 A. Well, when I interviewed Mr. Galster in -- I believe it was
21 in that preliminary interview at Community Bakery. It could
22 have been one in November. I was aware that he wanted to make a
23 documentary about this, to have the story documented, especially
24 before Canadians died from HIV or hepatitis C. So I knew there
25 was a making of a video or a documentary and that he had

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1 actually asked if Kelly Duda could come on some of the
2 interviews that I had to film.

3 THE COURT: Say that again.

4 THE WITNESS: He had asked me as a reporter if Mr.
5 Duda could come with me on some of the interviews that I would
6 be doing for the Salon story.

7 BY MR. WOODSON:

8 Q. Did Mr. Duda accompany you?

9 A. On just a few.

10 THE COURT: That was the plaintiff asked you --

11 THE WITNESS: Exactly, yes, sir.

12 THE COURT: -- if Mr. Duda could accompany you on some
13 of those interviews you were doing?

14 THE WITNESS: Yes, sir.

15 BY MR. WOODSON:

16 Q. Did you ever have occasion to view any of the filmed
17 interviews that were made during the making of this film?

18 A. I did.

19 Q. Tell the Court how that came about.

20 A. I can't exactly remember who -- which interviews I saw. I
21 just know that Kelly Duda came over to my apartment a few times
22 to show me photos that he had gotten, because at some point we
23 began to kind of work in tandem, because he would get interviews
24 for the documentary that I needed for my story, so sometimes I
25 would want to see the footage so that I would know if I hadn't

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1 interviewed that person what he told Kelly Duda so that I could
2 follow up on a more intense interview. And so he came over to
3 my apartment a couple of times to show me that footage. But I
4 can't remember with who.

5 Q. Other than the footage that he showed you, did you ever
6 have occasion to view a compiled film of all of the different
7 interviews?

8 A. No.

9 Q. Did you attend Mr. Galster's press conference in
10 Washington, D.C.?

11 A. I did.

12 Q. Tell the Court the circumstances of that.

13 A. Well, I was -- after I did my initial story, I was very
14 much into following this story as much as I could. And so I
15 traveled to Washington D.C. in February of 1999 to cover the
16 press conference at the National Press Club that was held there.

17 Q. What happened at that press conference?

18 A. Mr. Galster presented his evidence. Many of the Canadians
19 who were infected with HIV and hepatitis C came down to
20 Washington to also talk to the media. That's what happened.

21 Q. Who were the people that went on the trip to Washington?

22 A. That would be myself, Mr. Galster, Kelly Duda, Clint. I
23 don't know his last name. He was a photographer. And John
24 Schock.

25 Q. Who paid for the travel expenses?

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- 1 A. That was Mr. Galster.
2 Q. Who paid for the hotel expenses?
3 A. Mr. Galster.
4 Q. Who directed the folks with the camera what to do and how
5 to do it?
6 A. Mr. Galster.
7 Q. How long did the trip last?
8 A. I believe three days. It could have been two.
9 Q. While you were involved in this story, researching for your
10 article, going to Washington, all of that, what role, if any,
11 did Kelly Duda play in your gathering information?
12 A. He would give me documents that I would ask Mr. Galster if
13 he had, you know, I would need this document or that document.
14 He would say, "Yes, I have it, and I'll have Kelly drop it by
15 your apartment." Sometimes he would try to explain the
16 connections of people. But I soon realized that he didn't know
17 the connections quite like I knew the connections, since I had
18 covered politics. That was about it.
19 Q. Compare the role of Mr. Duda to the role Mr. Galster played
20 in your investigation.
21 A. Mr. Galster was definitely the whistle-blower. Mr. Duda
22 was like an assistant, like was there to give me documents and
23 to show me footage from this film that he was making for Mr.
24 Galster.
25 Q. How do you know that Mr. Duda was an assistant?

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- 1 A. Because I know he was getting paid by Mr. Galster, because
2 I saw money actually exchange hands. And he told me he was
3 working for Mike Galster.
- 4 Q. Would Mr. Galster tell Mr. Duda what to do?
5 A. Yes.
- 6 Q. When you watched Plaintiff's 25, was there any narration?
7 A. Yes.
- 8 Q. Did the narration in Plaintiff's 25 seem similar to your
9 article of "Blood Money," which is Plaintiff's 28?
10 A. Yes.
- 11 Q. Describe how so for the Court.
12 A. He uses exact phrases. For instance, in the very beginning
13 of that, he talks about how Arkansas has a good old boy network
14 or good old boy system. And in my story I have a quote actually
15 from someone that says "good old boy network." He describes --
16 he describes Grady, Arkansas, much like I describe it. He
17 interviews many of the same people that I interviewed. The
18 narration, the piecing together of the dateline of international
19 recalls and that certain kind of thing is very much like this
20 story.
- 21 Q. Your article, Plaintiff's 28, was published when?
22 A. December 24th, 1998.
- 23 Q. Do you recall on Plaintiff's 25 whether or not it has a
24 copyright date on it?
25 A. It does not, I don't think.

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1 MR. WOODSON: Pass the witness.
2 CROSS-EXAMINATION

3 BY MR. SMITH:

4 Q. Ms. Parker, my name is Steve Smith. I'm one of Mr. Duda's
5 lawyers. You said you had seen money change hands in your
6 testimony just a second ago. When did that happen?

7 A. I definitely saw it in Washington, D.C.

8 Q. You also said that in Washington, D.C., Mr. Galster was
9 clearly in charge of the video production that was going on
10 there at the press conference?

11 A. Yes.

12 Q. I believe you also testified on direct that Mr. Duda
13 accompanied you on several of your interviews. Is that right?

14 A. That's right.

15 Q. And who else went with the two of you?

16 A. It was just me and him.

17 Q. Mr. Galster was not there?

18 A. No.

19 THE COURT: Were any of your interviews filmed, or
20 were they just person to person? When you interviewed, was
21 someone filming the interview?

22 THE WITNESS: On one occasion, yes. The John Schock
23 interview was filmed.

24 BY MR. SMITH:

25 Q. Ms. Parker, how did you find out about the existence of
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- 1 Plaintiff's 25?
2 A. NPR. Local NPR radio had a story about it.
3 Q. Do you remember approximately when that was?
4 A. Sometime in mid December of 2003.
5 Q. Do you listen to NPR on a regular basis?
6 A. Yes.
7 Q. You sound like you could be an announcer for them as well.
8 You testified that you got documents from Mr. Galster while you
9 were doing your investigation. Is that right?
10 A. Right.
11 Q. He had them, obviously, before he gave them to you?
12 A. Right.
13 Q. Were you with him when he obtained any of them?
14 A. No.
15 Q. So you really don't know where he got them?
16 A. I do know that he told me that he was going to the
17 sheriff's office a few times here locally to get them. I never
18 doubted they did not come from him.
19 Q. Were all those documents from the sheriff's office you got
20 from him?
21 A. No.
22 Q. Although you did not doubt him, it is possible that those
23 documents may have indeed come from various sources through
24 Kelly Duda, isn't it?
25 A. Possibly.

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1 Q. Do you remember approximately when your meeting with Mr.
2 Galster at Community Bakery was?

3 A. Late October 1998.

4 Q. You may have testified to that on direct. If so, I
5 apologize for asking you again. Just for a second, going back
6 to the press conference in Washington, what was the purpose of
7 that press conference? Do you recall?

8 A. It was basically to shed light on this story and to have
9 the Canadians who were infected with HIV and hepatitis C to come
10 down in hopes that an investigation by the Department of Justice
11 would occur.

12 Q. Did it also promote a book called Blood Trail?

13 A. Not really, no.

14 Q. No? Did it mention the book?

15 A. I don't recall.

16 Q. At one point in your direct testimony, you testified that
17 you and Mr. Duda, I believe you used the word, worked in tandem
18 on a few interviews. Do you remember that?

19 A. I do.

20 Q. Do I understand from that that there was between you and
21 Mr. Duda some sharing of information about the blood scandal?

22 A. Yes.

23 Q. Very quickly, do you have a lawyer that represents you in
24 any or has ever represented you in any possible disputes as to
25 copyright, your copyright rights or whether or not someone has

- 1 infringed or plagiarized any of your work?
2 A. Do I have a lawyer? I have a lawyer on retainer, yes.
3 Q. Would that lawyer on retainer handle matters like that?
4 A. Usually, yes.
5 Q. Has that lawyer on retainer taken any action against Mr.
6 Duda based on the Salon story?
7 A. Not yet.
8 Q. He hasn't. You testified that Mr. Duda uses the term "good
9 old boys" or "good old boy network." Is that right?
10 A. Correct.
11 Q. Other than having seen it in Plaintiff's 25 and your
12 article that was published in Salon, have you ever heard anybody
13 else in Arkansas use the term "good old boy network"?
14 A. Well, of course.
15 Q. Have you ever heard anybody else say that Arkansas is -- or
16 parts of Arkansas are impoverished?
17 A. Yes.
18 Q. One last question. By the way, congratulations on your
19 award. It appears to have been a very well written article that
20 I have had a chance to scan so far. You got some initial leads
21 on this story from Mr. Galster. Is that right?
22 A. Correct.
23 Q. From those leads, you developed additional leads of your
24 own? Is that right?
25 A. That's correct.

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1 Q. You also verified, as a good journalist does, what Mr.
2 Galster had told you. Is that right?

3 A. That's correct.

4 Q. Do you consider your work on this matter your own?

5 A. Yes.

6 Q. You had help from Mr. Galster, but that doesn't mean this
7 is his work, does it?

8 A. No.

9 Q. Finally, if I came along, did my own research after reading
10 your article from Salon and wrote my own story about this, would
11 that in any way, supposing I didn't quote from your article
12 other than brief mentions perhaps, would that be plagiarism?

13 A. I have no idea.

14 Q. Thank you.

15 THE COURT: You may stand down. You are excused.

16 MR. WOODSON: Plaintiff rests.

17 THE COURT: Plaintiff rests. We'll take a break.

18 Then the defendant can start the evidence, a 15-minute recess.

19 Let me ask defense counsel, how many witnesses do you have?

20 MR. BOWDEN: Well, we've got Mr. Duda. We've got Ivan
21 Duda. We've got Jon Ruffiner, who I've asked to be here
22 tomorrow morning, because I assume we will be back tomorrow
23 morning. We have Tona DeMers. We have a Bill Horn and a Linda
24 Miller. That's basically it. We may have to do one or two
25 depending on how the evidence develops.

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1 THE COURT: Very well.
2 (Recess from 2:55 p.m. until 3:15 p.m.)

3 THE COURT: You may proceed.

4 MR. SMITH: Thank you, Your Honor. Before we begin
5 our case in chief, I would like to renew defendant's motion to
6 dismiss. We've heard a lot of testimony. I will be as brief as
7 I possibly can. As I understand the Court, Hartman is the
8 controlling case on copyright law in this matter. And one of
9 the requirements is ownership of the copyright. And as I see
10 it, that's going to be a real threshold issue in determining
11 whether or not the plaintiff has met his burden of proof on the
12 various elements of asking for injunctive relief.

13 My understanding also of the Court's outlining of the law
14 of copyright prior to the beginning of the hearing is that the
15 ownership must be complete. Partial ownership for purposes of
16 this injunctive relief will not do.

17 Based on the testimony of plaintiff's witnesses only, we
18 have the testimony from Mr. Galster that they were partners, who
19 later tried to explain that away, unsuccessfully, and mentioned
20 that there was 30 percent of the proceeds or 30 percent of the
21 proceeds were to go to my client, Mr. Duda. Instead of
22 categorizing that as a partnership, he said it was an incentive.
23 And it is a very good incentive indeed to make someone's
24 remuneration dependent upon the sale or profitability of a
25 product. Making an arrangement like that with somebody in

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1 exchange for getting them to do work is called becoming a
2 partner.

3 We have the testimony of William Moss that Mr. Duda had
4 sweat equity of 30 percent in this project. And under
5 cross-examination, Mr. Moss testified that equity is ownership.
6 He also testified that the only record of the kind typically
7 prepared for the IRS for employees or independent contractors
8 was a single W-2 from Mr. Galster's Orthopedic Clinic for the
9 year 2000. And I submit that if Mr. Duda were an employee of
10 Mr. Galster's for the year 2000, much, if not all, of the raw
11 footage, interviews, research portion of the product, or of the
12 project rather, would have been completed.

13 I also point out to the Court that the W-2, which is
14 Plaintiff's Exhibit 18, shows a gross income of \$8,000. We
15 heard testimony from Ms. Smith, the payroll clerk for Mr.
16 Galster's clinic, earlier today the total wages paid to him were
17 considerably less than that. That information, I believe, is
18 found on Plaintiff's 31, ten payments, which allows one to move
19 the decimal point one place to the left and get an average, or a
20 total rather. So even for the year that he was allegedly an
21 employee, it may have indicia of real bona fide employment, the
22 W-2, the information that was reported to the IRS, doesn't match
23 with the individual business records brought here by the payroll
24 clerk of that business.

25 I would submit that for any time outside that -- and I
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1 don't concede that Mr. Duda was an employee for the purposes of
2 the film, even for that year. However, outside that year,
3 there's been no colorable evidence that he was an employee or an
4 independent contractor. There were no 1099s prepared. And Mr.
5 Moss testified that it is proper and required to prepare 1099s
6 for independent contractor agent types. He also testified that
7 wasn't done with Mr. Duda.

8 Frankly, looking at the exhibits introduced through Mr.
9 Moss and the checks that are part of Exhibit Plaintiff's 17, it
10 is atypical in my experience at least for employers to give
11 employees lump sums of money and say take some of this money as
12 wages, take some of this and go purchase equipment, and not keep
13 records that will allow you later to determine how much money
14 has been paid as wages and how much has been used to purchase
15 equipment.

16 Additionally, I point out that although we have testimony
17 that many thousands and thousands of dollars were spent by Mr.
18 Galster on equipment, if the records of these expenditures are
19 available, they have not been presented. And for what it's
20 worth, I believe that the IRS, in order to validate deductions
21 taken for those expenditures on a tax return, would require a
22 receipt or some other reasonable verification of purchase that
23 goes beyond a copy of the personal check.

24 We have the testimony of Mr. Broening, a former employee of
25 the plaintiff. "I would say they were partners and that there

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1 was to be a 30/70 split of the proceeds from this project with
2 30 percent going to Mr. Duda, 70 percent going to Mr. Galster."
3 He also testified -- and I believe this is a quote. "It was
4 part Kelly's film."

5 Also, we heard testimony from the plaintiff, and I believe
6 also from Mr. Moss, that he does have a partner on the novel
7 Blood Trail. However, that partner is not mentioned in any of
8 the pleadings. It's another partnership that he did not
9 disclose.

10 I would also point out to the Court, I believe the law is
11 that a notice of a copyright is considered a colorable claim,
12 the copyright of a given piece of work. What was submitted as
13 an exhibit -- and I don't have the number, Your Honor -- in this
14 matter was a receipt from the Library of Congress for \$30
15 received from Labuena Vida, Incorporated. And the only evidence
16 we have that there's a connection between that corporation and
17 the plaintiff, again, is testimony from the plaintiff's
18 witnesses.

19 I have to wonder why Mr. Galster didn't take action on this
20 matter earlier. If someone was holding property wrongfully that
21 he believed to be his, a timely resort to a replevin action in
22 state court could well have solved the problem and totally
23 destroyed Mr. Duda's alleged ability to make this allegedly
24 bootleg documentary. But it appears that he didn't take any
25 action on this until he heard on National Public Radio, as did

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1 Ms. Parker, that it was getting ready to be shown. And Mike had
2 a chance of generating some income, some further interest in the
3 book, or the possibility of making a movie on this. I submit
4 that he saw its profitability come, or its profitability was on
5 the potential rise. And although he played no active role in
6 the documentary, he wanted to use it to further his own
7 interest. Understandably, he wants to make money on this
8 project -- there's nothing wrong with that -- and tried to claim
9 the whole thing as his own.

10 I would also point out that plaintiff has now rested. And
11 although we have a receipt from the Library of Congress showing
12 receipt of 18 DVDs, one digital videotape, and a transcript, and
13 the testimony from Mr. Moss, or perhaps Mr. Galster -- I'm not
14 sure, Your Honor -- that those items were readily available and
15 one hour away -- that testimony was here in this courtroom
16 yesterday afternoon -- I'm working under the belief that Mr.
17 Galster went home to Pine Bluff last night and has had much more
18 than an hour, and the materials have not been presented.
19 There's no way for the Court to know with any degree of
20 certainty what is on these materials.

21 Had they brought the copy that they claim to have, a
22 cursory inspection of those items, sticking these DVDs in a
23 computer would have revealed whatever their contents were,
24 whether or not they are substantially similar to this work or
25 the same work or a transcription of every word spoken on all the

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1 raw footage or not.

2 I believe that the failure to introduce those, that the
3 Court is allowed to draw the inference that had they been
4 introduced and inspected the results of that would not have been
5 favorable to the plaintiff.

6 Getting back to the employer/employee issue, Your Honor, I
7 see that as very important in this. We're told that Mr. Duda
8 was paid \$400 a week for some indefinite period of time. We had
9 an accountant give lengthy testimony on direct and to bring in a
10 substantial number of records of payments to Mr. Duda. However,
11 those weekly \$400 payments of wages were not to be found among
12 them.

13 Also, not all of the expenses, per the accountant, the
14 longtime friend and accountant, who has a social and a monetary
15 interest in maintaining a strong relationship with the
16 plaintiff, his own records he prepared himself, I presume at
17 plaintiff's instance for this litigation, show the words Blood
18 Trail for a great number of the expenditures in Plaintiff's 17.
19 In fact, \$300,250. It just so happens that Blood Trail was also
20 the name of the book. It just so happens that during the time a
21 great many of these expenditures were made, Mr. Galster was
22 working to publish, promote, and try to advance his book.
23 There's also testimony that Mr. Duda, from the plaintiff's own
24 witnesses, that Mr. Duda assisted in this.

25 Other expenses or other checks written by Mr. Duda were
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1 characterized as dividends, which I'm not a tax attorney, Your
2 Honor. I wouldn't pass myself off as one. I would not mean to.
3 But "dividend" is a term of art when it comes to keeping records
4 and dealing with the Internal Revenue Service and other taxing
5 authorities. And a CPA -- the CPA who prepared this document
6 that listed payments as dividends certainly has to know that.
7 So those don't look like wages either.

8 We were told that the \$400 checks or other checks that are
9 set forth on spreadsheets but don't -- for which copies are not
10 included were available. I can get them. Well, they are not
11 here. They weren't introduced. I would submit that from that
12 lack of introduction the Court, again, is entitled to draw the
13 inference that had they been introduced, the result would not
14 have been favorable to the plaintiff.

15 Based on those things, I believe there's no way to
16 substantiate an employer/employee relationship. Consequently,
17 while it appears from the testimony presented -- and for
18 purposes of the hearing on the merits, we do not concede this.
19 But it appears at this point that Mr. Galster has an interest in
20 the film. Mr. Duda has an interest in the film, that there's
21 not outright ownership. And, therefore, neither of these men
22 has absolute control over what is done with the product based on
23 the testimony proffered to the Court so far.

24 Now, without proof of ownership, there is no way to satisfy
25 the requirements set forth in Hartman, which the parties agree

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1 is controlling legal authority in this matter. Also, we have
2 testimony, I believe from Mr. Case, the video editor from Los
3 Angeles, that he believed that there was an equity interest or a
4 sweat equity interest on the part of Mr. Duda as well. He
5 testified that much of his involvement in making of the film on
6 the creative end was with Mr. Duda, although he did also have
7 contact with Mr. Galster. Mr. Case also testified that editing
8 footage that has been taken is a creative process. It is very
9 creative. We had testimony from Mr. Broaning that Kelly did a
10 lot of editing work on this project.

11 Again, I just don't believe that the plaintiff has proved
12 that there's ownership of copyrighting. Without that,
13 everything fails. However, in the event the Court sees
14 otherwise, the basic requirements for anyone to get injunctive
15 relief include a showing of irreparable harm. We've had
16 testimony from the plaintiff's witnesses that there would indeed
17 be irreparable harm. But it's not been set forth with
18 particularity of any kind what that harm would be.

19 Mr. Galster has testified that he is interested in
20 filmmaking. He's done some amateur projects, but that he
21 makes -- he runs an orthopedic company and makes prosthetic
22 devices. He apparently does this very well. He's been doing it
23 for a long time. We have testimony from his accountant that the
24 primary purpose of his business, in fact, is to make and sell
25 these devices to people who need them. We're told he's going to

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1 suffer irreparable damage to his reputation and standing. But
2 although I wouldn't want to see his name harmed, he does not
3 have reputation or standing as a filmmaker. There's nothing --
4 there's nothing there to damage, if any real evidence of how
5 it's to be damaged has been shown at all. He's, in fact,
6 submitted his version of the compilation of raw footage in this
7 matter to various festivals and not met with any success. And
8 one wonders how he would be harmed by Mr. Duda screening this
9 film. If, in fact, the film is 70 percent his or part his --
10 and, again, we're not conceding that on the merits. But if it
11 is, it seems it would be beneficial to him.

12 Prong number two of the injunctive relief in my notes is
13 substantial likelihood of success on the merits. I understand
14 that that standard is somewhat elastic. But for the reasons
15 I've cited, that they can't prove outright ownership vis-a-vis
16 the fact they can't prove that there's an employer-employee
17 relationship, I don't believe that they've shown substantial
18 likelihood of success on the merits as that phrase is defined by
19 current law.

20 The balance of harm test is the last thing that I'll cover.
21 Your Honor, we've had testimony that there will be irreparable
22 harm to Mr. Galster. But we don't know exactly what that harm
23 is going to be. On the other hand, Mr. Duda went through a
24 competitive process with the Slam Dance Film Festival to have
25 this film submitted. If it is not allowed to be shown this

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1 year, he can resubmit it. That much is true. It may or may not
2 ever make it through the thousands of other documentaries that
3 are presented to be slated for showing there again, or perhaps
4 at any other film festival. Mr. Duda, I think everyone would
5 agree from the testimony of plaintiff and his witnesses, is
6 someone who wants to make films for a living. He doesn't want
7 to make orthotics -- excuse me. He doesn't want to work in his
8 father's business. He wants to be a filmmaker. Having a chance
9 to have worked with his name on a screen at a festival full of
10 people who work in that industry gives him incredible
11 opportunities to get additional work and recognition.

12 MR. WOODSON: Judge, I'm going to have to object to
13 the extent that all assumes facts not in evidence.

14 THE COURT: Let him finish his motion.

15 MR. SMITH: Just briefly, Judge -- that aren't
16 available every day and conceivably could never be available
17 again. And it would also deprive him of work that he's spent
18 years of his life on in completing. To take away that benefit
19 and not allow it to be shown would indeed be irreparable harm
20 and leave him with nothing to show for all of that work but an
21 injunction from the Court. Thank you, Your Honor.

22 THE COURT: Do you wish to respond?

23 MR. WOODSON: Just very briefly, Judge. Under the
24 Hartman standard, the first element is ownership of a valid
25 copyright. Title 17 Section 201(b) states that in a work made
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1 for hire, the employer is the owner of the copyright. It is
2 clear from all of the testimony that we presented that all of
3 the witnesses, except for Ms. Parker, unequivocally stated that
4 Mr. Duda was the employee of Mr. Galster. As a result of being
5 his employee, Mr. Galster owns the copyright. And then Section
6 201(a) of Title 17 says that ownership, which we've established
7 through the employee-employer relationship, vests in the
8 employer, so he's met the first prong of the Hartman test.

9 The second is access to the copyrighted work by the
10 defendant. Well, there's abundant evidence of that. He was the
11 employee of Mr. Galster. He had open access to the film. Then
12 the third element is substantial similarity. All of the
13 witnesses, except for Ms. Parker, have testified that
14 Plaintiff's 25 is substantially similar, if not identical, to
15 the films that existed back in 2000 and 2001, so we've met the
16 Hartman test.

17 THE COURT: Well, I'm going to overrule the motion for
18 directed verdict. The issue essentially is at this point would
19 a trier of fact such as a jury be permitted to find for the
20 plaintiff applying properly the law on the basis of this
21 evidentiary record, and the answer is clearly yes. That being
22 so, the motion will be overruled.

23 I think the plaintiff referred to some of the Court's prior
24 comments about the law with respect to ownership. But I believe
25 what you are talking about is my quotation of 201(a) and 201(b)

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1 with respect to the ownership of the copyright. 201(a):
2 "Initial Ownership. Copyright in a work protected under this
3 title vests initially in the author or authors of the work. The
4 authors of a joint work are coowners of the copyright in the
5 work."

6 201(b): "Works Made for Hire. In the case of a work made
7 for hire, the employer or other person for whom the work was
8 prepared is considered the author for purposes of this title,
9 and, unless the parties have expressly agreed otherwise in a
10 written instrument signed by them, owns all of the rights
11 comprised in the copyright." I believe that's the only comment
12 I made about joint ownership before in connection with some of
13 the telephone conferences we had on this case.

14 So the plaintiff has rested, and the defendant may proceed
15 with its case.

16 MR. SMITH: Ivan Duda, Your Honor.

17 IVAN DUDA, DEFENDANT WITNESS, DULY SWORN

18 DIRECT EXAMINATION

19 BY MR. BOWDEN:

20 Q. Sir, would you state your name for the record, please.

21 A. Ivan Duda.

22 Q. And where do you live, Mr. Duda?

23 A. Little Rock.

24 Q. How long have you lived in Little Rock?

25 A. Oh, boy. Permanently, off and on, I guess, probably 30

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1 years almost.

2 Q. Mr. Duda, are you acquainted with Kelly Duda?

3 A. Yes, sir.

4 Q. How are you acquainted with him?

5 A. He's my son.

6 Q. What kind of work is Mr. Duda wishing to be in at least or
7 has been in? What was he trained for?

8 A. My son?

9 Q. Yeah.

10 A. Well, he went to film and broadcasting school and graduated
11 from San Jose State with a degree in film and broadcasting, then
12 went on to get a master's degree. So basically film and
13 broadcasting, making movies, things of that nature, commercials,
14 things.

15 Q. Mr. Duda, what is your background?

16 A. Well, I'm a retired private criminal investigator, worked
17 in homicides here in Arkansas for many years, missing persons,
18 things of that nature, and finally got tired of that after too
19 many people dropping dead around me. Now I'm -- I guess I'm
20 semiretired. I'm in the Italian importing, manufacturing, and
21 brokerage business.

22 Q. So at this time you import jewels in --

23 A. Right.

24 Q. Are you aware of a project your son was working on called
25 Factor 8, The Arkansas Prison Blood Scandal?

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- 1 A. Yes.
- 2 Q. How did you become aware of that?
- 3 A. He told me about it.
- 4 Q. Did he tell you that anyone else was working with him on
5 it?
- 6 A. Yes.
- 7 Q. When did he tell you about it?
- 8 A. Probably when he first started it, I guess in I would say
9 '98, 1998.
- 10 Q. Who else was working with him at that time on this?
- 11 A. Well, actually several people, people I didn't know, you
12 know, like photographers, cameramen, people who were editors and
13 video people, computer people, and a friend of his in Pine
14 Bluff.
- 15 Q. Would that friend be Mr. Mike Galster?
- 16 A. Yes, sir.
- 17 Q. Do you know Mr. Galster?
- 18 A. No. I've never met him.
- 19 Q. Never met him. Okay. Now, what was your understanding of
20 their working relationship?
- 21 A. My understanding was that he had --
- 22 THE COURT: Let me interrupt you just a moment. Is
23 this information about this relationship, did you get it from
24 your son?
- 25 THE WITNESS: That's correct. Not only from my son.
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1 I also -- I do a lot of book reviews myself. And I understood
2 that Mr. Galster had written a fiction novel, and I was
3 interested in it. And when I found out my son knew him, I said,
4 "Well, I would love to see this book." And that's how I first
5 knew about him.

6 MR. BOWDEN: May I approach the witness, Your Honor?

7 THE COURT: You may.

8 BY MR. BOWDEN:

9 Q. I'm going to show you what's been marked as Plaintiff's
10 Exhibit 26. Do you recognize that book?

11 A. I'm familiar with it. I have a copy of it that was
12 autographed and given to me by Mr. Galster. I haven't seen it
13 in years. In fact, I haven't read the book. I haven't had time
14 yet. It said, "Probably you know what Kelly has been doing all
15 these years. Sincerely, Mike," or something like that. I do
16 have a copy of it. Yes, it looks identical to this.

17 Q. That is a copy of the book then?

18 A. As far as I can tell, yeah.

19 Q. Now, did Kelly ever make any admissions to you about being
20 the employee of Mr. Galster?

21 THE COURT: I really think this is hearsay. He is
22 going to testify, is he not?

23 MR. BOWDEN: Yes, he will.

24 THE COURT: So what he told another person about the
25 relationship is not admissible. It can be admitted against him

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1 by your opponent, but it can't be --

2 MR. BOWDEN: That's why I was asking if he ever made
3 any admission about being an employee. I didn't ask him if he
4 made an admission about being a partner.

5 THE COURT: Well, anything he may have said would be
6 hearsay with respect to that issue.

7 BY MR. BOWDEN:

8 Q. Mr. Duda, was Kelly doing a movie on this business with the
9 Arkansas blood scandal from the prison?

10 A. Yes, uh-huh.

11 Q. Do you remember?

12 A. Yes.

13 Q. When did you become aware of him doing such a movie?

14 A. Probably when he first started it. He was making another
15 movie, a fictional movie. Then he got involved in this, because
16 for one reason, I think, I had a friend, still have a friend,
17 who is ill. He couldn't even make it here today for the
18 hearing. He had a liver transplant 12 years ago. He is one of
19 the only surviving liver transplants in America that I know of.
20 And he contacted hepatitis while he was in prison.

21 Q. Can you tell us what that friend's name is?

22 A. Yes. His name is John Schock.

23 Q. Did you put Kelly in touch with John Schock?

24 A. Well, John was a friend of mine for many, many years. And
25 Kelly knew him. John owned a restaurant in North Little Rock.

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1 And I used to go there for lunch and take Kelly with me. And
2 that's how Kelly met John, and John began telling him about some
3 of the things that happened in the prison system. And that's
4 where he initially learned, I think, about what was going on as
5 far as the problems they were having with taking blood from
6 inmates and selling it.

7 Q. Okay. Does John go by the nickname "Little Johnny"?
8 A. Yeah, I think so.
9 Q. A little short guy. Right?
10 A. Yeah, a little short fat guy, like a little short
11 quarterback or fullback.
12 Q. Now, you knew Kelly to be pursuing this project with the
13 Arkansas prison system and doing a movie about it. True?
14 A. That's correct.
15 Q. Did there come a time when he had a problem that he
16 expressed to you with continuing on with that project?
17 A. Oh, yeah. He never had any money to do it. I said, you
18 know, "Why don't you get a real job." He said, "Well, this is
19 my passion, you know. I'm working on it." He would work part
20 time and get things. Yeah, of course, the answer is yes.
21 Q. Did there ever come a time when he was -- when there was to
22 your knowledge a split between him and Michael Galster?
23 A. Well, as I understood it -- and, again, I didn't know Mr.
24 Galster and never met him. He was helping Kelly financially for
25 a while off and on intermittently, never knew what -- a lot of

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- 1 times, he would say, "Well, I'm broke. Can you loan me some
2 money?" I would say, "Well, what happened?" He said, "Well,
3 I'm not on a regular payroll or anything. I just never know,
4 you know, where my next dollar is coming from." I said, "Well,
5 you need to get a real job one of these days." Anyway, Mike, as
6 far as I knew, he would help him now and then here and now pay
7 his rent, give him some money for one thing or another. But it
8 wasn't as if it was coming every two weeks or every month.
9 Q. Did there ever come a time when Kelly asked you to invest
10 in his movie?
11 A. Oh, yeah, all the time.
12 Q. Did there come a time when you did that?
13 A. Yes.
14 Q. Tell me when that was.
15 A. Probably in '98, yeah.
16 Q. Was there a particular reason why you invested in it in '98
17 and not before?
18 A. I think that's when he started it, yeah.
19 Q. I'm going --
20 A. When he asked me, you know, to help him.
21 Q. At my request, did you bring some canceled checks here
22 today?
23 A. Yes, at your request I did.
24 Q. Relating to payments made to Kelly Duda?
25 A. That's correct.

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1 Q. In various amounts?

2 A. Various amounts at various times, yes.

3 MR. BOWDEN: Now, Your Honor, we only have one copy of
4 these, so what I'm going to do is show them to opposing counsel
5 as we take them up. That's three checks with the back on it. I
6 would like all of them to be made one exhibit.

7 Your Honor, if you'll give me just a minute, please. We
8 are kind of doing this on the fly. We didn't have a chance to
9 get everything as clean as I would like for it to be.

10 BY MR. BOWDEN:

11 Q. Mr. Duda, I'm going to show you a series of photocopies
12 here of some documents. I'm going to ask if you recognize them.

13 A. Yes.

14 Q. What are those?

15 A. They are photocopies of checks I've written to my son.

16 Q. Do these represent payments for the making of the movie
17 Factor 8, The Arkansas Prison Blood Scandal?

18 A. Yes, yes.

19 Q. You were an investor in that movie. True?

20 A. Yes.

21 Q. Do you have a total for the amount of money that you've put
22 into it?

23 A. Just on these, which are actually documented, that would be
24 \$19,960 right here.

25 Q. Was there other money that's not documented on that?

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- 1 A. Yes, correct.
- 2 Q. What would those payments be?
- 3 A. Cash payments and also -- well, subsidy in the way of
4 providing him with transportation, insurance, and things of that
5 nature, during the time he was working on this project.
- 6 THE COURT: Are you going to make that one exhibit?
- 7 MR. BOWDEN: Yes. I'm going to make those one
8 exhibit. But I have one more question.
- 9 BY MR. BOWDEN:
- 10 Q. What is the date of the first check on that?
- 11 A. I believe it's 1998, June of 1998.
- 12 Q. What is the date of the last check on that?
- 13 A. If you've got them in order here, it should be very recent.
- 14 Q. I think I had put them in chronological order from front to
15 back.
- 16 A. September of 2003.
- 17 Q. Do you have the originals of the check with you, the checks
18 with you?
- 19 A. Yes, I do.
- 20 Q. Originally, though, this morning, when you brought those
21 in, did I ask you to make photocopies of them?
- 22 A. Yes, you did.
- 23 Q. Where did you make photocopies?
- 24 A. On the second floor in the library.
- 25 THE COURT: No one is challenging the accuracy
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1 of them.

2 BY MR. BOWDEN:

3 Q. They are substantially the same as the originals. True?

4 A. They are identical, made on the copy machine in the
5 library.

6 MR. BOWDEN: Your Honor, I would submit all of these
7 checks as exhibit number next in order for defendants. We've
8 had some pretrial. I'm not sure.

9 THE COURT: She can staple them together. Do you have
10 a 1 yet or not?

11 MR. BOWDEN: Apparently not.

12 THE COURT: This will be Defendant's 1. It is
13 received.

14 (Defendant Exhibit 1 received in evidence.)

15 BY MR. BOWDEN:

16 Q. Mr. Duda, you've been an investigator?

17 A. Yes, sir.

18 Q. Did you help your son investigate any of the leads on this
19 story about the blood scandal?

20 A. Probably not directly. Indirectly, I may have.

21 Q. How would you do it indirectly? You told us about Mr.

22 Schock. Were there other folks?

23 A. Mr. Schock. You know, he told me stories about some of the
24 things that occurred. They were quite shocking. I just
25 mentioned them to my son. He said, "That's really interesting.

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1 How come somebody has never, you know, done anything about it or
2 made a movie about it?" I said, "I don't know." I said,
3 "There's a lot more to it." Then over time, I'm sure I've told
4 him other things that I picked up over the years.
5 Q. Did you talk with -- did you tell him about any other
6 witnesses involved in this?
7 A. That I knew of?
8 Q. Yes.
9 A. That might have been associated?
10 Q. Yes.
11 A. Possibly.
12 Q. Mr. Schock is well familiar with those stories. True?
13 A. Absolutely.
14 Q. You were around back in the days in the sixties when the
15 first prison problems broke out, weren't you, or brought to the
16 media's attention?
17 A. Yes, sir.
18 Q. Did you direct your son to anyone, perhaps a doctor or
19 someone at that time or from that period of time, to give you
20 some background?
21 A. Not anybody that I can recall directly, no.
22 Q. You didn't suggest he talk to Ed Barron, Dr. Ed Barron?
23 A. I didn't suggest he talk to him. I probably had mentioned
24 that he had worked at the prison. Let me clarify it. I
25 probably gave him a lot of names of things that I knew and then

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- 1 he -- I left it to him to do whatever he deemed, you know --
2 become an investigator himself.
- 3 Q. Did you follow up on what happened to your investment and
4 what these payments were used for?
- 5 A. Well, he said he was using them -- well, for one example,
6 at one time in July, sometime in July of 2001, he had a lot of
7 the equipment that had been loaned to him by Mr. -- as I
8 understand it, Mr. Galster loaned him some computer equipment,
9 video equipment. And he had taken it. It was on loan to him.
10 He had repossessed it, so to speak, or taken it back. And at
11 that time I gave Kelly a check for \$6,000. I said, "Well, buy
12 your own video equipment and your computer" at that time.
- 13 Q. Did he continue to work with that equipment?
- 14 A. Absolutely. He bought it the next day.
- 15 Q. That you bought for him?
- 16 A. Yes. He continued to work for it until probably yesterday
17 is the last time I saw him.
- 18 Q. So he still has that equipment?
- 19 A. As far as I know.
- 20 Q. Kelly does have his own equipment. What date was that
21 payment made? Do you remember?
- 22 A. Somewhere in July. It would be a check for \$6,000.
- 23 Q. July of which year?
- 24 A. July of 2001, just before the terrible thing in New York.
- 25

MR. BOWDEN: One second, Your Honor. Nothing further.
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1 THE COURT: Any cross?

2 MR. WOODSON: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. WOODSON:

5 Q. You mentioned that your son -- I'm sorry. Joe Woodson. I
6 represent Mike Galster, the plaintiff.

7 A. How are you doing?

8 Q. You mentioned that your son received a master's degree. Is
9 that correct?

10 A. No. He was working on a master's degree. I think he was
11 short about -- I don't know -- 20 or 30 hours of getting it.

12 Q. Do you know why, if Mr. Galster and your son were partners
13 on this film, why your son didn't give him credit on the film?

14 A. I don't know they were particularly partners. There was no
15 agreement that I knew of, written or oral. I knew they were
16 friends and he was helping him out. But that's as far as it
17 went as far as I knew.

18 Q. Was your understanding that your son was an employee of Mr.
19 Galster's?

20 A. No, never employed by him, no.

21 Q. Was your understanding that this was your son's project
22 completely, that it belonged exclusively to him, and Mr. Galster
23 had no part in it?

24 A. Basically, yes. Mr. Galster was interested in it, maybe
25 excited by it, enthralled by it or one way or the other. But as

1 far as I knew, he was no partner whatsoever.

2 Q. But your understanding was this was your son's brainchild?

3 A. Absolutely.

4 Q. His project?

5 A. Absolutely.

6 Q. What was your understanding of why Mr. Galster was helping
7 your son financially, intermittently, I think you testified?

8 A. Well, they became friends. He married a girl. He didn't
9 marry her. He met and had a relationship with a girl who is the
10 mother of my granddaughter, who was friends with Mr. Galster.
11 And she was from Pine Bluff, or her family was and everything.
12 That's how he had met him. They had become friends. And I
13 think Mr. Galster was interested in the project Kelly was
14 working on and said, "Hey, you know, maybe this will turn into
15 something, and I would like to help you." As far as any further
16 than it went as far as contractually, I don't know anything
17 about it.

18 Q. What did you mean when you said you encouraged your son to
19 get a real job?

20 A. Well, you know, eight to five. We're making a movie. I've
21 seen him up at 2 o'clock in the morning. I've written checks to
22 him and gotten the airline reservation for him to go all the way
23 from California to Montreal to Ontario to Ottawa, just on this
24 project. That's not a real job. I mean, that's busting out and
25 -- you know, he never could be an eight-to-five guy. That's

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1 what I mean by real job, sitting down at a desk.

2 MR. WOODSON: May I approach the witness, Your Honor?

3 THE COURT: Yes, you may. Do you want the checks?

4 MR. WOODSON: Yes, sir.

5 THE COURT: That's Defendant's 1.

6 BY MR. WOODSON:

7 Q. Did I understand your testimony correctly to mean that
8 Defendant's Exhibit 1 represents your investment in your son's
9 film?

10 A. Part of it.

11 Q. And in addition to Defendant's Exhibit 1, what was the
12 remainder of your investment in that film?

13 A. I made cash payments to him, which, you know, I couldn't
14 give you a record of them. Like I said, they were cash
15 payments. Other -- helping him with his living expenses
16 basically, travel expenses, purchasing vehicles and insurance,
17 just keeping him going.

18 Q. Can you show the Court any documents that reflect your
19 investment or describe what percentage investment you had in his
20 film?

21 A. Percentage wise, I would have to find out how much, you
22 know, total amount he had spent on it. But there you have
23 approximately \$20,000. I can tell you under oath approximately,
24 cash investments, I've given him an amount of close to \$10,000.
25 Vehicles, insurance, and everything, I would say would be

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1 another 20,000.

2 Q. So approximately 30,000?

3 A. In addition to that, you are talking about 50,000.

4 Q. So you've invested approximately 50,000 of your money in
5 his project?

6 A. Right.

7 Q. How much of his own money has your son spent on the
8 project, if you know?

9 A. I think every dime that he made. How much it is or was, I
10 couldn't tell you. But I would say it was every penny he had.

11 Q. Do you know whether or not your son gave you any credit on
12 the film for being the producer or the financier of the film?

13 A. I don't know.

14 THE COURT: Were these payments to your son by way of
15 a loan, or were they investment or just a gift?

16 THE WITNESS: Well, he's my son. And I told him
17 basically, if you ever can pay me back, fine. If you can't, you
18 know, you are my kid. I'm giving it to you anyway. So it
19 was -- yeah, I would like to get the money back, if you can
20 afford it some day. I drive a Rolls-Royce, but it is not a new
21 one. I showed him a picture of a new one I would like to have.

22 BY MR. WOODSON:

23 Q. Do you have any documents that can verify how the money
24 that you gave to your son was spent?

25 A. How it was spent?

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- 1 Q. What equipment did it buy?
2 A. Yes, sir, yes, sir. Apple computers, hard drives, things
3 of that nature, oh, yes.
4 Q. And you have those documents?
5 A. He has most of them. I have some.
6 Q. Could I see them?
7 A. I don't have them with me.
8 Q. Okay. Where are they?
9 A. Some would be in my office. Others, he could probably have
10 in his possession.
11 Q. Why didn't you bring those with you?
12 A. I didn't know they would be necessary. I mean, we could
13 probably bring the physical equipment down here, the computers
14 and, you know, whatever is involved in making movies. I don't
15 know.
16 Q. What is your background or experience with the Arkansas
17 prison system?
18 A. I put a few people away there, being an investigator and
19 working with the prosecuting attorney, Dub Bentley, and spending
20 time interviewing people who have gone there, very popular
21 people, like Lee Orsini, who recently died. I was her
22 investigator. Alice McArthur, Bill McArthur. That was a very
23 high profile case. I was very much involved in that.
24 Q. Did you ever work at the prison system?
25 A. Work there?

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- 1 Q. Work at the prisons?
2 A. No.
3 Q. Did you ever work with anyone who did work at the prison
4 systems, other than the people you've already mentioned?
5 A. No.
6 Q. Now, who is Dr. Ed Barron?
7 A. He is a family practitioner that has an office in
8 Breckenridge Village in Little Rock.
9 Q. I believe you testified that you helped your son at least
10 indirectly by giving him leads and names of folks who knew about
11 the prison blood scandal. Is that correct?
12 A. Sure.
13 Q. What names did you give him?
14 A. I think I gave him -- I know I gave him John Schock's name.
15 We were friends, you know. And he ate lunch at his restaurant
16 every day. I think I gave him Dr. Eddie Barron's name, possibly
17 some others that worked there. But I didn't know them
18 personally.
19 Q. Can you give us any other specific names besides those two?
20 A. That I would have directly given him? No, probably not.
21 Q. When did your son conceive of the idea of making a
22 documentary film as far as you know?
23 A. I think when he first talked to John Schock. And, he said,
24 "My God, how come you had to have a liver transplant?" He said,
25 "Well, I'll tell you why." I think that's when it started.

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- 1 Q. When was that?
- 2 A. That was back way before he actually started the project.
- 3 That would have been back in the mid nineties, early to mid
- 4 nineties.
- 5 Q. Did he immediately start working on the project from that
- 6 point forward?
- 7 A. No. He just started researching it.
- 8 Q. Do you know when he started filming the project?
- 9 A. Not for sure. I would say probably '98, '99. That's my
- 10 guess. I wasn't directly involved with it. I wouldn't even
- 11 know what camera, which one -- you know, I wouldn't know one
- 12 from the other. I'm not in that business.
- 13 Q. In looking at Defendant's Exhibit No. 1, I see one check
- 14 made out in 1998, five checks made out in 1999, three in 2000,
- 15 and the remainder, I think, in 2001.
- 16 A. There's probably some in 2002 and 2003 there.
- 17 Q. Is it your testimony Defendant's Exhibit 1 -- well, strike
- 18 that. Prior to Defendant's Exhibit 1, did you ever support your
- 19 son in a similar way?
- 20 A. No. He was living in California. He was going to college
- 21 there.
- 22 Q. You didn't make financial contributions to his living
- 23 expenses?
- 24 A. No, sir. No, sir. He lived -- he worked for a law firm in
- 25 California.

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- 1 Q. Did I understand you correctly to testify that you were
2 living here in Little Rock when the prison blood scandal began
3 or prison blood scheme began in the sixties?
4 A. Yes, sir. I came here in 1961.
5 Q. At that point in time, were you aware of the prison blood
6 and the selling prisoner or inmate blood?
7 A. In '61, no.
8 Q. When did you first become aware of the prison blood scheme?
9 A. Probably when I met Mr. Schock. That would have been in
10 the mid eighties.
11 Q. Do you know why your son took money from Mr. Galster if
12 this project was his alone?
13 A. Well, they were friends, and he was helping him. I often
14 asked him. I said, "Are you guys partners? Do you have a
15 written agreement? Do you have a contract and all that?" He
16 said, "No. He's helping me, and we're friends. We'll work
17 something out. One of these days, we'll work it out. Maybe
18 we'll be famous." But that was, you know, there was no --
19 nothing specific, nothing that I knew of.
20 Q. Do you know who Chris Case is?
21 A. No.
22 Q. Do you know who Dan Broening is?
23 A. Yes.
24 Q. Who is he?
25 A. He's a fellow that I met one time probably about four or

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1 five years ago, who my son ended up being a roommate with.

2 Q. Did he work for your son on this film?

3 A. Not that I know of.

4 Q. Did he have any participation on the film that you know of?

5 A. No.

6 Q. Your son never told you Mr. Broening worked on the film?

7 A. No, sir. I don't know what Mr. Broening does. I met him
8 at a bar, and he used to sit next to me. I would come in for
9 lunch. He never spoke to me for many, many months. One day I
10 spoke to him, told him my name. He said, "My goodness. I know
11 your son." And that's how I got to know him.

12 Q. Do you know whether or not your son has copyrighted this
13 film that he claims to be his?

14 A. I asked him. He told me he had years ago, yes.

15 Q. When did he say he had done that?

16 A. Probably in '98.

17 Q. Do you have any records of that?

18 A. No. It's not my film.

19 Q. No more questions.

20 THE COURT: Any additional questions? No. You may
21 stand down, sir. Call your next witness.

22 MR. BOWDEN: We will be calling Tona DeMers by
23 telephone, Your Honor.

24 THE COURT: Who is this witness?

25 COURTROOM DEPUTY: Tona DeMers.

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1 MR. BOWDEN: Would the Court entertain a five-minute
2 comfort break?
3 (Recess from 4:10 p.m. until 4:15 p.m.)
4 TONA DEMERS, DEFENDANT WITNESS, DULY SWORN, BY TELEPHONE
5 DIRECT EXAMINATION
6 BY MR. BOWDEN:
7 Q. Ms. DeMers, this is David Bowden, Kelly Duda's attorney. I
8 want to ask you a few questions this afternoon.
9 A. Okay.
10 Q. First of all, would you state your full name for the
11 record.
12 A. My name is Tona Maria DeMers.
13 Q. Ms. DeMers, where do you live at the present time?
14 A. I live in Pensacola Beach, Florida.
15 Q. Have you ever been a resident of Arkansas?
16 A. Yes, I have.
17 Q. How long were you a resident of Arkansas?
18 A. For 44 years. I moved here approximately two and a half
19 years ago.
20 Q. What is your profession, ma'am?
21 A. While I was in Arkansas, I was an attorney. I now live in
22 Florida, but I'm not licensed here.
23 Q. Are you still licensed in Arkansas?
24 A. Yes, I am.
25 Q. Where did you go to school?

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- 1 A. I went to -- I graduated from McClellan High School in
2 1975. And then I got my bachelor's degree at the University of
3 Arkansas at Little Rock. Then I went to law school at the
4 University of Arkansas at Little Rock.
- 5 Q. When did you graduate law school?
- 6 A. In 1990, May of 1990.
- 7 Q. When were you licensed to practice law in Arkansas?
- 8 A. February of 1991.
- 9 Q. Ms. DeMers, at that time, or shortly thereafter, did you
10 obtain employment with the State of Arkansas?
- 11 A. Yes. In fact, I became inmate attorney. I need to go
12 back. I actually was licensed on April the 2nd of 1991. And
13 then I went to work in the compliance office for the Board of
14 Corrections in May of 1991.
- 15 Q. Your title was what?
- 16 A. Inmate attorney in the compliance office.
- 17 Q. This was with the Arkansas Department of Corrections?
- 18 A. No. It was actually an office that was created by the
19 federal courts, and it was under the Board of Corrections. Then
20 the Department of Corrections was also under the board. And we
21 were sort of a watchdog. We served several different functions
22 in the compliance office.
- 23 Q. Pardon me. How long were you in that position?
- 24 A. Oh, about six months.
- 25 Q. During those six months, did you become acquainted with a
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1 series of events relating to the Arkansas prison plasma program?
2 A. Yes. Approximately the end of July or first of August, we
3 had an employee. And the compliance attorney did not disclose
4 the name of this employee. But he came to our office for the
5 purpose of reporting that the plasma program -- they were
6 falsifying test results on the inmate's plasma and sending out
7 dirty blood.

8 Q. Are you at liberty at this time to say who this employee
9 was?

10 A. No. I never knew the name of the employee. I saw the
11 employee. It was a male. We were not -- a lot of employees of
12 the Department of Corrections came to our office to report
13 various things within the department. And those names were not
14 disclosed.

15 Q. Did the compliance office take any action at that time?

16 A. The compliance attorney at the time was Mark Hewett. And
17 he and Jim Smith, the internal auditor, prepared a report and
18 presented it to the board members. And no action was taken, you
19 know, at that point.

20 Q. Do you know who was chairman of the board at that time?

21 A. Let's see. I believe his name was -- his last name was
22 McClinton. I'm trying to remember his first name. No, it
23 wasn't. It was Jimmy Mason who was chairman of the board at
24 that time, Jimmy Mason.

25 Q. During this time, was Woodson Walker on the board?

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1 (Connection lost.)

2 BY MR. BOWDEN:

3 Q. Tona, we're back on the record. Apparently we lost you
4 just a minute.

5 A. Okay. I'm sorry about that.

6 Q. No problem. We were talking about Mr. McClinton and Mr.
7 Mason being on the board. Out of curiosity, was Woodson Walker,
8 Attorney Woodson Walker, on the board at that time?

9 A. No, he wasn't.

10 Q. He had left the board by then. True?

11 A. Yes.

12 Q. With regard to this incident or this situation with the
13 blood plasma system, what happened after that, after the report
14 was made to the Board of Corrections?

15 A. Nothing.

16 Q. Did you ever have any further involvement with the blood
17 plasma situation or knowledge of it from your activities as
18 inmate attorney in the compliance office?

19 A. No. I left shortly thereafter. But I reported it to as
20 many people as I could think of to report it to once I had left
21 the position. I went personally to Tommy Goodwin, who was the
22 director of the state police at that time, and informed him of
23 it. And it was later discovered, whenever they ordered an
24 investigation of the Department of Corrections by his office.
25 Mr. L.D. Brown, who was the state trooper doing the

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1 investigation, had discovered this activity, and as a part of
2 the report he made, once his investigation was complete. I also
3 gave this information to the independent counsel. I was
4 summoned to talk to them about some of the other things that I
5 knew. You know, I had talked to them briefly about this
6 situation as well.

7 Q. Would that have been the former independent counsel Mr.
8 Kenneth Starr?

9 A. Yes, it would have.

10 Q. Who did you talk to in that office?

11 A. His name was Wally Druik. He was a special IRS agent.

12 Q. Now, I take it that the independent counsel expressed some
13 interest, they had some question about involvement of the
14 higher-ups. True?

15 A. Well, they didn't ask me specifically about that.

16 Q. Did you have any information regarding that?

17 A. Well, not at that time.

18 Q. So you couldn't tell them anything at that time about that?

19 A. No.

20 Q. Okay. Ms. DeMers, do you know Kelly Duda?

21 A. Yes, I do.

22 Q. When and how did you meet Kelly Duda?

23 A. I met Kelly -- we were introduced through a friend of mine
24 by the name of Dale Mesmer. And I'm going to say that this was
25 late 1998 or early 1999. Dale contacted me to see if it was all

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1 right to give Kelly my phone number so that he could interview
2 me for his film and get some other information. He knew that I
3 probably had other leads that I could give Kelly. And I told
4 him that that was all right, and our relationship started there.
5 Q. I forgot what that date was. What year did you say that
6 was that you met him?

7 A. Well, I can't remember exactly. I'm trying to think. I'm
8 thinking it was late 1998 or early 1999. But it was in that
9 area somewhere, you know, because we have known each other so
10 long and have spent so much time, you know, together and on the
11 phone and discussing all this stuff that it's really all a big
12 blur. But that's about the time frame. That's about as close
13 as I can get.

14 Q. Who is Dale Mesmer?

15 A. Okay. Dale Mesmer is a former inmate that I got out of
16 prison. And he has the Straight Talk Outreach Program, where he
17 goes all over the United States and speaks to teenagers in
18 junior high and high school about the dangers of getting
19 involved in drugs and gangs and various things.

20 Q. Did Dale Mesmer have any knowledge of the blood plasma
21 program?

22 A. Well, I suspect that he had some knowledge, because he was
23 incarcerated in the Department of Corrections during the time
24 frame in which these activities were going on.

25 Q. How did Mr. Duda contact you, and what was the gist of what
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1 he desired to receive from you?

2 A. Okay. Kelly called me on the phone after I had okayed Dale
3 giving him my phone number. And he wanted to do a videotaped
4 interview, which we did. I gave him quite a few other leads,
5 people for him to talk to and places he could go to for more
6 information.

7 Q. Can you specify that a little bit, Ms. DeMers, some of the
8 leads that you gave him?

9 A. Well, I had told him that I thought he should talk to
10 retired Arkansas Supreme Court Justice John Purtle, which he
11 did. I had put him in touch with Dr. L.D. Brown. I had put him
12 in touch with Reverend Hezekiah Stewart, who is a friend of
13 mine, who was on the board at that time. I had given him
14 information that I knew of about John Byus and other folks
15 involved in the Department of Corrections.

16 Q. Will you identify Mr. Byus for us just for the record?

17 A. Okay. Mr. John Byus is a medical administrator for the
18 Arkansas Department of Corrections.

19 Q. All right. Did you, in fact, do the interview then at some
20 point?

21 A. Yes. We did the videotaped interview. And it was included
22 in one of the earlier -- the first and maybe one or two of the
23 earliest versions of Kelly's documentary. But I was so
24 mortified about how horrible I looked that I begged him to take
25 it out, and he did.

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1 Q. And he did that. Right?
2 A. Yes, he did. At my request.
3 Q. Ms. DeMers, let me ask you -- let me ask you this. When
4 you did this interview, how long did it take, first off?
5 A. Well, it didn't take very long. We did it -- he and the
6 cameraman and I, we met on the North Little Rock side of the
7 Arkansas River. And I was seated with a portion of the Little
8 Rock skyline in the background. I don't know. I'm going to
9 say, you know, maybe 30 or 45 minutes. It could have been a
10 little longer. But it didn't seem all that long.
11 Q. Okay. I take it there was no lighting to be set up or
12 anything like that if you were out-of-doors?
13 A. Oh, no. It was during the day, and we were outdoors.
14 There was plenty of lighting. It was a nice day.
15 Q. Who was the cameraman? Do you remember?
16 A. No.
17 Q. It wasn't Mr. Michael Galster. First of all, do you know
18 Mr. Michael Galster?
19 A. No, I don't.
20 Q. Do you remember a name at all for the cameraman, a first
21 name, anything?
22 A. No. No. I know that he was introduced to me. But that's
23 been quite a few years ago. He was not the one who was
24 conversing with me. And my relationship with Kelly at the time
25 was fairly new. And, you know, most of the dialogue was between

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1 Kelly and me.

2 Q. Did you ever meet Mr. Galster?

3 A. I've never met Mr. Galster, and I've never talked to Mr.
4 Galster on the phone.

5 Q. Has he ever corresponded with you?

6 A. No.

7 Q. He didn't ask you to set up a meeting with Kelly?

8 A. No.

9 Q. Now, you gave him at least several leads that we've talked
10 about here. You've told about the background of some of each
11 one of them. Have you continued to work with him on his
12 project, to know about this project, the Factor 8, The Arkansas
13 Prison Blood Scandal?

14 A. Absolutely. In fact, Kelly -- I educated Kelly quite a bit
15 as to the Arkansas Department of Correction in general. It's
16 fairly common knowledge that I have been a prison activist since
17 leaving that position, because I was absolutely mortified at
18 what I learned during the time that I served as inmate attorney.
19 And I have spent the bigger portion of my legal career trying to
20 correct the Arkansas Department of Correction. So Kelly and I
21 share that particular cause because, first of all, we're both
22 cause oriented. We share a common cause, which is to bring the
23 Department of Corrections to justice. And we became very good
24 friends. In fact, I was practically a constant adviser and
25 confidant to Kelly as he was working his way through this

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1 project.

2 Q. Are you credited in the film by any chance?

3 A. I believe so, yes.

4 Q. Now, how was Mr. -- how was Mr. Duda financing all of this?
5 Can you tell me?

6 A. From the best of my knowledge, out of his own pocket.
7 There were even times that I helped him financially.

8 Q. Did he have any investors to your knowledge?

9 A. Not to my knowledge.

10 Q. Now, did you participate in any review or editing of the
11 tapes or anything of that nature?

12 A. Well, actually yes. You know, he would bounce all of his
13 ideas off of me, which was a wonderful process. Kelly is a very
14 talented filmmaker. And he has some very good ideas, and I was
15 very impressed and actually amazed at how he was able to take so
16 many hours of footage and reduce it down to a wonderful piece of
17 work. The only disagreement that we really had over the film
18 was that I had repeatedly asked him to take the segment of David
19 Hale out of the film. He was reluctant to do that for sometime,
20 but finally I was able to convince him to do that. We were -- I
21 would say there were times that Kelly and I talked several times
22 a day. But we became closer and closer as time went on. So,
23 you know, there were times that we would talk hours on the phone
24 about this particular subject. And I have actually been in his
25 apartment and viewed the editing process.

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1 Q. Without telling me anything that he might have said that
2 was said, did he mention Michael Galster in any of those phone
3 conversations?

4 A. Well, the first that I really knew of the name of Michael
5 Galster was when I viewed the first -- the first film, which was
6 a four-hour version. Once he had picked out what he wanted and
7 put it together, along with the music and the artistic shots,
8 that's whenever I knew about Michael Galster and the name. Now,
9 if he had mentioned to me anything about Michael Galster prior
10 to that, I certainly don't remember it. That's not to say that
11 the name wasn't mentioned. It's just that, you know, I can't
12 say under oath that it was, because I simply don't remember. I
13 don't remember his name. I don't remember him talking to me
14 about Michael Galster.

15 Q. Did you have any reason to believe this was anybody's film
16 other than Kelly Duda?

17 A. Oh, absolutely not. I mean, Kelly sunk his whole life, all
18 his money, all of his time and effort into this film. You know,
19 to my knowledge -- and I was fairly well involved with it. And,
20 you know, Michael Galster was never around. He was never
21 talking to us. He never called me and asked me my ideas that I
22 know of during all the hours that Kelly and I have spent on the
23 phone and the times that I've been over at his apartment
24 watching him working on this and looking at revisions. Mr.
25 Galster was never there by phone or person or otherwise.

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1 Q. Ms. DeMers, did you ever go to Pine Bluff to work on this
2 film with Mr. Duda?

3 A. No.

4 Q. But you did work with him during the year of -- well, what
5 years did you work with him on it?

6 A. We really, from the time that we first got acquainted and
7 did my videotaped interview, it just snowballed from that point.
8 He became interested not only in the dirty blood aspect of the
9 Department of Corrections, but he was becoming interested in
10 some of their other illegal and unconstitutional activities as
11 well. So, you know, this brought about many hours of lively
12 conversation between the two of us. And he was sufficiently
13 shocked by some of the things that I've had to tell him over the
14 years.

15 Q. Did anyone supply the tools with which Mr. Duda worked to
16 your knowledge?

17 A. I don't have any knowledge of that.

18 Q. One way or the other.

19 A. One way or the other, I don't have any knowledge of that at
20 all. I wouldn't have any knowledge of that. I think I may
21 have -- I think maybe Kelly has used -- I mean, I haven't
22 contributed significantly to anything. But there have been
23 things that have been needed to be done, and I've certainly
24 tried to help, because I have a vested interest in seeing that
25 the world knows about this particular activity.

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1 MR. BOWDEN: That's all I have at this time, Your
2 Honor.

3 THE COURT: Mr. Woodson.

4 CROSS-EXAMINATION

5 BY MR. WOODSON:

6 Q. Ms. DeMers, this is Joe Woodson. I'm the attorney for Mr.
7 Galster.

8 A. Yes.

9 Q. When you described the situation where you observed Kelly
10 sinking his whole life into this, as I think you said, what was
11 the time frame of that?

12 A. Well, actually probably from the time that we met, you
13 know, late 1998 or early 1999, until now, you know, he has lived
14 and breathed this film.

15 Q. The four-hour version of the film that you say you viewed?

16 A. Uh-huh.

17 Q. When did you view that?

18 A. Let's see. I believe that that was -- I moved here two and
19 a half years ago. And I believe that I looked at that -- that
20 may have been ready before I moved down here.

21 Q. Can you give me an approximate date?

22 A. I can't get very close. Now, I've been here two and a half
23 years, and it was in close proximity to me moving down here.

24 Q. So we're just now into 2004. So two and a half years would
25 be back in 2001 sometime?

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- 1 A. Possibly, yeah.
- 2 Q. And Mr. Duda represented to you that he was the sole
3 producer of that film?
- 4 A. Absolutely. I mean Kelly, he's a director. He has done
5 all the producing. He's the one who has been seeking a buyer
6 for the project. That I know of, there's been nobody else
7 involved, at least not as long as I've known him.
- 8 Q. Did Mr. Duda tell you that his father was an investor in
9 the film?
- 10 A. No.
- 11 Q. Do you know how Mr. Duda supported himself while he was
12 trying to make this film?
- 13 A. No. And it's none of my business.
- 14 Q. Why did you urge Mr. Duda to take David Hale out of the
15 film?
- 16 A. Because he was a client of mine, and I felt that that was
17 an unfair portrayal of him, because he had nothing to do with
18 the dirty blood situation with the Department of Correction.
19 Mr. Hale certainly had more than his share of problems. And I
20 felt like that was a portrayal of him that was unfair.
- 21 Q. You testified that you've never met Mr. Galster. You never
22 talked on the phone. You've never communicated by e-mail?
- 23 A. Right.
- 24 Q. Do you have any information that you can share with the
25 Court that reflects on what, if any, working relationship Mr.

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1 Galster and Mr. Duda had with respect to the documentary film?

2 A. No. I never witnessed any working relationship. If
3 anything was ever communicated to me, it certainly wasn't
4 communicated in a significant enough manner that I remember it.

5 Q. Do you know whether or not Mr. Galster was Mr. Duda's
6 employee?

7 A. No.

8 Q. Do you know whether or not Mr. Duda was Mr. Galster's
9 employee?

10 A. Well, I mean, as much time as Kelly was at home and doing
11 other things, I certainly didn't have any reason to think that
12 he was anybody else's employee.

13 Q. Since you never even met Mr. Galster, you certainly never
14 witnessed the two of them together, did you?

15 A. No, I didn't.

16 Q. You never saw any documents that described their working
17 relationship, did you?

18 A. No, I didn't.

19 Q. That's all I have. Thank you.

20 THE COURT: Thank you, Ms. DeMers. Just a moment.
21 There's another question. Mr. Bowden.

22 REDIRECT EXAMINATION

23 BY MR. BOWDEN:

24 Q. One question. Ms. DeMers, I take it that you never saw Mr.
25 Galster exercising any control or direction over how Mr. Duda

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1 did the film. True?

2 A. That's absolutely correct, because I was -- I was heavily
3 involved with Kelly by phone and sometimes in person during this
4 process. You know, I never witnessed Mr. Galster calling or
5 being present, you know, or -- generally, if you are talking to
6 someone on the telephone and there's someone else there also
7 working on the same project, you might hear them say something.
8 You know, I never -- I was never aware of anything like that. I
9 was never aware of Mr. Galster's presence at any time during
10 this project.

11 MR. BOWDEN: That's all I have of this witness, Your
12 Honor.

13 THE COURT: Thank you, Ms. DeMers. Call your next
14 witness.

15 MR. BOWDEN: Mr. Robert Riable was to be here today,
16 but he had a death in the family this morning. He can be here
17 tomorrow. Mr. John Schock that has been mentioned several times
18 was here yesterday also. He can be here, we think, tomorrow.

19 THE COURT: I guess the question is, who do you have
20 here right now?

21 MR. BOWDEN: As of right now, we will have to call
22 somebody else by phone, it appears. I didn't know for sure
23 exactly how much longer we're going, so how much longer --

24 THE COURT: Who is the witness you want to call, and
25 how long would his or her testimony take?

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1 MR. BOWDEN: Well, Your Honor, I'm kind of thinking in
2 terms of calling Kelly Duda at this point since he's kind of
3 flexible. We can bring him in, ask him some questions, then
4 maybe call him back a little later and ask him some more.

5 THE COURT: Is there any other witness that you could
6 call at this time?

7 MR. BOWDEN: I have people that Kelly has gotten ahold
8 of as of yesterday. I have not had a chance to talk to them. I
9 have talked to Mr. Jon Ruffiner, but I'm not sure for certain
10 that he's available right now. We can certainly try him.

11 THE COURT: Is he a short witness?

12 MR. BOWDEN: He should be, yes, sir.

13 THE COURT: How much longer do you think your case is
14 going to take?

15 MR. BOWDEN: Your Honor, I think we can be finished by
16 noon tomorrow.

17 THE COURT: Let's go ahead and recess for the evening
18 then. We'll resume at 9:30 in the morning. Court will be in
19 recess.

20 MR. BOWDEN: We have a number of very short witnesses
21 tomorrow, plus Mr. Duda, who will take some time.

22 MR. WOODSON: Judge, do any of the plaintiff's
23 witnesses need to come back, or can they be dismissed?

24 THE COURT: I'm going to dismiss them unless the
25 attorneys want them held.

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1 MR. BOWDEN: I don't think I have any reason.
2 THE COURT: It's up to you.
3 MR. BOWDEN: We reserve the right to call Mr. Galster
4 if we decide to.
5 THE COURT: It is your decision whether they stay or
6 not.
7 MR. WOODSON: Thank you, Judge.
8 THE COURT: Court will be in recess.
9 (Overnight recess at 4:50 p.m.)

10 REPORTER'S CERTIFICATE
11 I certify that the foregoing is a correct transcript from
12 the record of proceedings in the above-entitled matter.

13 Date: February 12, 2004.

14 Elaine Hinson, RMR, CRR, CCR
15 United States Court Reporter

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

MICHAEL GALSTER,

Plaintiff,

v.

No. 4:03CV1013 GTE

KELLY DUDA,

Friday, January 16, 2004

Little Rock, Arkansas

Defendant.

9:30 a.m.

TRANSCRIPT OF HEARING ON PRELIMINARY INJUNCTION - VOLUME 3
BEFORE THE HONORABLE G. THOMAS EISELE,
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES:

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Proceedings reported by machine stenography; transcript
prepared utilizing computer-aided transcription.
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United States Court Reporter

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1 THE COURT: Good morning. Are we ready to proceed?

2 MR. BOWDEN: Absolutely.

3 THE COURT: Who is your next witness?

4 MR. BOWDEN: It is going to be a Ms. Linda Miller of
5 Seattle, Washington, or the environs of Seattle anyway. I've
6 already provided her phone number.

7 THE COURT: All right. Linda Miller.

8 LINDA MILLER, DEFENDANT WITNESS, DULY SWORN, BY TELEPHONE
9 DIRECT EXAMINATION

10 BY MR. BOWDEN:

11 Q. Ms. Miller, my name is David Bowden. I'm the attorney for
12 Kelly Duda. How are you doing this morning?

13 A. Fine. Thank you.

14 Q. I'm sorry to disturb you this early in the morning. I know
15 it is about 7:30 out there.

16 A. That's okay.

17 Q. We need to talk for a minute about what you know about a
18 project called the Factor 8, The Arkansas Prison Blood Scandal
19 and the involvement of Kelly Duda with that project and also of
20 Michael Galster. First of all, do you know anything about the
21 Arkansas prison blood scandal?

22 A. Yes. I became aware of it back in the early eighties, when
23 my brother was there at the Cummins Unit. And he was donating
24 plasma there. Several years later, 1998, I became aware of the
25 fact that there was hemophiliacs, an epidemic of HIV and

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1 hepatitis --

2 THE COURT: Just a moment. I'm sorry. The court
3 reporter can't hear you. I'm not sure what we can do about
4 that.

5 THE WITNESS: Maybe if I cup my hand over.

6 THE COURT: Go ahead and try again.

7 THE WITNESS: All right. I became aware of the plasma
8 program in the early eighties, when my brother was donating
9 plasma there. And I was concerned about it for a lot of years
10 until 1998, when I became aware about the epidemic in Canada.
11 And at that point, my father-in-law spent a lot of time trying
12 to contact various media and trying to get somebody to
13 investigate it. And then after my brother died, we wrote a
14 letter to the Long Line Writer, which is the Cummins Unit
15 prisoners' newspaper. And we asked that anyone who had any
16 information about the plasma center write to us. And we got a
17 lot of responses. So I wanted to have a whole lot of
18 information. Kelly sent an e-mail to me after he found my
19 website and said that, "We need to talk."

20 THE COURT: You mentioned you wrote -- what was that
21 called?

22 THE WITNESS: The Long Line Writer.

23 THE COURT: And you got several contacts as a result
24 of that?

25 THE WITNESS: Yes, sir, quite a few.

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1 BY MR. BOWDEN:

2 Q. Ms. Miller, let me ask you a question at this point. You
3 mentioned a website. Did you establish a website on the
4 Internet regarding this situation?

5 A. Yes. I established a website called Arkansas River of
6 Blood, which was on a mass pages server for a number of years.
7 Then they got a complaint about the content and took it down.
8 That was about 1999, early spring of 1999.

9 Q. Now, you were contacted, you said, I think by Kelly Duda?

10 A. Yes, sir.

11 Q. Were you ever contacted by Michael Galster prior to that
12 time that you were contacted by Kelly Duda?

13 A. No, sir.

14 Q. And what was the nature of the contact from Kelly Duda?

15 A. Well, he wanted to find out what information that I had
16 relative to the plasma program. And I was able to refer him to
17 a number of the prisoners who had written to me, given me
18 information, and also to Tona DeMers, who is a former compliance
19 officer for the ADC. And he went out and interviewed them.
20 Also, there was a guy named Jeff Greek, who is a medical
21 professional that I had met at the hospital when my brother was
22 dying. And I put him in Kelly's contact. I talked to him,
23 spent a lot of time working on him before he ultimately agreed
24 to be interviewed.

25 Q. Ms. Miller, let me ask you. Let me back up one more step.

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1 You said your brother died. He had donated in the plasma
2 program, and then he died. How did he die?
3 A. He died of hepatitis B and C in March of 1999.
4 Q. Was he, in fact, a victim of this situation?
5 A. I'm sorry?
6 Q. Was he, in fact, a victim of this situation?
7 A. Well, we're not really absolutely positive. John Byus told
8 us that he had hepatitis when he first entered the prison. But,
9 you know, we don't know that for sure. Now that we've
10 investigated and we know how much illegal activities there were
11 that went on there, that we know that there's a chance he could
12 have got it through the plasma program. But it is one of those
13 things we'll never know.
14 Q. I understand. Now, give me the names of some of the
15 prisoners that you put Kelly Duda into contact with.
16 A. Okay. It was Rolf Kaestel. There was Michael Graves.
17 There was John Moss, although at the last minute John declined
18 the interview by Kelly. But what he did was he gave information
19 to me to give to Kelly.
20 Q. What kind of information? What did he tell you to tell
21 Kelly?
22 A. Excuse me?
23 Q. What kind of information did he give you to give to Kelly?
24 A. Well, John Moss was the inmate who, after several days of
25 the plasma program, the freezer would be broken. He would be

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1 brought in to fix the freezer. And he told us about how the
2 plasma would be all thawed and stinking and they would just
3 refreeze it as soon as he got the freezer going and ship it out
4 again on the next truck.

5 Q. Let me just ask you quickly. Have you seen the video that
6 Kelly has made of the documentary: Factor 8, The Arkansas
7 Prison Blood Scandal?

8 A. I saw the two-hour version, because I transcribed it for
9 him onto paper just so he could use it for editing.

10 Q. Did that information about the blood plasma unthawing and
11 that sort of thing, that was in that, was it not?

12 A. I believe so. Then Michael Bray, his job was to sharpen
13 used needles with sandpaper. And he gave quite a bit of detail
14 in this film.

15 Q. Now, you obviously have a familial interest in this. And
16 apparently some of the other members of your family have. Did
17 there ever come a time when you learned of Michael Galster?

18 A. Yes. Well, Mike Galster as Mike Sullivan was mentioned in
19 the article that was in the Conservative Chronicle about the
20 epidemic in Canada. My dad and I tried to find him under the
21 name of, you know, Michael Kennedy long before we even knew what
22 his name was. After Kelly came here in October of 1999, me and
23 my dad, that's when he told us Mike Galster's real name and that
24 he was a friend of his, and I became aware of Mike Galster.

25 Q. Tell me where "here" is just for the record.

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- 1 A. I'm sorry. I didn't hear that.
- 2 Q. You said Kelly came to you "here." You said "here." Where
- 3 is "here"?
- 4 A. Oh, I'm sorry. He came up to Washington state, at my
- 5 brother's grave site.
- 6 Q. Did you ever attempt to make contact with Mr. Galster after
- 7 that?
- 8 A. Well, not directly. There was a meeting in Hot Springs
- 9 with a bunch of people from around the country who were
- 10 interested in the plasma program. That was in October of 1999.
- 11 Q. What was the name of this group that met?
- 12 A. Well, there was some people from the Free Republic. There
- 13 was a lady named Dolly. I don't remember her last name. It was
- 14 her husband. It was a whole bunch of people.
- 15 Q. Did you meet Mike Galster at that time?
- 16 A. Yes. That was when I first met Mike Galster. Prior to
- 17 that, I had called him on the phone to get directions of where
- 18 to meet. That was my first direct contact with him.
- 19 Q. Did you have occasion, you and another member of your
- 20 family, to interact with him in a social setting?
- 21 A. Yes. Well, the meeting there in Hot Springs was October
- 22 29th, 30th, and 31st. So the first two days it was just kind of
- 23 an informal milling around and discussing things. Then on the
- 24 evening of the 31st, Halloween, there was a party at Mr.
- 25 Galster's house that we all went to. So that was the full

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1 extent of my interaction with Mr. Galster.

2 Q. Did you have a conversation with Mr. Galster, you and/or
3 someone in your presence at that time, about his book Blood
4 Trail?

5 A. Yes. When we were at Mike's house that night, my dad and
6 he were sitting over on the hearth there in his den, I guess it
7 is. And I had taken my copy of the book Blood Trail with me to
8 ask him to sign it for me. And when I saw he was seated with my
9 dad, I went and got my copy of the book out of the car. And I
10 went and asked him if he would sign the book for me. And my dad
11 started telling me that he had lost his copy of the book. After
12 he had read it, he had lent it to someone else. So Mike went
13 and got a book from another room in his house and signed it for
14 my dad. My dad was telling him how much he enjoyed the book and
15 all that. Mike stated that it hadn't really taken off like he
16 had expected that he hoped that it would.

17 Q. What was it that was making his hopes that this book would
18 take off a viable hope in his opinion?

19 A. Well, he said that he expected that it would take off after
20 Kelly's documentary was aired.

21 Q. Did he use those exact words, "Kelly's documentary"?

22 A. Yes. In fact, the whole time that I've been knowing about
23 this film, that's what it was called up until he gave it the
24 title Factor 8, The Arkansas Prison Blood Scandal. During that
25 whole conversation there at the meeting in Hot Springs, it was

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1 one of the topics that people were discussing. And it was
2 universally known as "Kelly's documentary." That's just what
3 everybody called it. That's what it was known as.

4 Q. Can you define who "everybody" is --

5 A. Well --

6 Q. -- a little more clearly.

7 A. The people that were there, that would have been Dolly and
8 Mike. There was another, a doctor, a prison doctor from I
9 believe it was Tennessee.

10 Q. Would it be Knutson?

11 A. Yes, yes, yeah. Then there was Tim Wheeler from Free
12 Republic and a guy named Less Peeland, Andy Fudge. I can't
13 remember. It's been quite a while ago that I met with these
14 people.

15 Q. These people referred to this as "Kelly's documentary"?

16 A. Yes.

17 Q. Now, your father was present on this conversation too. Is
18 he able to testify today?

19 A. No, he's not.

20 Q. Will you tell the Court why?

21 A. He's had three strokes and two heart attacks and a bypass
22 surgery. His heart is only working at 17 percent, so his mind
23 is real foggy.

24 Q. But you do remember hearing Michael Galster make this
25 representation, this admission that this was Kelly's

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1 documentary?

2 A. Yes, sir, I do. It was just my dad and Mike and I in a
3 little group there talking. I remember it specifically because
4 of the fact that I told Mike I wanted to be a writer. And Mike
5 was the first published author I had ever met. I was pretty
6 thrilled to have a chance to talk to him and visit with him. So
7 just about everything that happened at that meeting is pretty
8 memorable to me.

9 Q. Ms. Miller, just for information's sake, what do you do for
10 a living?

11 A. At the present time, I'm disabled.

12 Q. So you have time to research some of this stuff. True?

13 A. Yes, sir. That's mostly all I do. I'm on the computer,
14 because I can't move around a lot. So I just do research. And
15 I write letters to prisoners, you know, getting information
16 about medical neglect and not too much about the plasma program
17 anymore. I think I got all the information that they were
18 willing to give.

19 Q. I think you said you tried to get some interest in this
20 story and had not succeeded at the time. Is that correct?

21 A. Yes, sir. From the time that my father and I read the
22 article in the Conservative Chronicle, we wrote letters to, as I
23 said, like all the media we could think of, every thought we had
24 that came along. We tried really, really hard, because we
25 thought that we were the only ones that had the information that

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1 we had, especially after I started getting all the information
2 from the prisoners. So there I sat with this whole bunch of
3 information I didn't know what to do with until Kelly contacted
4 me. So at that point, I made him promise that I would give all
5 of my information exclusively to him. Over the years, I had
6 been contacted by other documentary filmmakers and TV producers
7 and people like that. I always tell them, you know, I would
8 prefer him to tell it because I gave him all my information. I
9 withheld things from my website in deference to the impending
10 film.

11 Q. I take it it's important to you that this film get shown.
12 True?

13 A. Yes. It really is. I think it's important to everybody,
14 even those who don't know about it yet, especially those who
15 don't know about it yet. I have a lot of faith in this film and
16 in Kelly's ability to make this film what it should be and get
17 the attention this atrocity deserves.

18 Q. Thank you, Ms. Miller. That's all I have. There may be
19 some more questions from the plaintiff.

20 CROSS-EXAMINATION

21 BY MR. WOODSON:

22 Q. Ms. Miller, this is Joe Woodson. I'm the lawyer for Mike
23 Galster.

24 A. Yes, sir.

25 Q. You just testified about committing to Kelly that you would
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- 1 give him all of your information that you had on the prison
2 blood scandal?
3 A. That's correct.
4 Q. When did you make that commitment to him?
5 A. Within a couple of days of receiving his first e-mail, once
6 he started seeing what I had, and I started telling all I had
7 and everything. And he explained to me about how on several
8 occasions he had given information to other reporters that had
9 been distorted and various things. So he was really nervous
10 about all this information getting out to other media sources
11 that might corrupt it.
12 Q. When was the date of that e-mail?
13 A. I do not know exactly. I had a computer crash in December
14 of that year, and I lost all of my old stuff.
15 Q. What year was that?
16 A. That was 1999. My brother died on March 13th. And Kelly
17 came here to film us at my brother's grave in October of that
18 year, so it was sometime between March and October. I'm going
19 to guess like mid spring.
20 Q. Spring of 1999?
21 A. Yes, sir.
22 Q. You stated that you met Mr. Galster. Would it be fair to
23 say that you have a lot of respect for Mr. Galster?
24 A. Yes, it would. He seemed like a really outstanding
25 individual.

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1 Q. You enjoyed his book. Correct?

2 A. Well, I was real disappointed in the book. But all the
3 guys I know liked it. It was an action adventure kind of thing.
4 It just wasn't my kind of book, I guess.

5 Q. You thought it was well written, nevertheless. True?

6 A. Yes.

7 Q. Isn't it also true that from time to time you have made
8 many complimentary remarks about Mr. Galster?

9 A. Well, yes. In fact, I have a photo of him and Mike
10 McCarthy standing outside of the Cummins Unit of the ADC. I
11 said, it's two men who just won't give up.

12 Q. In fact, you may have even mentioned Mr. Galster on your
13 website. Correct?

14 A. Yes.

15 Q. Would you consider Mr. Galster a trustworthy person?

16 A. Well, you know, I only met him the one time. I have had
17 reason to kind of rethink my initial impression of him. But I'm
18 not one to judge people in the first place. And I don't really
19 know him well enough to state an opinion.

20 Q. Have you rethought your impression of Mr. Galster based
21 upon information given to you by Kelly Duda?

22 A. Well, no, not really. It basically -- I don't know how to
23 say this. It comes down to -- oh, boy. This is terrible -- my
24 impressions that Mike probably has a womanizing problem.

25 MR. WOODSON: I'm going to object as irrelevant.

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1 THE WITNESS: I knew you would.

2 THE COURT: Well, you asked, so she answered. Let's
3 move on. Actually none of this is relevant.

4 BY MR. WOODSON:

5 Q. What, if any information, can you share with the Court
6 regarding the working relationship, if any, between Mr. Galster
7 and Mr. Duda?

8 A. Well, it's my understanding that a lot of us have worked on
9 this film and that everybody was doing it on speculation of one
10 sort or another, either speculation receiving monetary
11 compensation or artistic recognition, or like, in my case,
12 justice. My impression was that Mike was providing Kelly the
13 equipment to do this film and giving a little money from time to
14 time --

15 Q. Excuse me.

16 MR. BOWDEN: Let her finish, please.

17 BY MR. WOODSON:

18 Q. I'm sorry. Do you know whether or not Mr. Duda and Mr.
19 Galster had any sort of partnership contract or document?

20 A. Not to the best of my knowledge.

21 Q. Do you know whether or not Mr. Galster and Mr. Duda had an
22 employer-employee relationship?

23 A. I don't think so. I never understood it to be that way.

24 Q. Well, let me back up. I'm asking you if you have any
25 information one way or the other.

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1 A. No.

2 Q. Any documentary evidence?

3 A. No, I don't.

4 Q. Do you know whether or not Mr. Galster paid for Mr. Duda's
5 trip to Washington when he came to visit your brother's grave?

6 A. I understood that someone did, but I don't know, who had
7 given him a miles voucher. I take it that they had frequent
8 flier air miles and that he stayed here at our home with me and
9 my husband and my grandson, so he didn't have any living
10 expenses when he was here. It was my understanding, like I
11 said, that someone gave him a voucher.

12 Q. No more questions.

13 THE COURT: All right. Anything else?

14 MR. BOWDEN: Just one follow-up, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. BOWDEN:

17 Q. Understanding it is not strictly relevant, I take it from
18 what you said in answer to counsel's questions that you bear Mr.
19 Galster no ill will?

20 A. None whatsoever. I mean, I think he's done a lot of
21 remarkable things with his life to be admired. You know,
22 there's a whole lot of us who have done a whole lot of work on
23 this film. And I think we all kind of have a feeling that it is
24 our film, so I kind of think that's kind of what's going on.
25 That's my opinion. I'm sorry. That's why I say that.

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1 Q. But while you don't know the relationship financially
2 exactly between them --

3 A. No.

4 Q. -- you did hear Mr. Galster refer to this film as Kelly's
5 documentary. True?

6 A. Yes. Like I said, that's just what everybody called it
7 before it had a title.

8 Q. And that he could expect --

9 A. But I specifically do remember Mike saying that.

10 Q. And that he expected this to cause his book sales to take
11 off?

12 A. Exactly, yes.

13 MR. BOWDEN: That's all I have, Your Honor.

14 THE COURT: All right. Thank you. Call your next
15 witness.

16 MR. BOWDEN: Your Honor, I believe I'm going to call
17 Mr. Riable, Robert Riable. He is a cousin to Attorney Mark
18 Riable.

19 THE COURT: Just come forward to the witness stand to
20 my right.

21 MARK RIABLE, DEFENDANT WITNESS, DULY SWORN

22 DIRECT EXAMINATION

23 BY MR. BOWDEN:

24 Q. Would you state your full name for the record, please, sir.

25 A. Robert L. Riable.

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1 Q. Mr. Riable, where do you live?

2 A. Stuttgart, Arkansas.

3 Q. What is your profession?

4 A. Well, I used to be a farm manager all my life. I'm retired
5 now.

6 Q. Did you ever work for the Arkansas Department of
7 Corrections?

8 A. Yes, I did.

9 Q. In what capacity?

10 A. I started back in 1962. I was an extension -- county
11 extension agent. We worked with the farm over there in the crop
12 production, livestock production, through their educational
13 program and cattle operation for three years. And then in 1983
14 I started there as farm manager to develop the farm that was a
15 kind of preexisting farm operation.

16 THE COURT: In '83, you became an employee of the
17 Arkansas Department of Corrections?

18 THE WITNESS: Yes.

19 THE COURT: As their farm manager?

20 THE WITNESS: As farm manager, yes. I was asked to
21 develop the farm to a more up-to-date farm operation.

22 BY MR. BOWDEN:

23 Q. Mr. Riable, let me ask you further, did you stay in that
24 position a number of years?

25 A. I stayed there until '95. The farm administrator was
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1 opened up, I guess, because I put pressure on some political
2 people that an \$8 million operation, nobody headed up the farm
3 operation, and it was going in all directions. And they opened
4 up the farm administrator job that was funded and was there.
5 Consequently, they did give me the farm administrator job in May
6 of 1995.

7 Q. How long did you stay with that particular job?

8 A. Well, in July of '95, I had a heart attack and had to have
9 open-heart bypass surgery. And then '96, July of '96, I was
10 fired.

11 Q. Without going into too much detail, can you tell us why you
12 were fired?

13 A. Because I tried to stop corruption that was going on.

14 Q. What corruption do you know about in relation to the
15 Arkansas blood plasma program?

16 A. Well, I didn't know anything too much about it, except when
17 I first started there, looking back, I wondered why the pressure
18 was always put on us to let the inmates go in and give blood.
19 At our office conferences we would have, the secretary would
20 always remind everybody that their crews that they had, that
21 anytime the inmates could give blood, that that was our
22 obligation, to let them give blood in order for them to have
23 extra money to spend. I didn't -- that just took -- I thought,
24 well, that's just one of their perks that they had at the time.
25 But they kind of went out of their way to make it known that we

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1 had to do that.
2 Q. Have you since learned about the prison blood scandal
3 relating to the plasma program at that time?
4 A. Well, yes, in the last few years.
5 Q. But at that point, you just had a little piece of the whole
6 story. True?
7 A. True.
8 Q. Now, were you ever contacted by anyone relating to the
9 donating of blood by inmates or other matters that you might
10 have knowledge of relating to the blood program?
11 A. Kelly called me one time and wanted me to come in and
12 interview and just question me as to what all I knew, what was
13 going on in the prison system. That's when I kind of started --
14 Q. By Kelly, you mean Defendant Kelly Duda?
15 A. Kelly Duda, yes.
16 Q. Did you go in?
17 A. Yes. We went in. I give him an interview.
18 Q. Where did you go to to give him the interview?
19 A. Some little place here in Little Rock, off-the-street
20 thing.
21 Q. Did you ever have any contact with Michael Galster prior to
22 that meeting?
23 A. Oh, several years ago -- I don't know when it was -- a
24 friend of mine, I was in Pine Bluff one day. And these friends,
25 Kay McLemore and David McLemore said they were going over to

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- 1 meet this guy that was writing a book or something and wanted to
2 know -- it was about the prison system. And I went with them.
3 And they sat down and had a meeting. I don't know what it was
4 about. They were just talking about the book. And the main
5 thing I got out of the meeting, that you better be careful what
6 you are dealing with down there, because they will get you,
7 because he had been burned out of his job. And I was kind of
8 leery as to what was going on, just kind of stay away from the
9 Department of Correction, don't buck them.
- 10 Q. Was that Mr. Galster, in fact, that you went to meet?
11 A. I guess it was.
12 Q. Do you recognize him?
13 A. I don't recognize him. I just met him that one time.
14 Q. So you are not sure that that's who that was?
15 A. No. I couldn't tell you. I just knew it was supposed to
16 have been his place of business out there on Olive Street
17 somewhere out there.
18 Q. Did you share any information with Mr. Galster about the
19 prison operations?
20 A. No, sir.
21 Q. If it was, in fact, him?
22 A. No, sir.
23 Q. Now, you did share information with Kelly Duda?
24 A. Yes, sir.
25 Q. Was your interview filmed by Mr. Duda?

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- 1 A. Yes, sir, it was filmed.
2 Q. What information did you share? Just what you told us here
3 a minute ago?
4 A. Just mainly what the corruption that I knew that was going
5 on and about -- he asked me about the blood thing, just what
6 little I knew about -- I told you that before, about inmates
7 going in, taking them in, letting them give blood.
8 Q. Did Mr. Duda say how he had come to know about you?
9 A. Yes. That lady that wrote for the Arkansas Times.
10 Q. Mara Leveritt?
11 A. Mara Leveritt, yes.
12 Q. He didn't say anything about Michael Galster sending him
13 out there?
14 A. No, sir.
15 Q. Was Michael Galster anywhere during that interview taking
16 pictures or directing Mr. Duda?
17 A. No, sir.
18 Q. Who was there present for the interview?
19 A. The film man. There was some other guy at the door. But I
20 don't know who he was.
21 Q. Was it Mr. Galster, sitting at counsel table, at the door?
22 A. No, it wasn't him.
23 Q. So your only contact with this story has been your little
24 piece of information and Kelly Duda?
25 A. Yes.

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1 Q. That's all I have.

2 THE COURT: Any questions of this witness?

3 MR. WOODSON: Just briefly, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. WOODSON:

6 Q. Do you know whether or not Mr. Duda was the employee of Mr.
7 Galster?

8 A. No, sir.

9 Q. You do not know?

10 A. No, sir.

11 Q. That's correct?

12 A. I assume he was on his own, because the way he always
13 talked, he give me a little card showing --

14 Q. I'm not asking you for assumptions. I'm asking you if you
15 know one way or another as a matter of fact whether or not Mr.
16 Duda was the employee of Mr. Galster.

17 A. No.

18 Q. That's a, no, that's incorrect, or, no, you do not know?

19 A. No. I don't know.

20 Q. Do you know whether or not Mr. Galster ever paid Mr. Duda
21 for Mr. Duda's services?

22 A. No, sir.

23 Q. You do not know one way or the other?

24 A. No. His name never did come up whenever I would talk to
25 him.

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1 Q. I understand. But you don't have any facts that you can
2 testify to as to whether or not Mr. Galster ever actually paid
3 Mr. Duda. Is that correct?
4 A. No, no.
5 THE COURT: Do you know the date that Kelly called you
6 and arranged that interview?
7 THE WITNESS: Somewhere back in 1980, I think.
8 THE COURT: Eighty?
9 THE WITNESS: I mean '98. I think about '98,
10 somewhere in there, because I was in the lawsuit, trying to file
11 a lawsuit against the Department of Corrections during that
12 time.
13 BY MR. WOODSON:
14 Q. It's correct, isn't it, that you do not know one way or
15 another whether or not Mr. Galster hired Mr. Duda to work on the
16 documentary film Factor 8?
17 A. No.
18 Q. That is incorrect or it's correct?
19 A. I don't know. That was never brought up about it that I
20 know of.
21 Q. All right. Thank you.
22 THE COURT: All right, sir.
23 REDIRECT EXAMINATION
24 BY MR. BOWDEN:
25 Q. One further question. You said that he gave you a card --
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1 A. Yes.

2 Q. -- at that time. Did that card reflect Galster Orthopedic
3 or Labuena Vida or anything other than Kelly Duda?

4 A. Just Kelly Duda, Stone Films. I think that's the name of
5 it.

6 Q. Could it have been Concrete Films?

7 A. Concrete Films. That's what it is. Concrete Films is what
8 it was.

9 Q. Did it say what Mr. Duda's function was on that card, if
10 you remember?

11 A. I don't remember. Just had Kelly Duda and had his phone
12 number down.

13 Q. Thank you.

14 THE COURT: You may stand down, sir. I want to alert
15 the parties, there's going to be a recess at 10:30 for a
16 sentencing. Then we'll proceed. In the meantime, call your
17 next witness.

18 MR. BOWDEN: In light of that, Your Honor, we're going
19 to call Mr. Jon Ruffiner. My partner will question Mr.
20 Ruffiner. The next couple of witnesses will be short. But we
21 may want to take it after the sentencing, Your Honor.

22 THE COURT: Let's see how much progress we can make.
23 Call Mr. Ruffiner.

24 JON RUFFINER, DEFENDANT WITNESS, DULY SWORN
25 DIRECT EXAMINATION

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1 BY MR. SMITH:
2 Q. Good morning, Mr. Ruffiner.
3 A. Good morning.
4 Q. Is Jon Ruffiner your full name?
5 A. Yes, sir.
6 Q. How do you spell Ruffiner?
7 A. R-u-f-f-i-n-e-r.
8 Q. Do you know Kelly Duda?
9 A. Yes, sir.
10 Q. Have you ever worked with Kelly?
11 A. Yes.
12 Q. Are you familiar with Michael Galster?
13 A. The name is not familiar. I did meet someone in Pine Bluff
14 the first day that Kelly and I had worked together. I don't
15 recall that name. But we had gone to a medical facility, a
16 doctor's office or clinic or something, to meet with someone
17 that Kelly was affiliated with on this project.
18 MR. BOWDEN: Your Honor, I don't want to interrupt.
19 May I interrupt for just one second? Can Mr. Riable leave? Do
20 you need him for anything?
21 THE COURT: He is excused. He may go.
22 MR. BOWDEN: Thank you.
23 BY MR. SMITH:
24 Q. And did you work with Kelly on the filming of the
25 documentary?

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1 A. Yes.

2 Q. What did you do?

3 A. I'm a camera operator. And I also run audio usually on
4 these types of shoots. I shoot and run audio into the camera
5 and monitor audio as well as camera.

6 Q. Is that what you did for Mr. Duda?

7 A. On this particular project, yes.

8 Q. And what did you film?

9 A. We mostly conducted interviews. One particular day -- and
10 I don't remember the order. One day we went to Hope, Arkansas,
11 to film an event with President Clinton for B-roll. And you go
12 off and come out to these types of events in hope for whatever
13 else you get. We also went to a Wal-Mart in southwest Little
14 Rock to -- Congressman Vic Snyder was appearing here. We went
15 to hopefully get an interview with him at that time. We did
16 B-roll then. And we didn't get the interview. He was whizzed
17 out real quick.

18 On another day, however, on a third day, we went and
19 interviewed Congressman Snyder in downtown Little Rock in a room
20 in the back of what was at the time Cafe St. Moritz restaurant.
21 There were, I believe, three other days we shot on. We
22 conducted an interview with a couple of folks at a small fish
23 market in Pine Bluff, but I don't remember their names.

24 Q. Let me just ask, were all of these interviews related to
25 the making of the documentary?

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- 1 A. Yes.
- 2 Q. And you said "we" went. Who was we?
- 3 A. Kelly and I went to conduct the interviews and the B-roll,
4 shoot B-roll on each of these days.
- 5 Q. Did Kelly conduct the interviews?
- 6 A. Yes.
- 7 Q. While you filmed them?
- 8 A. Yes.
- 9 Q. Did the man you met in Pine Bluff at the medical facility
10 attend any of these shoots?
- 11 A. No, not that I was on. None of the shoots that I was on,
12 no.
- 13 Q. And, again, those are the only ones I'll ask you about.
- 14 A. Yes, sir.
- 15 Q. Were you paid for going on these shoots?
- 16 A. I was paid cash at the end of the day.
- 17 Q. And who paid you?
- 18 A. Kelly handed me the cash at the end of the day.
- 19 Q. You said that you met with the person in Pine Bluff one
20 time. Let me just ask. Do you recognize the gentleman to your
21 right with the Van Dyke beard as the person you met?
- 22 A. I would say yes, looks quite familiar. It's been over five
23 years. But I would say without a doubt that that's the
24 gentleman I met, yes.
- 25 Q. The day that you met him, did he and Kelly discuss

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1 anything? I'm not asking you what they said. Did they discuss
2 anything?

3 A. They did. I seem to recall a conversation. And it had to
4 do with the interview that we were fixing to go out and do. And
5 I seem to recall it as just, as I can recall, sort of -- how
6 could you say it -- a bouncing of ideas maybe, a debrief -- not
7 a debriefing, but however you would, you know, what was going to
8 go on, what they were going to ask.

9 Q. Was it a friendly conversation?

10 A. Yes.

11 Q. Did you get the impression that either this gentleman or
12 Kelly, one was in charge of the other?

13 A. I got no impression that either one was, you know.

14 Q. Based on your experience. Going on the shoots and meeting
15 with this gentleman -- this is Mr. Galster, by the way -- did
16 you have an impression as to who was making the documentary?

17 A. Not particularly.

18 MR. WOODSON: I have to object to that.

19 THE COURT: What we are asking for here is evidence.
20 Let's really try to stay with the issues.

21 BY MR. SMITH:

22 Q. Was Kelly Duda your primary source of contact for the work
23 you did on this documentary?

24 A. He was the only source of contact.

25 Q. Thank you, Mr. Ruffiner.

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1 THE COURT: Any cross-examination?
2 MR. WOODSON: Briefly.
3 CROSS-EXAMINATION
4 BY MR. WOODSON:
5 Q. Could you try to think back to the fish market interview
6 briefly in Pine Bluff? Do you not recall seeing the plaintiff
7 at that interview?
8 A. I do not.
9 Q. How many interviews specifically did you film?
10 A. There was the Congressman Snyder interview. This is all
11 that I can recall. This is five years ago. There was the two
12 at the fish market. There was one in the park in Pine Bluff
13 that we shot outside. I do not recall the gentleman's name.
14 And then there was another interview at a house that we went to.
15 And this is very vague. I know we drove up I-40 and got off
16 somewhere. I just cannot recall where. And there was a former
17 inmate that we had interviewed. That's all I can remember.
18 Q. What information, if any, can you give the Court regarding
19 the employer-employee relationship between Mr. Galster and Mr.
20 Duda?
21 A. Honestly, sir, I have no knowledge of that at all.
22 Q. Thank you.
23 A. You bet.
24 THE COURT: You may stand down, sir. Call your next
25 witness.

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1 MR. BOWDEN: Your Honor, I would like to at least
2 start with Mr. Bill Horn by telephone. He works for the USDA in
3 California. It should be about 9:10 out there -- about 8:10, I
4 guess. I think he will be at work.

5 THE COURT: He works for the Department of
6 Agriculture?

7 MR. BOWDEN: Department of Agriculture, yes. I
8 believe you have his work number.

9 THE COURT: This is H-o-r-n?

10 MR. BOWDEN: I believe it is H-o-r-n. I have two
11 alternate numbers if he is not available there.

12 Your Honor, he may be in transit because of the time of
13 morning it would be in California. Our problem is, this has all
14 come about so quickly, that many of these people couldn't be
15 here other than by phone.

16 Mr. Brent Rothert is an individual in California also that
17 we need to talk to. He is, however, a high school teacher. And
18 the word was that we would have to call him a little bit in
19 advance so that someone could come down and cover his class
20 while he came to his work phone and spoke with us.

21 On Bill Horn, I do have a cell phone. We could try him on
22 that if the Court wishes to attempt that sort of a connection.

23 THE COURT: Let's do something.

24 MR. BOWDEN: That would be (530) 383-4302. One more
25 try then. (530) 406-1994. Your Honor, I'm sure Mr. Horn will

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1 be available at some point.

2 WILLIAM HORN, DEFENDANT WITNESS, DULY SWORN, BY TELEPHONE
3 DIRECT EXAMINATION

4 BY MR. BOWDEN:

5 Q. Sir, would you state your name for the record, please.

6 A. My name is William Forrest Horn.

7 Q. Do you go by Bill?

8 A. Yes.

9 Q. Mr. Horn, where do you live?

10 A. I live at 411 El Dorado Drive, Woodland, California, 95695.

11 Q. Sir, how are you employed?

12 A. I am a nutritionist GS7 for the U.S. Department of
13 Agriculture.

14 Q. What is your educational background, just briefly?

15 A. I have a bachelor's in biogenics, a master's in nutrition
16 and food science, and a master's in biology.

17 Q. Do you work for the Department of Agriculture?

18 A. Yes, yes. I'm a support scientist.

19 Q. Now, Mr. Horn, do you have any knowledge of something
20 that's been called the Arkansas prison blood scandal?

21 A. Yes. I've been studying that since the end of 1998. And
22 I've been studying the collection of blood in labs and prisons
23 since 1995.

24 Q. And I take it that that didn't only include Arkansas.
25 There were other states that you were studying this on?

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1 A. Yes. There's several states. My specialties have been the
2 states of Arizona, Nevada, Arkansas, Louisiana, Tennessee.
3 That's pretty much my specialty.
4 Q. Okay. In the course of doing this research, do you operate
5 a website or anything of that nature?
6 A. No. I have an historical archive. And I've provided
7 materials to foreign governments and newspaper/television
8 reporters all over the world, in Ireland, Canada, England,
9 Japan, Korea. And I've been doing this for almost the whole
10 time.
11 Q. Are you compensated for providing that information, Mr.
12 Horn?
13 A. Very rarely I'll be compensated for Xeroxing costs,
14 something like that. My mission is to get as much information
15 out as possible. It's a personal mission. Several of my
16 friends have been killed from contaminated blood.
17 Q. Mr. Horn -- I'm sorry. Did I interrupt you?
18 A. No.
19 Q. Mr. Horn, in the course of carrying out this personal quest
20 or ambition or whatever, did you have occasion to be in contact
21 with an individual by the name of Kelly Duda?
22 A. Yeah, yes. I was interviewed by him in October of 1998.
23 Q. By whom?
24 A. By a David Meechner of San Francisco. And since that time,
25 as I do with everyone that I contact who is in this area, I

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Horn - Direct

1 basically say that I'm very interested in the area of prison
2 plasma, inner city plasma, other kinds of contaminated plasma.
3 And I give them a package, send them a package of some of the
4 highlights and ask for material in return. And Kelly and I have
5 exchanged several packages over the years.

6 Q. What did you give Kelly specifically about the Arkansas
7 prison blood scandal?

8 A. Specifically, I drove across -- if I can do a quick
9 prelude, I drove across the country to the Arkansas state
10 historical archives and went to the archives looking for the
11 governor's papers, which usually contain the prison records.
12 And though I found nothing from that collection, I did find a
13 lot of older newspaper articles that I copied from microfilm,
14 microfiche. And I sent Kelly a stack of those, including some
15 that stills were used in the film. Also, at one time we were
16 working together to try to find more material on the infamous
17 Dr. Austin Stough. I did an extensive search across the
18 country, came across some footage of Dr. Stough at the
19 Vanderbilt archives and shared that with Kelly. That, I
20 believe, is included in the film as well.

21 Q. That's Vanderbilt University in Tennessee?

22 A. Yes, exactly.

23 Q. Now, Mr. Horn, did you ever have occasion to contact or to
24 speak with or to be involved with a fellow by the name of
25 Michael Galster?

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1 A. You know, I've tried to -- I don't have a clear memory.
2 But I know at that time I either e-mailed or spoke with him and
3 sent him, you know, a package just like I do, you know, everyone
4 who has an inkling of interest in that area. And I never heard
5 back from Mr. Galster.

6 Q. It is very important if you can remember to answer this
7 question.

8 A. Sure.

9 Q. Did you contact Mr. Galster before or after you were
10 contacted by Mr. Duda?

11 A. I remember being introduced to Kelly Duda through Dave
12 Meechner first. As a matter of fact, I have an e-mail, if I
13 could find it in front of me, where Dave Meechner says, You have
14 to meet this guy in Arkansas, got to talk to this guy in
15 Arkansas, Kelly.

16 Q. Tell us about Mr. Meechner that you were speaking of. Is he
17 a former inmate of the Arkansas Department of Corrections?

18 A. Oh, Meechner, no. He's a man who has worked behind the
19 scenes in this area for many years, done very good work
20 anonymously and helped to get people researching and doing the
21 investigation.

22 Q. Do you know how he knew about Mr. Duda?

23 A. No, other than I know he's been in constant contact with
24 people all over the country. His wife, Masami, speaks fluent
25 Japanese. She's helped coordinate some conferences in Canada

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1 and Japan. And a lot of the Canadians and Japanese have spoken
2 together on strategy concerning contaminated plasma in their
3 country.

4 Q. Mr. Horn, are you aware of Kelly Duda's film, Factor 8,
5 The Arkansas Prison Blood Scandal?

6 A. Yeah, yeah.

7 Q. How did you become aware of that?

8 A. Well, with all the historical research that I've done and
9 that he's done, we've kind of, you know, dovetailed anything he
10 could do to help me with my research, which I'm basically
11 putting together articles about each state and the history of
12 contaminated plasma in each state, and anything I can contribute
13 to making, you know, the historical background of this film.

14 Q. Would that include money?

15 A. Yeah, yeah. I've financially helped Kelly. I loaned
16 for -- it was either gifts or loans of about \$7,400 that I have
17 receipts for that I've been able to collect.

18 Q. That was with the understanding it would go to this
19 project?

20 A. Yeah.

21 Q. Did it go to this project as far as you know?

22 A. Yes, yes, always focused on the film.

23 Q. Did you ever contribute any money to Mr. Galster for
24 anything?

25 A. No, no.

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1 MR. BOWDEN: That's all I have, Your Honor.
2 THE COURT: Mr. Woodson.
3 CROSS-EXAMINATION
4 BY MR. WOODSON:
5 Q. Mr. Horn, this is Joe Woodson. I'm the attorney for Mr.
6 Galster.
7 A. Uh-huh.
8 Q. In the course of your research, did you ever come to know
9 that Mr. Galster's own daughter is infected with contaminated
10 blood products?
11 A. Mr. Galster's what?
12 Q. Mr. Galster's daughter had been infected with contaminated
13 blood products?
14 A. No. I don't remember hearing that, though I must say in my
15 circle of friends, there are 40 or 50 people who are infected.
16 I don't think it would stand out necessarily.
17 Q. Mr. Horn, what information, if any, can you share with the
18 Court regarding the employer-employee relationship between Mr.
19 Galster and Mr. Duda?
20 A. I can't give you any specifics of things that I know for a
21 fact.
22 Q. That's all I'm interested in are facts. Thank you.
23 MR. BOWDEN: Your Honor, I think he ought to be
24 allowed to finish.
25 THE COURT: Well, if he doesn't know. Do you have any
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1 information at all about that relationship?

2 THE WITNESS: Yes.

3 THE COURT: Go ahead. What is it?

4 THE WITNESS: If I could say, you know, I've talked
5 with Kelly. I know that Galster and Kelly worked together,
6 somewhat, you know, cooperated. And I talked with some of the
7 specifics of that. As to what, you know, I don't have any
8 information on anything specifically that I've seen with my own
9 eyes, you know.

10 THE COURT: Very good. We thank you very much, Mr.
11 Horn. Sorry to interrupt you out there early in the morning.
12 You are excused.

13 THE WITNESS: I also wanted to mention that I also
14 collected money in the hemophiliac community. About ten
15 hemophiliacs, or widows or survivors, have donated or loaned
16 about \$4,500 to help get the film out into the world, because
17 people in the hemophiliac community want truth to be known and
18 want it to be known as quickly as possible.

19 THE COURT: Are you saying that you collected money
20 from these hemophiliacs and have given it to Mr. Duda?

21 THE WITNESS: Yes.

22 THE COURT: Is that part of the \$7,500 you were
23 referring to?

24 THE WITNESS: No.

25 THE COURT: That's in addition to?

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1 THE WITNESS: Yeah. That's in addition to. Ten
2 people from the hemophiliac community who are either, you know,
3 widows, survivors, people with HIV.

4 THE COURT: How much money did you give to Mr. Duda
5 from them?

6 THE WITNESS: From them was 4,570; 4,500.

7 THE COURT: Are you aware of any other money that
8 you've given to Mr. Duda?

9 THE WITNESS: That's everything that I have, you know,
10 either Xeroxed checks or notes or original canceled checks for
11 it.

12 BY MR. WOODSON:

13 Q. Sir, when was that money given?

14 A. That money was given in the time period from 2000 to 2004.
15 I have it all, you know, dated.

16 THE COURT: When did you give the \$7,400 to Mr. Duda?

17 THE WITNESS: It was across the time period starting
18 at 2000 and going until 2004.

19 THE COURT: Very good. Thank you, sir. We'll excuse
20 you. We'll be in recess for five minutes. Then if you will
21 leave the counsel table, just leave an area for the attorneys to
22 come, we're going to have to take care of a sentencing. Court
23 is in recess.

24 (Recess from 10:30 a.m. until 10:55 a.m.)

25 THE COURT: Mr. Bowden, who is next?
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1 MR. BOWDEN: Mr. Brent Rothert by telephone,
2 R-o-t-h-e-r-t. He can be contacted at (408) 535-6340. We have
3 already contacted his place of employment, and they said they
4 would have him standing by about this time. My partner spoke
5 with Ms. Ogden, if that's of any help.

6 (Telephone call placed.)

7 COURTROOM DEPUTY: They say they don't have a sub for
8 him -- this is one of the principals -- and that is not true,
9 and he cannot get out of class for an hour.

10 MR. BOWDEN: All right. We will proceed.

11 COURTROOM DEPUTY: Apparently they could not find a
12 sub for him, and they are prepping for tests. And he cannot
13 leave the class for an hour. They will have him standing by in
14 one hour.

15 MR. BOWDEN: Your Honor, I apologize. That's not what
16 we were told.

17 THE COURT: That's all right. We'll take it in an
18 hour.

19 MR. BOWDEN: My partner will question the next
20 witness.

21 MR. SMITH: Kelly Duda, Your Honor.

22 MR. BOWDEN: Your Honor, I would ask that if we're
23 questioning Mr. Duda and we come up on the hour at 12 o'clock,
24 that we may need to break and call Mr. Rothert back and then
25 complete questioning. I anticipate reasonably Mr. Rothert will

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K. Duda - Direct

1 be short and on the order of some of these other witnesses.

2 THE COURT: We'll interrupt with Mr. Duda's testimony
3 to take that in an hour from now. Go ahead.

4 KELLY DUDA, DEFENDANT WITNESS, DULY SWORN, BY TELEPHONE
5 DIRECT EXAMINATION

6 BY MR. SMITH:

7 Q. Mr. Duda, what is your full name?

8 A. Kelly Michael Duda.

9 Q. And how old are you?

10 A. I am 37.

11 Q. Are you married?

12 A. No.

13 Q. What's your current residence?

14 A. 500 East 6th Street, Apartment No. 6, Little Rock,
15 Arkansas, 72202.

16 Q. I'm going to ask you to speak up just a little bit on your
17 future answers.

18 A. Okay.

19 Q. Give the Court a brief sketch of your educational
20 background.

21 A. I have a bachelor's degree in film and broadcasting and
22 political science from San Jose State University. I also have
23 graduate coursework in business at the master's level, business
24 administration, emphasis in marketing and finance.

25 Q. Where are you now, sir?

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- 1 A. I'm in Salt Lake City, Utah.
2 Q. And why are you in Utah?
3 A. I'm in Utah to show and promote the film.
4 Q. And do you understand that you are currently under a
5 restraining order from the Court not to do that pending the
6 outcome of this hearing?
7 A. Yes.
8 Q. And have you been abiding by that order?
9 A. Yes.
10 Q. Is the film slated to be shown at Slam Dance?
11 A. Yes.
12 Q. When is it to be shown?
13 A. Beginning on the -- hold on one second -- the 18th.
14 Q. And how many times is it to be screened during the
15 festival?
16 A. At least three times.
17 Q. How did you get it on the slate of films to be shown there
18 at Slam Dance?
19 A. You submit the film for consideration.
20 Q. Does that just involve sending a copy to someone in the
21 mail?
22 A. In the beginning, yes.
23 Q. Okay. What else is involved in getting the film through
24 the selection process?
25 A. Well, they can call you up with questions, so there can be

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1 an exchange back and forth. I mean, I don't know what their
2 criteria is on their end as far as the selection process goes,
3 but I was contacted. I had contact with them prior to them
4 selecting the film.

5 Q. Is this a highly competitive selection process?
6 A. Absolutely. It is even more competitive a process than
7 Sundance, which is the film festival also in Park City that I
8 think is a household name.

9 Q. Do you know whether or not there's any cross-attendance
10 from Sundance attendees to Slam Dance?
11 A. Absolutely, yes.

12 Q. And are there people attending Slam Dance that those of us
13 here in the court would likely have heard of?
14 A. I'm sorry. Repeat the question again.

15 Q. Yes. Are there going to be people at Slam Dance that would
16 be known to us outside the film community?
17 A. Oh, I'm sure.

18 Q. If the film is allowed to be shown over the weekend, what
19 opportunities, if any, does that present for you?
20 A. What opportunities?
21 Q. Yes.
22 A. Well, it's boundless in its opportunities. Do you want me
23 to be specific?
24 Q. Yes, I do.
25 A. Okay. Well, first of all, you get to show the film, so the
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K. Duda - Direct

1 film gets seen by the people who watch it. So the issue has an
2 opportunity to be heard. I mean, this isn't just a film. It is
3 a documentary about something awful that occurred. And people,
4 you know, are still dying because of it in this country as well
5 as in other places, so you have that. You have the opportunity
6 from everything that comes from that. I am a filmmaker. This
7 is my film, so, you know, there's the opportunity that the film
8 might get picked up. You have the opportunity of all the people
9 you are going to meet. You have an opportunity -- I mean, this
10 business is all about the people you meet. You can have a great
11 film and no one purchase it. You can have a great film, and the
12 reason why people purchase it is because of who you know.

13 So the opportunity here is for me to kick-start its use as
14 a platform to show the film, to expose the issue, and to show my
15 talent and my work. It is an opportunity for me to begin a
16 career in the sense in the way that most people want to have
17 one. It's an opportunity for me to be able to get work, to show
18 people other projects I have in mind that I would like to make
19 and et cetera.

20 Q. What other opportunities other than Slam Dance are
21 potentially available to you of the magnitude of those that
22 you've just described to the Court?

23 A. None.

24 Q. Are there other documentary film festivals in the United
25 States?

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- 1 A. Yes.
- 2 Q. Do any of them compare favorably in size to that of Slam
3 Dance?
- 4 A. I would say -- okay. You say documentary film festival. I
5 would say no. And I would say that when it comes to a film
6 festival period, there's knowing that compares to Slam Dance in
7 the world, much less the United States.
- 8 Q. Do you indeed claim this documentary as your own work?
- 9 A. Yes.
- 10 Q. What is the name of the documentary?
- 11 A. It's called Factor Eight, The Arkansas Prison Blood
12 Scandal.
- 13 Q. When did you begin work on this documentary?
- 14 A. Well, I began principal photography October of 1998. I've
15 been researching the documentary prior to that or the subject
16 matter, I should say.
- 17 Q. Do you know Michael Galster?
- 18 A. Yes.
- 19 Q. Does Michael Galster own any part of the film or the source
20 tapes for this documentary?
- 21 A. No.
- 22 Q. Did he contribute to the postproduction work on the
23 documentary?
- 24 A. Did he contribute to the postproduction work of the
25 documentary? No.

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- 1 Q. Did he contribute to the production work of the
2 documentary?
3 A. Michael Galster contributed. But how you want to define
4 that is an open question.
5 Q. Well, what contributions did he make?
6 A. Mike's position -- if I can elaborate -- with my
7 girlfriend, who is the mother of my child, was such that he had
8 been long-term friends with her and her family. In fact, they
9 considered themselves family. She has considered him, when I
10 met him, as her godfather. So Mike Galster and Valerie Galster
11 considered us family. And as such, we did things for each
12 other, favors that you do for family. We have been at a variety
13 of events. We've been through -- we've spent Christmas
14 together, thanksgiving, you know, Fourth of July, things of this
15 such, in the same way that you would with a family. So in that
16 position, we did things for each other. I'm not schooled in his
17 business. He is not schooled in mine. So, you know, he
18 contributed as a friend in helping out the effort, as he said,
19 to help the victims. He wanted the issue exposed, as has
20 everybody else that has helped.
21 Q. Do you know Mr. Galster's children?
22 A. Yes.
23 Q. Are you aware that one of his daughters has been infected
24 with tainted blood products?
25 A. No.

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1 Q. You've never heard that before?

2 A. I'm not aware of that.

3 Q. Mr. Duda, tell the Court, please, what work you did toward
4 this documentary prior to the time you began to tape actual
5 footage.

6 A. Well, a lot of research. I have no idea how many pages.
7 I've got, you know, 20,000 plus documents, you know, relating to
8 this. And so you do a lot of archival research, newspaper
9 researching, interviews with people, you know, Internet
10 research, talking to your friends, you know, going through
11 anybody, everybody you possibly can to look into something. You
12 know, as a journalist, that's what you do. So my interest as a
13 person grew over time. With my background in film and video, at
14 a certain point, you know, I thought, especially because no one
15 else was talking about it, that, you know, the issue should be
16 told. If wrong things happen that hurt people, and it happened
17 in my state, I felt I had a social responsibility to try to do
18 something about that in the way I knew how.

19 Q. Do you have any idea approximately how long you worked on
20 preproduction research?

21 A. I would say a year.

22 Q. Did you get any of your leads while you were doing that
23 research from Mike Galster?

24 A. Oh, I'm sure that Mike, you know, said "you might want to
25 talk to this person or that person." I've gotten leads from --

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1 that's what you try to do as a journalist when you talk to
2 people. You get leads from, you know, all -- anybody and
3 everybody you can.

4 Q. Did you get any leads from a Suzi Parker?

5 A. No. In fact, she got all her leads from me.

6 Q. Did you ever accompany Ms. Parker on any interviews?

7 A. I was with her during phone interviews that I gave her
8 phone numbers for.

9 Q. Did you ever date Ms. Parker?

10 A. No.

11 Q. I'm sorry. I didn't hear your response.

12 A. No.

13 Q. Never?

14 A. No, never.

15 Q. Before we move to the production, I would like to ask you
16 one other question about Slam Dance. If your film is not
17 allowed to be shown this year, will they show it next year?

18 A. Well, you would have to ask Slam Dance that. I feel if I
19 miss this opportunity, no, that would not happen. It would do
20 irreparable damage to everything that's set up. I mean, this is
21 a once in a lifetime opportunity. You have to go with it now.

22 Q. So there's not, even though your film made it through the
23 selection process this year, there's not a guarantee that it
24 would make it next year?

25 A. Oh, yes, absolutely. There's no guarantee.

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- 1 Q. Would you -- go ahead.
- 2 A. In fact, I believe there have been films that were going to
- 3 show that didn't and were never -- I mean, they didn't screen
- 4 them next year.
- 5 Q. Would you have to go through the selection process again?
- 6 A. Absolutely.
- 7 Q. Mr. Duda, were you ever an employee of Galster Orthopedic
- 8 Lab?
- 9 A. Yes, I was.
- 10 Q. Do you remember when?
- 11 A. I would say for approximately four months, ending in
- 12 September, October of 2000.
- 13 Q. What were your duties as an employee of the lab?
- 14 A. They were just general duties. It wasn't something that
- 15 was defined as such. His clinic had been ruined by a fire, and
- 16 he wanted someone to be there to, you know, survey the ground,
- 17 to make sure everything was okay, that someone wasn't there to
- 18 do it again. If he needed something done in the clinic as far
- 19 as an errand or something like that, you know, I would help out
- 20 however way I could.
- 21 Q. Do you know the nature of the fire or the cause of the fire
- 22 that destroyed his clinic?
- 23 A. No. I have no knowledge as to that.
- 24 Q. Was it a fire, or was the clinic firebombed?
- 25 A. You would have to ask the fire department. I mean, you

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- 1 know, I'm not in the position to be able to draw a conclusion as
2 to that. That would be something that police and fire officials
3 would do in their investigation.
- 4 Q. Okay. Did you have insurance, health insurance, through
5 the orthopedic lab while you were an employee there?
- 6 A. During part -- not for the entire like four or five month
7 period I was there. But, yes, for a period I did.
- 8 Q. While you had that insurance, did it cover your daughter
9 Raven?
- 10 A. Yes.
- 11 Q. You said approximately September of 2000 you ceased to be
12 an employee there. Is that correct?
- 13 A. Yes. I remember one point Mike said that Raven can't be
14 covered anymore and I couldn't either.
- 15 Q. Mr. Duda, do you remember attending court in person on
16 Wednesday afternoon?
- 17 A. Yes.
- 18 Q. And do you remember testimony from William Moss?
- 19 A. Yes.
- 20 Q. Do you remember Mr. Moss testifying to an exhibit that was
21 a four-page list of expenses?
- 22 A. Yes.
- 23 Q. Did you submit that list to Mr. Moss?
- 24 A. No.
- 25 Q. Did you compile that list?

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- 1 A. No.
- 2 Q. Did you ever submit any expense lists or expense reports to
- 3 Mr. Galster or to Mr. Moss?
- 4 A. No.
- 5 Q. Please tell the Court, what was Mr. Galster's involvement
- 6 in the making of the documentary during the production process?
- 7 And by the production process, I mean the obtaining of
- 8 interviews and the making of the source tapes.
- 9 A. None.
- 10 Q. Did he ever accompany you on any interviews?
- 11 A. No.
- 12 Q. Did he ever tell you what questions to ask interviewees?
- 13 A. I wrote and created all questions that are asked. I am the
- 14 interviewer. I'm there. I'm the researcher. I'm the writer.
- 15 Q. Did you, in fact, interview Mr. Galster for the film?
- 16 A. Yes.
- 17 Q. Did Mr. Galster purchase any of the equipment that you used
- 18 in production?
- 19 A. Michael Galster purchased equipment that he allowed me to
- 20 use. Michael Galster purchased some equipment that he allowed
- 21 me to use in the production.
- 22 Q. What equipment was that? Do you remember?
- 23 A. I remember that Mike purchased a camera. And he had
- 24 already some sound equipment that wasn't of very good quality
- 25 that he allowed me to borrow and use. That would be the extent

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- 1 of it.
- 2 Q. And how long did the production phase, the gathering of the
- 3 source tape on this project, run?
- 4 A. I would say I was still -- well, let me think for a
- 5 second -- up until the time of 2003, into 2003.
- 6 Q. Did you ever live in quarters provided by Mr. Galster while
- 7 you were working on any phase of the documentary?
- 8 A. Yes.
- 9 Q. Do you remember for approximately how long?
- 10 A. I would say approximately six months.
- 11 Q. Where was this?
- 12 A. This was behind his clinic. I believe the street is called
- 13 Poplar.
- 14 Q. Did Mr. Galster participate in the postproduction phase --
- 15 strike that. You've answered. Did Mr. Galster buy any of the
- 16 equipment used in postproduction?
- 17 A. Michael Galster purchased equipment that he allowed me to
- 18 use in postproduction.
- 19 Q. Did you assist in locating that equipment?
- 20 A. In some fashion, yes.
- 21 Q. Did Mr. Galster know what equipment he needed to buy to
- 22 allow you to use?
- 23 A. Well, Michael Galster -- I mean, obviously he had to know
- 24 it to buy it.
- 25 Q. Did you play any role in selecting the equipment?

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- 1 A. I have in the past. He would ask me questions.
2 Q. Did you actually purchase any of the equipment?
3 A. Yes. I believe he asked me to purchase a camera for him,
4 but I didn't purchase, you know, anything else for him.
5 Q. And it's your testimony that Mr. Galster provided you with
6 a place to live for a period of time? Is that right?
7 A. Yes.
8 Q. That he purchased some of the equipment you used?
9 A. Yes.
10 Q. Did Mr. Galster ever pay you any money other than the wages
11 you earned in his clinic?
12 A. Galster would, you know, contribute, you know, sporadically
13 to help the effort and the cause. But there was no, you know,
14 system. There was no regimen. There was no -- you know, there
15 was nothing. There was no system. There was no regimen. There
16 was no agreement. You know, he just, you know, sometimes would
17 say, here, we'll just help out with what you are doing.
18 Q. And do you remember what you did with at least some of the
19 contributions, as you've characterized them, from Mr. Galster?
20 A. Well, a variety of things. You know, it was used to help
21 push forward, you know, trying to get something done in relation
22 to my film.
23 Q. Did you use it to pay expenses in the making of the film?
24 A. Sure.
25 Q. Can you give us a few examples, please.

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K. Duda - Direct

- 1 A. Well, I mean, there's tape expenses, you know. There is --
2 you know, there's a variety of expenses that you are going to
3 use. I mean, you know, production will encompass a lot of
4 things. You have to be able to find the information. You have
5 to get to the people. You need gas to be able to get to the
6 people. You need other people to be able to help you do that
7 when it comes to actually taping something. You know, there's
8 preproduction, production, and postproduction. So, you know, if
9 you have a need in hand, you need money to pay for it.
- 10 Q. Do I understand you to say you, in fact, used some of this
11 money to pay other people who contributed work toward the film?
- 12 A. Yeah.
- 13 Q. Do you remember the names of any of these people?
- 14 A. I would say the only person, I had six different camera
15 people or seven -- yeah, seven different camera people that
16 worked on the film at any given time. Only one of those camera
17 people ever received any funds from me during the time that Mike
18 was, you know, donating funds.
- 19 Q. You've testified that Mr. Galster donated funds. He
20 purchased equipment that he allowed you to use.
- 21 A. Uh-huh.
- 22 Q. He supplied you with a few leads.
- 23 A. Uh-huh.
- 24 Q. He allowed you to live in some quarters behind his office,
25 and for a time he employed you as part of his business. Was

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1 there ever any understanding of what Mr. Galster expected from
2 you in return for that?
3 A. No.
4 Q. I didn't hear your answer, Mr. Duda.
5 A. No. No, sir.
6 Q. So there was -- did you ever understand that Mr. Galster
7 had a claim or would make a claim on any of this work either in
8 its raw or finished form?
9 A. No.
10 Q. Are you familiar with a Mr. Broening?
11 A. I'm familiar with a Mr. Broening.
12 Q. Broening. Did he contribute any work toward the
13 documentary?
14 A. Yes.
15 Q. Do you know a Renee Williams?
16 A. Yes.
17 Q. Are you familiar with any relationship between these two
18 individuals?
19 A. Yes.
20 Q. And do you have any reason to believe either or both of
21 them would wish you ill?
22 A. Yes.
23 Q. Why is that?
24 A. I met Renee Williams through Daniel Broening. Daniel
25 Broening was a friend of mine. He introduced me to Renee. I

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1 dated Renee for approximately three or four months. Then I
2 stopped dating her. And she got very angry with me, and so did
3 Daniel. In fact, I never heard another word from Daniel again
4 after that. I saw Renee a few months after we stopped dating
5 and said "hi" to her. She said she never wanted to see my face
6 again, never ever wanted to talk to me. So that was kind of the
7 end.

8 Q. Do you know whether Ms. Williams has any kind of
9 relationship with Mr. Galster?

10 A. As far as I know, she never met him, at least when I knew
11 her. In fact, I know she had never met him when I knew her or
12 when I was dating her, I should say, which is the time I
13 considered that I knew her.

14 Q. Mr. Duda, one quick question about your research. Do you
15 remember the year that you began researching the facts behind
16 this scandal?

17 A. Actively researching, 1997.

18 Q. Do you remember working with a Mr. Christopher Case on the
19 documentary?

20 A. Yes, yes.

21 Q. How did Mr. Case come to be associated with you?

22 A. Mr. Case was a friend of mine who I met, I would say, 1995.
23 He was from -- well, he's from Hot Springs, lived in California.
24 I'm from Little Rock, lived in California. We had both returned
25 to Arkansas to pursue avenues of making films. And so we shared

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1 a common interest in that. And we met through, you know,
2 someone else, a mutual friend. And that started our friendship.
3 Q. Did you hire him to work on this documentary?
4 A. Yes.
5 Q. Did you have the power to fire him?
6 A. Yes. I have all oversight when it comes to people's
7 contribution, you know, to the work. I'm the director. That's
8 part of what a director does.
9 Q. Did you pay Mr. Case?
10 A. I did not physically pay Mr. Case.
11 Q. Was Mr. Case paid for his work?
12 A. Apparently, yes.
13 Q. Do you know who paid him?
14 A. I think Mike did.
15 Q. Did you receive the product that Mr. Case produced?
16 A. Yes. I would say that I probably -- I probably paid him
17 for some things.
18 Q. Did he do good work?
19 A. Yeah. I thought he did good work.
20 Q. During the time he was working on the project, did y'all
21 have frequent contact with one another?
22 A. Yes.
23 Q. Approximately how often would you talk to him?
24 A. Well, Chris Case and I were friends. But we might have
25 daily contact with each other. That would be excluding, you

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1 know, what he did for the film. Chris Case, what Chris Case did
2 for the film was he transcribed some of the source material.
3 Then much later, for about two weeks, he came to Arkansas and
4 attempted to help me in organizing some of the transcripts.
5 Q. And he came to Arkansas at your invitation?
6 A. Yes.
7 Q. Let's go back. Are you familiar with a book by the title
8 of Blood Trail?
9 A. Yes.
10 Q. And to the best of your knowledge, who wrote that book?
11 A. Michael Galster.
12 Q. Under the pen name Michael Sullivan?
13 A. Yes. I mean, I never saw him actually type a word of it,
14 but yes.
15 Q. Did you ever have any involvement with the book prior to
16 the time it was published?
17 A. Yes.
18 Q. When did that begin?
19 A. 1997.
20 Q. What did that prepublication involvement entail?
21 A. Okay. Well, you know, as I mentioned before, Mike and I
22 were friends. And Mike knew of my background in film. You
23 know, Mike had been involved in the arts himself. So, you know,
24 two creative people talked about such things. He had no
25 knowledge of filmmaking, but he sang in plays and things of that

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1 sort. And we were having a casual conversation in which he had
2 told me about how he had contracted at the prison system.

3 So we began talking about the infamous Cummins Prison Farm,
4 talking about the movie Brubaker, you know, just the notion of
5 unmarked graves at the prison system and whatnot. And Mike was
6 casually telling me about a variety of experiences and stories
7 he had heard there. He also mentioned about the blood
8 harvesting operation. I remember in the movie Brubaker scenes
9 of that, as well as other things that I had heard about in the
10 past, unmarked graves, the whippings with the strap, the use of
11 the Tucker telephone, the blood program. Robert Redford
12 actually says when he gets in there, that we have to get you
13 real food, and we need to stop the blood program. He said that,
14 you know, he figures that people probably got hurt by this.

15 Q. I'm sorry to cut you off, Mr. Duda. I want to kind of
16 return to my question.

17 A. I'm sorry.

18 Q. That's quite all right. What did you do, if anything, in
19 assisting with this book prior to the time it was published?

20 A. Okay. At one point, he decided he wanted to write a
21 fictional book. And he asked me if I would be willing to look
22 at it for him, and I did. In fact, you know, I had various
23 versions of the book that he asked me as a friend to look at and
24 give him pointers and opinions on and about. I remember getting
25 individual chapters and then from that actual manuscripts, and

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- 1 then from that, you know, a preprinted copy of the book. Then
2 eventually it was published.
- 3 Q. Did you, in fact, make any suggested changes or alterations
4 to the work?
- 5 A. Yes.
- 6 Q. Do you know whether Mr. Galster implemented them?
- 7 A. I really have no idea. I never read the book once it was
8 published.
- 9 Q. After it was published, did you participate in the
10 marketing of that book?
- 11 A. Yes. I helped him as a friend however way I could.
- 12 Q. Do you remember what period of time you provided that help?
- 13 A. I would say from the time the book published until into mid
14 2000.
- 15 Q. Did you receive a fee for your marketing or editing of the
16 book Blood Trail?
- 17 A. No. I was -- once again, you know, that was all -- he
18 helped out where he could, and I helped out where I could. And
19 I helped him out a great deal.
- 20 Q. Do you remember trying to contact Matt Drudge?
- 21 A. Yes. I did contact Matt Drudge.
- 22 Q. That was an effort to market this book?
- 23 A. Yes, and to try to expose the issue.
- 24 Q. Did you travel to Washington, D.C., for a press conference?
- 25 A. Yes.

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- 1 Q. Was that press conference at least in part related to the
2 marketing of this book?
3 A. Yes.
4 Q. Did Mr. Galster stage that press conference himself?
5 A. He along with a variety of other people.
6 Q. Are you aware of any other people who provided work or
7 labor on this film who are looking to Mr. Galster to be paid but
8 who were, in fact, never paid?
9 A. Repeat the question again. I'm sorry.
10 Q. Did anybody working on the film look to Mr. Galster for
11 payment but never receive it?
12 A. Not to my knowledge.
13 Q. Did you ever attempt to enter into a partnership with Mr.
14 Galster regarding the book Blood Trail?
15 A. No.
16 Q. Did you view that as his project?
17 A. Yeah. That was his book.
18 Q. Did you ever seek to enter into a partnership with Mr.
19 Galster regarding the making of the documentary?
20 A. No.
21 Q. Did he seek to enter into a partnership with you regarding
22 the making of the documentary?
23 A. No.
24 Q. Are you familiar with a man named John Schock, Mr. Duda?
25 A. Yes.

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- 1 Q. How do you know Mr. Schock?
2 A. He is a friend of mine. I've known John for 20 years.
3 Q. Did you talk to him in relation to this film?
4 A. Yes.
5 Q. Do you remember when you first talked to him?
6 A. In relation to the film?
7 Q. Well, I tell you what. In relation to the facts underlying
8 the documentary.
9 A. Okay. 1997.
10 Q. Have you spoken to him about it since?
11 A. Absolutely.
12 Q. Did you meet Mr. Schock through Mr. Galster?
13 A. No.
14 Q. How did you meet him?
15 A. As a child, I mean, I've known him since I was, you know,
16 17 years old.
17 Q. Do you know a physician named Ed Barron?
18 A. Yes.
19 Q. Did you meet him through Mr. Galster?
20 A. No.
21 Q. Did you discuss the facts underlying the documentary with
22 him?
23 A. With Dr. Barron?
24 Q. Yes.
25 A. Yes.

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- 1 Q. Was he familiar with them?
2 A. Absolutely.
3 Q. Do you know Tona DeMers?
4 A. Yes.
5 Q. Do you know Robert Riabile?
6 A. Yes.
7 Q. Did you meet either of them through Michael Galster?
8 A. No.
9 Q. Do you know Linda Miller?
10 A. Yes.
11 Q. Did you meet her through Robert, through Mr. Galster?
12 A. Through Mike Galster?
13 Q. Through Mike Galster.
14 A. Linda, no.
15 Q. Do you know Bill Horn?
16 A. Yes.
17 Q. Did you meet Mr. Horn through Mr. Galster?
18 A. No.
19 Q. Are you familiar with Mara Leveritt?
20 A. Yes.
21 Q. Did you meet Ms. Leveritt through Mr. Galster?
22 A. No.
23 Q. Are you familiar with a Mr. Brent Rothert in California?
24 A. Yes.
25 Q. Did you meet Mr. Rothert through Mr. Galster?

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- 1 A. No.
- 2 Q. Did you meet any of the people that I've just run through
- 3 the list of based on your contacts with Mr. Galster?
- 4 A. Not to my knowledge, no, no.
- 5 Q. Do you have any idea or any personal knowledge as to how
- 6 many copies of the book Blood Trail were sold?
- 7 A. Well, I would not have access to those figures, so I could
- 8 only guess. I know that the book lost a great deal of money.
- 9 It did not sell well. I would say, you know, at best, it might
- 10 have sold maybe 8,000 copies. But that would just be a guess.
- 11 Q. I understand you are not sure.
- 12 A. Yes.
- 13 Q. Did Mr. Galster ever mention to you the possibility of
- 14 making a motion picture based on the writing of that book?
- 15 A. I have no knowledge of that.
- 16 Q. Did Mr. Galster ever mention making a feature-length motion
- 17 picture involving the facts behind the blood scandal of any
- 18 type?
- 19 A. No.
- 20 Q. Did you ever mention that possibility to Mr. Galster?
- 21 A. No.
- 22 Q. Did you do your best to try and promote the sales of Mr.
- 23 Galster's book?
- 24 A. As a friend, I tried to help any way that I could that he
- 25 asked, you know.

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- 1 Q. Did Mr. Galster ever express any hope that a feature film
2 or documentary involving the prison blood scandal might aid in
3 future sales of his book?
4 A. Not to my knowledge, no.
5 Q. Mr. Duda --
6 A. Yes.
7 Q. -- to the best of your recollection, when did Mr. Galster
8 first make a claim to ownership of the documentary and/or the
9 source material behind it?
10 A. Right now.
11 Q. Did he not ever make a claim of that nature to you prior to
12 the filing of his lawsuit?
13 A. No.
14 Q. Did he ever ask for the return of any equipment he had
15 allowed you to use?
16 A. Yes.
17 Q. Did you return it?
18 A. Yes.
19 Q. Did you return it when he asked for it?
20 A. Yes.
21 Q. Have you kept anything Mr. Galster provided you with that
22 belongs to him?
23 A. I have two hard drives of his.
24 Q. Did you say you have them or you had them?
25 A. I have them.

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- 1 Q. Why do you have them?
2 A. Well, because he never came back for them.
3 Q. You are prepared to turn them over?
4 A. Sure.
5 Q. When was the last time he requested those hard drives from
6 you?
7 A. I would say close to three years ago.
8 Q. To make sure that I understand, Mr. Galster never requested
9 source material used in this documentary from you?
10 A. No.
11 Q. Before he filed this lawsuit?
12 A. No.
13 Q. One moment, Mr. Duda.
14 Mr. Duda, just a few more questions. Do you have any idea
15 how Mr. Galster received a copy of your documentary?
16 A. No.
17 Q. Were you aware that Mr. Galster has a representative in
18 Hollywood?
19 A. No. I don't have any knowledge of that. Do we know that
20 he has a copy of the film?
21 Q. He purports to have one, yes.
22 A. You know, I haven't seen this. If indeed he does have a
23 copy of one, I have no idea how he has it.
24 Q. Have you distributed copies of the film to people since it
25 was finished?

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- 1 A. Yes.
- 2 Q. In fact, did you distribute other drafts or versions of the
- 3 film before that?
- 4 A. Yes.
- 5 Q. Is it possible that someone at Slam Dance could have
- 6 provided this concerned documentarian with a copy of your film?
- 7 A. I think it is unlikely.
- 8 Q. When you have sent these copies of your documentary and
- 9 copies of previous versions of the documentary to various
- 10 people, what means have you used to get it to them?
- 11 A. The best means, I'll FedEx it.
- 12 Q. Do you have an account with FedEx?
- 13 A. No, not currently.
- 14 Q. Did Mr. Galster provide funding for you to mail any of
- 15 these copies out?
- 16 A. No.
- 17 Q. Very briefly, give the Court an idea of when you first sent
- 18 copies of the final version of the documentary, its current
- 19 version, out to anyone.
- 20 A. I'm sorry. Repeat the question again.
- 21 Q. Sure. When did you first send a copy of the documentary in
- 22 its current state to anyone?
- 23 A. Okay. Maybe four months ago, beginning four months ago.
- 24 Q. And since then, do you have any idea how many copies you
- 25 have sent -- of this documentary in its current form -- you have

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1 sent to prospective viewers?

2 A. Many. Several. You know, 30.

3 THE COURT: What did he say?

4 MR. SMITH: Approximately 30. Is that correct, Mr.
5 Duda?

6 THE WITNESS: Yes.

7 BY MR. SMITH:

8 Q. I may need you to speak up just a little bit.

9 A. I'm sorry.

10 Q. And what parts of the country have those copies gone to?

11 A. They've gone all over. They've gone to both coasts.
12 They've gone to the east coast. They've gone to the New York
13 Times. They've gone to the Village Voice. They've gone to,
14 obviously, Los Angeles, Florida, a variety of places in between.

15 Q. Have they been -- based on what you said, have they been
16 concentrated more heavily in the east and west coast?

17 A. Yes.

18 Q. Is that where the creative community of this kind is
19 concentrated?

20 A. Yeah. I would say that not only the creative community as
21 far as film, but also the journalistic community as well.

22 Q. Do you consider this a journalistic work?

23 A. Yes.

24 Q. Do you consider this your film?

25 A. Yes.

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- 1 Q. Have you attempted to register a copyright?
2 A. Yes.
3 Q. Do you remember when you did that?
4 A. You mean with the Library of Congress?
5 Q. Yes.
6 A. December 29th, 2003.
7 Q. How does one go about trying to register something for a
8 copyright?
9 A. Okay. You fill out a form, and you have what you are
10 wishing to copyright in a fixed form. You have a payment. And
11 you mail it to the Library of Congress. And they get it, and
12 they start the process.
13 Q. Did you fill out the form?
14 A. Yes.
15 Q. Did you write the check?
16 A. Yes.
17 Q. Did you send it to the Library of Congress?
18 A. Yes.
19 Q. How did you send it?
20 A. I sent it overnight via FedEx.
21 Q. Did you confirm receipt of the package?
22 A. Yes.
23 Q. How did you do that?
24 A. I did that electronically or through the Internet, through
25 the FedEx website.

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- 1 Q. How do you use the website to do that?
2 A. You just access their website. It's fedex.com. And you
3 use a tracking number that was on the airbill. And you plug
4 that in, and you can see when the package arrived at its
5 destination. And you can get confirmation on that, and you can
6 get additional proof of delivery of the shipment by getting a
7 signature of the person who signed for it.
8 Q. And you are able to get all of that on line?
9 A. Yes.
10 Q. And do you remember approximately when you sent this FedEx
11 package to the Library of Congress?
12 A. I know when I sent it. I sent it on the 29th of December
13 of 2003.
14 Q. What precisely did you send to the Library of Congress?
15 A. I sent a copy of my film, Factor 8, The Arkansas Prison
16 Blood Scandal, along with payment and application.
17 Q. Was the copy on VHS or DVD?
18 A. It was on VHS.
19 Q. Did you send anything else to the Library of Congress on
20 that day?
21 A. No.
22 Q. Did you keep your receipt from FedEx?
23 A. Yes.
24 Q. Did you print the confirmation of shipping that you said
25 you looked at on line?

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1 A. Yes.

2 Q. Before you left, did you provide one of your attorneys
3 documentation of that Federal Express transaction?

4 A. Yes.

5 Q. Is this a business record that you normally keep?

6 A. Yes.

7 Q. Did you provide your attorney the original document?

8 A. Yes.

9 Q. Did you send anything else to the Library of Congress on
10 December 29th, 2003?

11 A. No.

12 MR. SMITH: Your Honor, I'm told copies of this have
13 previously been given to counsel. We would submit the original
14 airbill and copies of the information taken from the on-line
15 service as plaintiff's next, which I believe is 2.

16 THE COURT: As one exhibit?

17 MR. SMITH: Yes, Your Honor.

18 THE COURT: State again what the exhibit is composed
19 of.

20 MR. SMITH: The exhibit is composed of the original
21 airbill from Federal Express, a receipt of payment, one page
22 from FedEx website showing the time it was picked up and
23 delivered, and finally a copy of the signature page from the
24 person receiving it at the Library of Congress.

25 THE COURT: That will be received.

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1 (Defendant Exhibit 2 received in evidence.)

2 BY MR. SMITH:

3 Q. Thank you, Mr. Duda. Mr. Woodson, I have no doubt, will
4 have some questions for you.

5 A. Okay.

6 THE COURT: Mr. Duda, this is the Court. This
7 cross-examination will probably be interrupted, because there's
8 another witness in California that's going to be available at
9 the top of the hour. So if you are interrupted, that will be
10 the reason. Mr. Woodson, you may cross.

11 CROSS-EXAMINATION

12 BY MR. WOODSON:

13 Q. Mr. Duda, this is Joe Woodson. I'm the attorney for
14 Michael Galster. Where are the 107 original source tapes at
15 this moment?

16 A. Where are the 107 original source tapes?

17 Q. Yes.

18 A. There are more than 107 source tapes.

19 Q. How many are there?

20 A. 150.

21 Q. Where are they physically located at this moment?

22 A. I have them.

23 Q. Where do you have them?

24 A. Arkansas.

25 THE COURT: Excuse me. You have to let him answer.
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1 Ask again.
2 BY MR. WOODSON:
3 Q. Where do you have them?
4 A. In Arkansas.
5 Q. Where in Arkansas?
6 A. Little Rock.
7 Q. Could you be very specific, please?
8 A. They are stored in Little Rock.
9 Q. Sir, where are they stored in Little Rock specifically?
10 A. They are stored in a warehouse in Little Rock.
11 MR. WOODSON: Judge, I would ask you to compel the
12 witness to answer.
13 MR. BOWDEN: Your Honor, this isn't a replevin action.
14 THE COURT: I know that. But I think he is entitled
15 to get the answer to that. Just where is the warehouse? What's
16 the address?
17 THE WITNESS: You know, I don't know the actual
18 physical address. It is in southwest Little Rock. It is off of
19 Geyer Springs.
20 BY MR. WOODSON:
21 Q. Do you know the name of the warehouse?
22 A. Maybe You Store It.
23 Q. You Store It?
24 A. You Store It, I believe.
25 Q. Do you have access to that warehouse?
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- 1 A. Yes.
- 2 Q. Does any other person have access?
- 3 A. No.
- 4 Q. Where are the two hard drives that you mentioned earlier on
5 your direct examination?
- 6 A. They are at the warehouse as well.
- 7 Q. Are those Cheetah hard drives?
- 8 A. They are CK Cheetah hard drives.
- 9 Q. Where is the four-hour version of the documentary film that
10 existed in December of 2000?
- 11 A. I don't know that I understand the question.
- 12 Q. Are you familiar with the four-hour version of the
13 documentary film called Factor 8 that existed in December of
14 2000?
- 15 A. I have a variety of versions of the film Factor 8.
- 16 Q. I'm sorry. What was the last part of your answer?
- 17 A. I have many versions of the film Factor 8.
- 18 Q. Where are these versions?
- 19 A. Well, they are in a variety of places. They can be on DVD.
20 They can be on VHS. They can be partly in the computer. They
21 can be stored on electronic media.
- 22 Q. I'm not asking how they are stored. I'm asking where they
23 are physically stored at this very moment.
- 24 A. Oh, some may be at my residence. Some may be in storage.
25 Others would be -- it depends on what form you are talking

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1 about, sir.

2 Q. Well, I just want a comprehensive list of where all of the
3 versions are of the film that you know of that existed in
4 December of 2000.

5 A. I would have to look. They could be in Florida and
6 California as well.

7 MR. BOWDEN: Your Honor --

8 MR. WOODSON: I'll move on, Your Honor.

9 BY MR. WOODSON:

10 Q. Who else is in the room with you at this moment, if anyone?

11 A. No one.

12 Q. How much money did you receive from Michael Galster from
13 the years 1998 through the year 2001?

14 A. How much money did I receive from him?

15 Q. Yes.

16 A. For what purpose?

17 Q. For any purpose.

18 A. I don't know.

19 Q. You don't have any accounting of that?

20 A. Well, you have to understand that -- what are the dates
21 again, please?

22 Q. From 1998 through the year 2001.

23 A. \$20,000.

24 MR. BOWDEN: I think the relevance should be limited
25 to for the purposes of this film.

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1 THE COURT: He said from the plaintiff, so I'm going
2 to overrule the objection.
3 BY MR. WOODSON:
4 Q. Do you have any accounting, sir?
5 A. Do I have any accounting? I would say approximately
6 \$20,000.
7 Q. Isn't it true that you lived in Michael Galster's home in
8 Hot Springs?
9 A. No, that's not true.
10 Q. Is it true that you lived in Michael Galster's lake house
11 in Hot Springs or in the vicinity of Hot Springs?
12 A. No, that's not true.
13 Q. You've already admitted that you lived in his home in Pine
14 Bluff. Correct?
15 A. I lived in a home behind the clinic there for, yes,
16 approximately six months.
17 Q. That belonged to him?
18 A. As far as I know, yes.
19 Q. Isn't it true that he paid for a time, at least in 2001,
20 for your apartment in Little Rock?
21 A. That is false.
22 Q. How many years did you tell Mr. Smith that you had been
23 working on this project? I wanted to make sure I got that
24 right. I think you said something like seven.
25 A. On this project. You mean on the film or on the research?

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- 1 Q. All of it, from start to finish.
2 A. I would say it began in 1997.
3 Q. Up until today. Correct?
4 A. The research in 1997, the film in late 1998 forward.
5 Q. I'm curious. How did you support yourself and the making
6 of this film from 1997 through today?
7 A. In a variety of ways.
8 Q. Could you list those for us?
9 A. Pardon me?
10 Q. Could you list those for us?
11 A. Sure. I've shot camera work. I've edited. I've directed.
12 I've been involved in the making of commercials, sporting
13 events, corporate videos, infomercials. I've shot weddings.
14 You know, related to the audiovisual realm, I have researched
15 for lawyers. I have done construction work. I have sold my
16 comic book collection, a variety of things, however way I could
17 to make ends meet.
18 Q. And you've given those W-2 statements to your attorney so
19 that they could show them here to us today. Is that correct?
20 A. Pardon me?
21 Q. Have you given your attorneys any of your W-2 statements?
22 A. I have not been asked to give anyone anything.
23 Q. Okay. Have you given your attorneys any pay stubs?
24 MR. SMITH: Your Honor, I object.
25 THE WITNESS: I have not been asked that.
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1 MR. SMITH: I'm going to object to the relevance of
2 the questions. Money from Mr. Galster is one thing. Other
3 income has not been an issue in this trial.

4 THE COURT: Well, I guess the question is during this
5 whole period what were his sources of income. I think it is
6 relevant, so you may continue.

7 BY MR. WOODSON:

8 Q. Did you file any tax returns during the years 1997 through
9 2004?

10 A. Yes.

11 Q. Have you provided any copies of those documents to your
12 attorneys?

13 A. I haven't been asked them.

14 Q. You testified earlier about your educational background.
15 And I think you said you received an undergraduate degree. Is
16 that correct?

17 A. That's correct.

18 Q. And master's level coursework in -- was it business?

19 A. Yes.

20 Q. Have you provided your attorneys any documents that would
21 substantiate that claim?

22 A. Yes.

23 MR. BOWDEN: Your Honor, it appears it is time for Mr.
24 Rothert.

25 THE COURT: Mr. Duda, I'm informed this is the time
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Rothert - Direct

1 we're going to break. If you don't mind just standing by, I
2 understand from the plaintiff's attorney, what, this will last
3 about how long?

4 MR. BOWDEN: Probably 15, 20 minutes max.

5 THE COURT: So we're talking about 15 or 20 minutes
6 max. If you will stand by, we'll appreciate it. So you can
7 take him off and call him back. This next witness, give me his
8 name again.

9 MR. BOWDEN: Brent Rothert.

10 BRENT ROTHERT, DEFENDANT WITNESS, DULY SWORN, BY TELEPHONE
11 DIRECT EXAMINATION

12 BY MR. BOWDEN:

13 Q. Sir, would you state your full name for the record, please

14 A. Brent Gordon Rothert.

15 Q. Where do you live, sir?

16 A. I live at 2327 Paulene Drive in San Jose, California.

17 Q. What is your profession, sir?

18 A. I am a mathematics teacher at Gunderson High School.

19 Q. In San Jose?

20 A. In San Jose, California, yes, sir.

21 Q. Can you give us a brief background as to what your
22 educational background is? And just be brief.

23 A. I have a bachelor's degree in philosophy, a second
24 bachelor's degree in mechanical engineering, both from San Jose
25 State University in San Jose, California.

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1 Q. When did you attend San Jose State?

2 A. I was a philosophy student at San Jose State from 1983
3 until 1988 and a mechanical engineering student from 1990 to
4 1994.

5 Q. During your matriculation at San Jose State, did you have a
6 chance to meet a fellow in the film department named Kelly Duda?

7 A. Yes, I did.

8 Q. How would you describe your relationship with Kelly?

9 A. Kelly and I have been probably best friends since 1988,
10 when we first met.

11 Q. Have you known Mr. Duda to work in the film and audiovisual
12 industry?

13 A. Yes. I am familiar with his work.

14 Q. Can you tell us some of the kinds of things that he's done
15 over the years?

16 A. Let's see. He's been involved in a number of projects,
17 most recently in the production of an extensive documentary on a
18 scandal with tainted blood that originated allegedly in the
19 Arkansas state prison system.

20 Q. Do you know anything about that scandal?

21 A. I received an advanced copy of the film documentary that
22 Kelly Duda produced. That was in 2002. In addition, he has
23 from time to time either e-mailed me or sent me paper copies of
24 articles and research that he has done in support of that
25 documentary. This correspondence takes place over a period of

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1 approximately 2000 to the present day.
2 Q. Mr. Rothert, you haven't lost anyone because of this prison
3 blood scandal or anything of that nature, have you?
4 A. You are speaking of my relatives?
5 Q. Yes.
6 A. No, sir.
7 Q. How about friends?
8 A. No, sir.
9 Q. To the best of your knowledge anyway. True?
10 A. That is correct.
11 Q. But Kelly is a friend of yours?
12 A. Yes, he is.
13 Q. Do you believe in his work?
14 A. Oh, yes. I have high regard for him as a person. I have
15 high regard for his journalistic integrity. And, in particular,
16 the project that he's working on is a story that I know he's
17 deeply committed to and one that he and I both agree should be
18 told.
19 Q. Do you have any idea how long he's been working on that
20 project from your own knowledge?
21 A. How long he has?
22 Q. Yes.
23 A. The first mention of it that I recall during our phone
24 conversation was approximately the year 2000. Now, I may be
25 off. It may be as early as 1999. But I think, beginning in the

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1 year 2000, and more or less continuously from then until now
2 he's been working on the documentary. I'm also aware of several
3 trips that he has made to Canada to continue his research and to
4 talk to victims of the events.

5 Q. Do you of your own knowledge know whether these events were
6 general knowledge in the public sphere?

7 A. What I know about the events I've learned from copies of
8 newspaper articles and research that Kelly Duda has e-mailed me
9 or sent me a paper copy, and also from the advanced copy of the
10 film documentary that he produced.

11 THE COURT: Let me interrupt. This is the Judge.
12 This advanced copy, I think you said you received it in 2002.
13 Is that right?

14 THE WITNESS: The copy of the documentary?

15 THE COURT: Yes.

16 THE WITNESS: Yes. That was the first draft of the
17 documentary. It is a film approximately three to four hours in
18 length. I received it on two VHS videotapes.

19 THE COURT: It was about three to four hours in
20 length?

21 THE WITNESS: Yes, it was.

22 THE COURT: Do you still have that copy?

23 THE WITNESS: I do still have a copy of it.

24 THE COURT: You may continue.

25 BY MR. BOWDEN:

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- 1 Q. Mr. Rothert, what I want to ask you next is, did there come
2 a time where you wanted to contribute to this cause, to the
3 making of this film, Factor 8, The Arkansas Prison Blood
4 Scandal?
- 5 A. Yes, there did.
- 6 Q. How did you contribute to it?
- 7 A. How much?
- 8 Q. How did you contribute?
- 9 A. Oh, I contributed financially.
- 10 Q. I guess the next question is, how much?
- 11 A. At least 7,000. I remember distinctly writing one check in
12 the amount of \$5,000. I remember writing one check in the
13 amount of \$1,500. And the last contribution, the most recent
14 contribution I made, was in the amount of \$500.
- 15 Q. Did you have a particular reason for doing that? I mean,
16 was it an investment, or how would you characterize what you
17 were doing?
- 18 A. Well, Kelly and I have been friends for almost 15 years
19 now. I believe in his work. I have high regard for his
20 journalistic integrity. And I, in particular, admire his
21 commitment to telling these people's stories. I thought that
22 the project was a worthwhile endeavor. And I considered Kelly
23 Duda both as my friend and, as a journalist, the man for the
24 job.
- 25 Q. Did you by any chance have any -- I think actually my
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1 question was, was this an investment, or was it a loan, or was
2 it a gift? How would you characterize these?

3 A. I would characterize it as an investment.

4 Q. Do you expect to make money off it at some point?

5 A. Yes. My understanding was, the film would be refined and
6 worked on and gotten ready for release at film festivals and
7 perhaps even a showing on cable TV, such as HBO or Showtime, and
8 that out of the proceeds from that distribution that I would be
9 paid back for the money I had invested.

10 Q. Now, have you ever known Mr. Michael Galster or
11 contacted -- been contacted by him?

12 A. I have no direct contact with anyone by that name. I am
13 familiar with the name because this is somebody who was
14 interviewed in the film documentary that Kelly Duda sent me.

15 Q. So you didn't provide any money for him to make a
16 documentary. True?

17 A. No. I've had no contact either personal or financial or
18 otherwise with anybody by that name.

19 Q. Mr. Rothert, I believe that's all I have for you at this
20 time.

21 THE COURT: Mr. Woodson, you may inquire.

22 CROSS-EXAMINATION

23 BY MR. WOODSON:

24 Q. Mr. Rothert, this is Joe Woodson. I'm the attorney for Mr.
25 Galster. Did I understand you correctly to state that in 2002

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- 1 you received the first draft of Mr. Duda's film?
2 A. Yes, I did.
3 Q. Why did you think it was a first draft?
4 A. Oh, because Kelly told me that it was. It was the first
5 attempt at putting something together.
6 Q. And that's what he told you?
7 A. Yeah.
8 Q. Other than this documentary film that he has sent to you,
9 do you know of any other films that Mr. Duda has produced?
10 A. I know of work that he's done as a student.
11 Q. Sir, would you speak up just a little bit?
12 A. Is this any better?
13 Q. Yes.
14 A. I'm aware that he has done -- that he's done some short
15 films when he was a student at San Jose State.
16 Q. Anything in addition to that?
17 A. Not that I can recall off the top of my head.
18 Q. Sir, do you have any information that you can share with
19 the Court regarding what, if any, employer-employee relationship
20 existed between Michael Galster and Kelly Duda?
21 A. I have -- the only information that I have is information
22 that I have from Kelly Duda. At the time he asked me if I would
23 be interested in contributing or investing in his film
24 documentary, he had made me aware that he had or thought he had
25 what he described as a gentleman's agreement or a verbal

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1 agreement with a gentleman named Mike Galster, who he told me
2 was not meeting the financial obligations of that agreement.
3 The information that I have from Kelly is that he had put a
4 great deal of his own money into the film and was running to the
5 end of his resources and was looking for alternate sources of
6 funding to tell the story that he felt needed to be told.

7 Q. And is that where the \$7,000 came in?

8 A. Yes, sir, it is.

9 Q. And so just to make sure I understood you correctly, Mr.
10 Duda told you that he and Mr. Galster had a gentleman's
11 agreement, but that Mr. Galster was not living up to his end of
12 the bargain, therefore he was trying to raise other funds?

13 A. That is correct.

14 Q. Okay. No more questions, sir. Thank you.

15 A. Thank you.

16 THE COURT: All right, sir. Thank you very much.

17 We'll let you go. So let's get Mr. Duda back on the phone.

18 KELLY DUDA, DEFENDANT WITNESS, PREVIOUSLY SWORN, BY TELEPHONE

19 CROSS-EXAMINATION CONTINUED

20 BY MR. WOODSON:

21 Q. Joe Woodson again, Mr. Duda. Mr. Duda, I had asked you a
22 few moments ago about your housing arrangements. Did you live
23 in Hot Springs in 1999?

24 A. Yes.

25 Q. Where did you live?

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- 1 A. I lived on Quapaw Avenue.
2 Q. And when did you leave that location?
3 A. In 2000.
4 Q. I believe you testified that you did live in Mr. Galster's
5 residence in Pine Bluff for approximately six months. Is that
6 correct?
7 A. Yes.
8 Q. From the time you left your townhome in 2000, taking out
9 the six months in Pine Bluff, what were the other locations that
10 you lived?
11 A. From when to when?
12 Q. From the time you left Hot Springs and your townhome until
13 today.
14 A. Oh, how many different places have I lived since the time I
15 left Hot Springs?
16 Q. Yes, sir.
17 A. Three. I'm thinking three.
18 Q. Okay. What were those locations?
19 A. Well, Daniel Broening, who was a friend of mine, had lost
20 his roommate and had asked me to help out with rent. And so I
21 moved in with him in Little Rock. And then a short while later,
22 Mike had offered to allow me to stay at the house behind the
23 clinic, which I really didn't want to do, because I didn't want
24 to stay in Pine Bluff. But I did. And then six months, you
25 know, approximately after that six-month period of time, I moved

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- 1 to Little Rock at the residence where I currently live.
2 Q. Thank you. You testified on direct examination that there
3 were -- I think you said over 20,000 documents involved with the
4 film. Is that correct?
5 A. With the film, I would say that I have at least 20,000
6 documents in relation to my research.
7 Q. And your research is part of the film or part of how the
8 film was made? Is that correct?
9 A. I used research in making the film.
10 Q. Okay. Where are those documents located physically at this
11 moment?
12 A. In a variety of places. Some at my house, some with
13 friends, some at my warehouse.
14 Q. Do you know a Mr. Rothert?
15 A. Yes.
16 Q. Could you tell us about your relationship with him?
17 A. He's a friend of mine from my days in college.
18 Q. Was he a professor of yours?
19 A. No, no. We went to school together.
20 Q. We just talked to Mr. Rothert. And Mr. Rothert told us
21 that you had presented him a first draft of your film. Is that
22 correct?
23 A. I don't know if I would call it a first draft, but he's
24 seen a version of the film, yes.
25 Q. When did you do that?

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- 1 A. I'm guessing 2002.
- 2 Q. He told us that you represented that what you gave him was
3 a first draft. Is that correct? Did you represent that to him?
- 4 A. Not to my knowledge, no.
- 5 Q. You did not tell Mr. Rothert that the film you gave him was
6 a first draft?
- 7 A. I gave Mr. Rothert a version of the film.
- 8 Q. But you did not tell him that the version you gave him was
9 a first draft?
- 10 A. I don't recall.
- 11 Q. You don't recall. Okay. In your direct examination, I
12 understood you to tell Mr. Smith that you and Mr. Galster had no
13 partnership relationship whatsoever. Is that correct?
- 14 A. Yes.
- 15 Q. And that you never expected anything from Mr. Galster. Is
16 that correct?
- 17 A. Yes.
- 18 Q. And that as far as you knew, Mr. Galster never expected
19 anything from you. Correct?
- 20 A. Yes.
- 21 Q. And that there never was any arrangement where you all were
22 going to share the profits. Correct?
- 23 A. That's correct.
- 24 Q. Mr. Rothert just told us that you told him that there was a
25 partnership agreement and that you told him Mr. Galster was

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- 1 renege on the, quote, gentleman's agreement. Did you tell him
2 that?
3 A. Not to my knowledge.
4 Q. Do you know where Mr. Rothert would have gotten that
5 information?
6 A. No.
7 Q. What kind of equipment did you use for the making of your
8 film?
9 A. A variety of camera equipment, lighting equipment, audio
10 equipment. I've used several different cameras in production.
11 Q. Can you give the Court a rough idea of how many separate
12 pieces of equipment we're talking about? Would it be five?
13 Ten? A hundred?
14 A. Twenty.
15 Q. Twenty. How did you pay for this equipment?
16 A. Well, it depends. Sometimes it would be you pay for it
17 with cash. Sometimes you barter. You make arrangements through
18 loans with companies, a variety of different ways.
19 Q. Do you have any receipts or documents that can substantiate
20 your claim that you bought equipment for the making of this
21 film?
22 A. Yes.
23 Q. You do have those?
24 A. I don't have them with me.
25 Q. Do your attorneys have them?

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- 1 A. Not to my knowledge.
- 2 Q. Was your father an investor in this film?
- 3 A. My dad contributed. My dad helped me out where he could.
- 4 Q. Was it more in the form of a gift and not a financial
5 investment?
- 6 A. Well, yeah. I mean, my father has never expected anything
7 in return for his help, nor has anybody else who have
8 contributed funds in the making of the documentary, including
9 Mr. Rothert.
- 10 Q. We just talked a few moments ago about how your testimony
11 is that there is no partnership agreement and that this was all
12 your project from the beginning. Correct?
- 13 A. It's my film.
- 14 Q. Mr. Galster, Bill Moss, Joella Smith, Chris Case, Renee
15 Williams, all of these folks got on the witness stand and said
16 this film did not belong to you, that it belonged to Mr.
17 Galster. Are they lying in your opinion?
- 18 A. I wasn't there, so I didn't hear their testimony. But what
19 they are saying is false.
- 20 Q. Are you currently employed anywhere?
- 21 A. Yeah.
- 22 Q. Where is that?
- 23 A. Well, I mean, I'm a day laborer. It depends. I do
24 different gigs, like with camera work, technical stuff relating
25 to audiovisual. You have to understand making films are such
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1 where I have to put, you know, a lot of effort into that first.
2 And then I do whatever I can to pay the bills along the way.

3 Q. Are you paid in cash or check typically?

4 A. Check.

5 Q. Do you have any of those documents, pay stubs, or W-2s,
6 anything like that?

7 A. Not with me.

8 Q. Do your attorneys have them?

9 A. Not to my knowledge.

10 Q. In your direct examination with Mr. Smith, you talked about
11 how the film festival created, I think, quote, boundless
12 opportunities, and this was the method to kick-start a film. Do
13 you recall that?

14 A. Yes.

15 Q. Would you agree with me that not with regard to this film,
16 but with any film in general, it's very important for the author
17 and the owner of the film to participate with regard to the film
18 in these festivals?

19 A. I'm sorry. Repeat the question again.

20 Q. Would you agree with me that it's important for the author
21 and the owner of any film to be given credit for that film
22 because, as you say, the opportunities are boundless, and it
23 helps to kick-start the film?

24 A. I would agree that there needs to be people there to
25 represent the film.

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- 1 Q. I guess my point is, that if there's ever a dispute about
2 who owns a film, it's important that the true author and owner
3 get credit for that. Would you agree with that?
- 4 A. Say it one more time. I apologize.
- 5 Q. Well, I apologize also. Would you agree with me that it is
6 important for the author and the owner of a documentary film to
7 get credit for that film?
- 8 A. Sure.
- 9 Q. And it's important that they get credit in particular if
10 we're talking about film festivals because, as you say, the
11 opportunities are boundless. Correct?
- 12 A. Sure.
- 13 Q. Did I understand your testimony correctly on direct
14 examination that you have never given Mr. Galster or Bill Moss
15 any itemization of expenses that you expected them to pay with
16 regard to your film?
- 17 A. No, I have not.
- 18 Q. Stated another way, that's correct?
- 19 A. Repeat the question one more time.
- 20 Q. You've never given Mr. Galster or Mr. Moss any itemization
21 of expenses that you expected Mr. Galster to pay for your film.
22 Correct?
- 23 A. That's correct.
- 24 Q. Did you have an opportunity to look at Plaintiff's Exhibit
25 10 before you left?

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- 1 A. I don't know.
- 2 Q. Let me just read it to you. You don't have it in front of
3 you, do you?
- 4 A. No.
- 5 Q. This is Plaintiff's Exhibit 10. It is a handwritten note.
6 The first word is "Mike." Under Mike, it states, "we owe." And
7 then there's three dots. C. Case, \$31; J. Schock, \$100; ATT,
8 \$57. At the bottom, in handwriting it states dot dot dot, these
9 ASAP period. Please contact me about this. Kelly. Is it your
10 testimony that you did not write that document, Plaintiff's
11 Exhibit 10?
- 12 A. I don't have the document in front of me.
- 13 Q. Since you've never submitted anything to Mr. Moss or Mr.
14 Galster, it couldn't be yours. Correct?
- 15 A. That's correct. Not to my knowledge.
- 16 Q. How many folks did you employ to help you in the making of
17 this film?
- 18 A. Several. I mean, I would have to estimate right off the
19 top of my head ten, if not more.
- 20 Q. How much money did you pay all of these people?
- 21 A. It would depend. For what?
- 22 Q. Can you give us a gross total that you paid all of them, if
23 you add it all together?
- 24 A. It depends. I still owe people.
- 25 Q. How much expense have you incurred in hiring these folks?

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- 1 A. Well, several thousands of dollars.
2 Q. Like 5,000 or 25,000?
3 A. Somewhere in between that.
4 Q. Okay. Did you issue these folks W-2s or 1099s?
5 A. No.
6 Q. Did they give you invoices?
7 A. When you say "employed," I mean, people have helped me with
8 the project, you know. I'm not like an employer.
9 Q. Okay. So basically it's just contract labor?
10 A. Yeah.
11 Q. Do you typically pay them in cash or by check?
12 A. Either or. It depends.
13 Q. So you've paid both ways?
14 A. I guess I could. I typically want to pay people with a
15 check.
16 Q. With regard to the checks that you wrote for paying these
17 employees or these contract laborers, do you have those canceled
18 checks?
19 A. Not with me.
20 Q. Do your attorneys have them?
21 A. Not to my knowledge.
22 Q. Did I understand you correctly to state on direct
23 examination that when you were an employee of Galster's Lab, you
24 actually did work for the lab itself and unrelated to the film?
25 A. That's correct.

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- 1 Q. I believe I understood your testimony to state that from
2 time to time Mr. Galster would loan you equipment for the work
3 on your film. Correct?
4 A. Yes.
5 Q. But besides Mr. Galster's equipment, you had your own
6 equipment. Correct?
7 A. Yes. I borrowed equipment from others.
8 Q. Then you had equipment from other sources. Is that what
9 you said?
10 A. Yes. I borrowed equipment from others, yes.
11 Q. Okay. When Mr. Galster testified Wednesday, he stated --
12 and I'm going to run through a list here of equipment. He
13 stated that he had a Canon XL1 video camera, a Mac G4 tower
14 computer, a PC tower computer, a DU Rex editing software, Final
15 Cut Pro editing software, a video editing deck, which was
16 purchased from Bryon Knight, for editing mini DV tapes. He had
17 a portable lighting system and reflectors. He said he had the
18 two Cheetah hard drives, two camera tripods, two CD burners and
19 some audio equipment, like microphones and things like that.
20 Now, I understood you to testify that Mr. Galster was not in the
21 filmmaking business. Is that correct?
22 A. Yes.
23 Q. Do you have any explanation why Mr. Galster would have all
24 this equipment if he wasn't in the business of making films?
25 A. An explanation?

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- 1 Q. Yes.
- 2 A. Just because you own equipment doesn't make you a
- 3 filmmaker.
- 4 Q. Does that make sense to you, that someone like Mr. Galster
- 5 would have all of this expensive and sophisticated equipment if
- 6 he weren't interested in making films?
- 7 A. Michael Galster has a lot of things. He has a lot of
- 8 hobbies. He has a lot of interests. Mike Galster has a lot of
- 9 things, so, yes, Mike Galster likes toys.
- 10 Q. That does make sense to you then?
- 11 A. What makes sense to me? That he could have those?
- 12 Q. That he does have these or had them. I'm sorry.
- 13 A. That he has things like that? Sure.
- 14 Q. Okay.
- 15 A. That he may have some of those things, yes. That he would
- 16 purchase things like that, yes.
- 17 Q. But it's your testimony he was not in the business of
- 18 making documentary films?
- 19 A. No.
- 20 Q. You stated on direct examination that you hired some people
- 21 to work on your film with funds that Mike Galster gave you. Is
- 22 that correct?
- 23 A. There are people that have worked on my film while Mike was
- 24 helping me when he chose to during a period of time.
- 25 Q. Do you know how much money Mike Galster gave to you to help

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- 1 you with your film?
2 A. Approximately?
3 Q. Yes.
4 A. Maybe \$15,000.
5 Q. Michael Galster testified Wednesday that he had all told
6 given you over a hundred thousand dollars or spent a hundred
7 thousand dollars on you. Do you disagree with that?
8 A. Yeah. That's false.
9 Q. Do you have any documents that reflect you paying other
10 people with Mike Galster's money?
11 A. Repeat the question.
12 Q. Do you have any documents in your possession that would
13 substantiate your claim that you paid your employees with monies
14 that Mike Galster gave to you?
15 A. No.
16 Q. You talked to Mr. Smith quite a bit about how there was no
17 partnership agreement. This was all your project. Do you
18 recall that?
19 A. Yes.
20 Q. And I think you stated in your direct testimony that
21 Michael Galster did not have, quote, any claim to the film.
22 Correct?
23 A. That's correct.
24 Q. So it would be fair to say that, as far as you are
25 concerned, there never was any partnership whatsoever. Correct?

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- 1 A. That's correct.
- 2 Q. Did you take Renee Williams to Pine Bluff in 2001 and let
3 her view a four-hour version of the documentary film?
- 4 A. I'm sorry. Repeat the question again.
- 5 Q. Did you take Renee Williams to Pine Bluff in 2001 and let
6 her view a four-hour version of the documentary film?
- 7 A. No.
- 8 Q. You stated on direct testimony that you paid Chris Case to
9 work on your film. Do you recall that?
- 10 A. Yes.
- 11 Q. Do you have any documents that would substantiate you
12 paying Mr. Case?
- 13 A. Not with me.
- 14 Q. Not with you?
- 15 A. That's correct.
- 16 Q. Do you have those documents?
- 17 A. I don't know.
- 18 Q. Your attorneys don't have them, do they?
- 19 A. Not to my knowledge.
- 20 Q. I'm curious about one thing, though. When you were talking
21 about Mr. Case, you told Mr. Smith that you hired him, that it
22 was your project, he worked for you, and that you had the right
23 to fire him. Do you recall that?
- 24 A. Yes.
- 25 Q. Why would Michael Galster pay him if you had all of those
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1 rights?
2 A. You would have to ask Michael Galster.
3 Q. Just out of the goodness of his heart?
4 A. Sure.
5 Q. Does Michael Galster appear on the film that you are
6 claiming ownership to?
7 A. Yes.
8 Q. Does his voice -- strike. Let me ask it this way. How
9 does he appear in your film?
10 A. I'm not sure I understand the question.
11 Q. Well, is it an interview?
12 A. Yes.
13 Q. Besides the portion of the film where Mr. Galster is
14 interviewed on your film, does he appear anywhere else in what
15 you are claiming to be your film?
16 A. Okay. I'm sorry. Repeat the question one more time.
17 Q. Besides Mr. Galster's interview, does he appear in any
18 other place in the film?
19 A. I don't believe so.
20 Q. Can you hear his voice at any other portion of the film
21 besides where he is interviewed?
22 A. The only time -- okay. I'm trying to understand the
23 question. There is a procedure -- maybe in a cutaway. For
24 instance, if you were talking to me now and we had a camera on
25 you and then we cut to someone in the jury room listening to

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- 1 you, you might still hear your voice over an image of someone
2 else, and then cut back to you. But it would all be within the
3 context of what you are doing right now, so I would say, you
4 know, if you heard Michael Galster's voice without his image, it
5 would be in the context of the interview.
- 6 Q. Okay.
- 7 A. Does that make sense?
- 8 Q. It makes perfect sense. So, for example, on your film, you
9 may be interviewing one person, but you hear Michael Galster's
10 voice in the background, so to speak?
- 11 A. Oh, that's not the way I was using -- I don't know about
12 that. I'm talking about -- you asked me about an interview,
13 when I'm interviewing him. I'm not sure I understand what you
14 are saying.
- 15 Q. Let me just ask you this. In any of the source tapes that
16 you have, can you hear Michael Galster's voice in the background
17 of an interview of any other persons when it is not him himself
18 that's being interviewed?
- 19 A. I don't know.
- 20 Q. You don't know?
- 21 A. Not to my knowledge. I don't know.
- 22 Q. If this was your film, how can you explain that some of the
23 folks that were interviewed remember seeing Mr. Galster at the
24 interviews?
- 25 A. Give me an example.

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- 1 Q. I can't. I don't have it in my notes.
2 A. Well, I can't comment.
3 Q. Fair enough. Did you ever work in the Arkansas prison
4 system?
5 A. No.
6 Q. I'm almost done, Mr. Duda. I'm just looking through my
7 notes. Is it fair to say that for the last seven years it's
8 your testimony that you have spent the vast majority of your
9 time, your energy, and your money on this film?
10 A. Let me think. I'm trying to think of the years.
11 Q. I think you said 1997. That's where I got seven years.
12 A. Yes.
13 Q. It is fair to say that?
14 A. Repeat the question one more time. I'm sorry.
15 Q. For the last six or seven years, it's fair to say that
16 you've spent the vast majority of your time and your money and
17 your energy on making this film. Is that fair to say?
18 A. Yes. Outside of raising my child.
19 Q. And outside of raising your child, this may be the most
20 important thing to you. Is that correct?
21 A. Yes.
22 Q. And that it's very important to you that you protect that.
23 Correct?
24 A. It's important that the issue be heard.
25 Q. Well, is it also important to you that you protect your

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1 rights in it or your credit to it?

2 A. Sure.

3 Q. I think you told Mr. Smith that in the last four months
4 you've sent out approximately 30 copies of the tape. Is that
5 correct?

6 A. Yes.

7 Q. Where were the places that you sent that?

8 A. A variety of places, to friends and sources.

9 Q. If you could clear one thing up for me, if for the last six
10 or seven years this has been very important to you, maybe the
11 most important thing besides your child, and it's important to
12 you to protect your interest in it and get credit for it, why
13 did you wait until December 29, 2003, to file a copyright on
14 this film?

15 A. Well, I have copyright on the film. I have automatic
16 copyright as soon as I fix it in a form. You know, you have
17 additional copyright when you put copyright on it. You know, it
18 didn't occur to me to begin registering with the copyright
19 office until I had, you know, a form that I was going to send to
20 Slam Dance.

21 Q. Do you know Elizabeth Fowler?

22 THE COURT: Let me ask you, in that last connection,
23 Mr. Duda, you know, we have this film. We've seen it here that
24 you claim to show at Slam Dance. When was that finally in the
25 form that you have it now? When was the date that was completed

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1 as it is now?
2 THE WITNESS: I'm sorry. May I ask you a question,
3 Your Honor?
4 THE COURT: You may.
5 THE WITNESS: You said you have seen the film?
6 THE COURT: Yes.
7 THE WITNESS: Have you viewed it?
8 THE COURT: Yes.
9 THE WITNESS: I'm wondering if you are viewing the
10 version I have. That's all.
11 THE COURT: I have to rely upon your attorneys. I'm
12 informed I am viewing the one you intend to show at Slam Dance.
13 Wait a minute. Let your attorney say so.
14 MR. BOWDEN: Your Honor, I will represent to the Court
15 that we received the video that we have submitted to the Court
16 from Mr. Duda, and we've provided it to the Court for the Court
17 to review.
18 THE COURT: Did you hear that?
19 THE WITNESS: No, sir, I did not.
20 THE COURT: Your attorney just said that he got it
21 from you and provided it to the Court and that's what I have
22 seen.
23 THE WITNESS: Okay. Yes, sir.
24 THE COURT: So now when was this version completed?
25 When was it in the form it is now completed and ready to go?

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1 THE WITNESS: I would say approximately four months
2 ago.

3 THE COURT: Four months ago. All right. You may
4 continue.

5 BY MR. WOODSON:

6 Q. Do you know Ms. Elizabeth Fowler?

7 A. I don't know.

8 Q. Do you recall ever having talked to Ms. Fowler?

9 A. Can you help me? Who is she?

10 Q. Well, I just need to know what you know.

11 A. I don't know.

12 MR. WOODSON: Okay. No more questions, Your Honor.

13 THE COURT: Mr. Smith?

14 MR. SMITH: Very brief redirect.

15 THE COURT: Mr. Smith, brief redirect.

16 REDIRECT EXAMINATION

17 BY MR. SMITH:

18 Q. Mr. Duda, I just have a few questions for you. You are in
19 Utah. Is that right?

20 A. Yes.

21 Q. Did you pack your clothes when you left?

22 A. Yes.

23 Q. Did you take a warm coat?

24 A. Yes. Not as warm as I should have, though.

25 Q. Did you take your business records?

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- 1 A. No.
- 2 Q. So you don't have them there to look at?
- 3 A. No.
- 4 Q. Did you take copies of the exhibits?
- 5 A. No.
- 6 Q. Do you think it would have helped you to answer any of the
- 7 questions asked about exhibits submitted to the Court if you had
- 8 been able to actually see the exhibit while you were answering
- 9 the question?
- 10 A. Yes.
- 11 Q. You say that you received money from Mr. Galster to help
- 12 make this documentary. Is that right?
- 13 A. Yes.
- 14 Q. And that that was a gift. Is that correct?
- 15 A. Yes.
- 16 Q. Did you also receive funding from other people?
- 17 A. Yes.
- 18 Q. Did you provide funding for it out of your own pocket?
- 19 A. Yes.
- 20 Q. The version of the film -- strike that. During this time
- 21 you've been making the film, you testified that you had worked
- 22 at other jobs. Is that right?
- 23 A. Yes.
- 24 Q. And is that because you have a daughter to support?
- 25 A. Well, I have to live. Yes, my daughter is part of my
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- 1 family.
- 2 Q. Making a documentary doesn't pay unless someone pays for
3 the documentary or pays to view the documentary?
- 4 A. Boy, is that the truth.
- 5 Q. You attempted to register a copyright on this December the
6 29th of last year. Is that correct?
- 7 A. Yes.
- 8 Q. Does the version of your film that you supplied to us, your
9 attorneys, that we in turn supplied to the Court, contain a
10 copyright notice in the credits?
- 11 A. Yes.
- 12 Q. And up to the time this lawsuit was filed, did you expect
13 anyone to contest your copyright or ownership of this film?
- 14 A. No.
- 15 Q. Had you expected something like that from Mr. Galster or
16 anyone else, would that have prompted you to register with the
17 copyright office sooner?
- 18 A. Yes.
- 19 Q. And you are, in fact, at Slam Dance because it's important
20 for the author or director or producer of a film that's to be
21 shown there to be there in person. Is that right?
- 22 A. Yes.
- 23 Q. And you are there in anticipation of a favorable ruling
24 from this Court. Is that correct?
- 25 A. Yeah.

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1 Q. That's all. Thank you, Mr. Duda.

2 A. Thank you.

3 THE COURT: Thank you. Well, any other evidence or
4 witnesses?

5 MR. BOWDEN: Your Honor, it is the noon hour. I would
6 like to ask, before I answer that, if I could take a short lunch
7 break to let me contact one person who might potentially be a
8 telephone witness. I think we can answer that in probably half
9 an hour. Can we do that?

10 THE COURT: All right. It's now 12:47. Let's just
11 say 2 o'clock. That's an hour and ten minutes. Court is in
12 recess.

13 (Recess from 12:47 p.m. until 2:00 p.m.)

14 THE COURT: I understand the defendant rests.

15 MR. BOWDEN: The defendant does rest, Your Honor.

16 THE COURT: Very good. Do you have any motions to
17 make?

18 MR. SMITH: Yes, Your Honor.

19 THE COURT: Mr. Smith, you may make your motion.

20 MR. SMITH: At the close of evidence, we would renew
21 our motion to dismiss based on the grounds gone into at some
22 length yesterday and just add in the summary, now that all of
23 the evidence is in, the threshold issue, again, is was this or
24 was this not a work for hire. The preponderance of the evidence
25 appears to indicate that there was some sort of partnership

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1 between the parties to this action, and that is brought forth by
2 the plaintiff's own witnesses. The plaintiff himself is the
3 only one who has claimed thus far absolute ownership in his own
4 name. By contrast, Mr. Duda is the only one who has claimed
5 that the film is all Mr. Duda's. The other witnesses have
6 almost to a person said that there was a partnership, a 70/30
7 split.

8 Without going back through them, I would point out that a
9 lot of the wages paid on this and the records brought in to
10 substantiate those don't bear up under close scrutiny. There
11 were not 1099s or W-2s filed by Mr. Galster for much of this as
12 to Mr. Duda's time with the lab as an employer. He was
13 explaining his duties there were not film related.
14 Consequently, there doesn't appear to be adequate verification
15 for proof of wages. I know that the plaintiff has asked our
16 client where are your records. Our records are not the ones
17 that are going to prove Mr. Galster's point. As the plaintiff
18 in this action, especially one requesting injunctive relief, the
19 burden of proof is clearly on him to adduce evidence that should
20 be in his possession at this point.

21 On that matter as well, we have evidence that Mr. Galster
22 sent some 18 CDs and a transcript, I believe a videotape, to the
23 copyright office in Washington. The Court has not had the
24 benefit of being able to inspect those. My client says that he
25 sent a copy of the videotape of the documentary to Washington.

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1 The Court has had a chance to watch that, see it with his own
2 eyes. They know what it is. It's been there to see. So I
3 guess what I'm saying is, there's no great certainty as to what
4 Mr. Galster submitted to be copyrighted. It may indeed be his.
5 We just don't know what it is. Without an employer-employee
6 relationship or hard evidence, direct evidence, that duplicate
7 material has been submitted for copyright, there's not a
8 colorable claim.

9 It's my understanding from a case by the name of Nimmer,
10 that joint -- I'm sorry. That's a treatise, Your Honor -- that
11 a joint ownership of a work would allow either holder to use it
12 so long as he is not abusing the rights of the other or purport
13 to sell the rights of the other. I believe the evidence here
14 shows that that is indeed the case that we have.

15 I would also say that there may well be administrative
16 remedies within the copyright department that can be exhausted.
17 I apologize for not being more authoritative. Our time to
18 research this has been rather limited. But there appears to be
19 some mechanism that could work for that. It apparently has not
20 been exhausted. I just say, it appears to me, absent outright
21 ownership by Mr. Galster, then there's no basis for the
22 injunction. There's clearly not outright ownership, just based
23 on the preponderance of evidence from witnesses on both sides up
24 to this point.

25 Also in Mr. Duda's favor, we had the testimony of Linda
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1 Miller this morning, someone who has investigated these facts,
2 conducted extensive research. Her own brother died from some of
3 this tainted blood. And Kelly Duda contacted her independent of
4 Mr. Galster. She supplied him with information, gave him the
5 names of Rolf Kaestel, I believe of Tona DeMers, two people that
6 were valuable sources in the making of the documentary. She
7 testified that she met Mr. Galster at a conference in Hot
8 Springs and attended a party in his home in 1999 and that at
9 that party her father requested a copy of the book, said he had
10 enjoyed it, but had lost his own. And Mr. Galster very kindly
11 obliged him and said that the book wasn't doing as well as he
12 had hoped, but we hope when Kelly's documentary comes out sales
13 will pick up, and referred to it in 1999 as Kelly's.

14 We have Mr. Duda's testimony that Mr. Galster never asked
15 for the source tapes or made a claim they were his own until
16 just before, at least Mr. Duda was aware of, until this
17 litigation was begun.

18 Without belaboring the point, Your Honor, it does not
19 appear they met the test as set forth in Hartman for the reasons
20 that I went into yesterday at length. And, again, this is our
21 closing. We also make this in the form of a renewed motion to
22 dismiss.

23 THE COURT: Thank you. Mr. Woodson, you may respond
24 or make any argument you might wish to make.

25 MR. WOODSON: Thank you, Your Honor. At this point in
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1 time, the plaintiffs would renew their motion for the Court to
2 issue a preliminary injunction to stop Mr. Kelly Duda from
3 showing the documentary film Factor 8 or any other similar
4 version at any film festival, including the Slam Dance Film
5 Festival in Park City, Utah, with scheduled showings of the
6 films starting, I believe, on the 17th or 18th.

7 Very briefly, plaintiffs would point the Court's attention
8 to the Feist case, 499 U.S. 340, a 1991 case. This Supreme
9 Court case states that the author and owner of a work has,
10 quote, immediate copyright protection from the moment a work is
11 first fixed in tangible form. In other words, the copyright
12 arises automatically, as the Court is well aware.

13 The question for this case is not whether the fixed form,
14 the copyright attaches to the fixed form that exists on
15 Plaintiff's 25 or what Mr. Duda is claiming ownership of. That
16 version, the version in 2001, the four-hour version, the
17 original compilation of all these source tapes that existed back
18 in 2000 or the source tapes themselves that came into existence
19 in 1998 and 1999, the question is not when were they fixed in
20 form. The question is who is the author and owner of those,
21 because the author and owner of those automatically receives
22 copyright protection once they come into existence.

23 So the plaintiffs would argue to the Court that Mr. Galster
24 is not trying to copyright facts. He's not trying to copyright
25 the underlying story of the Arkansas prison blood scheme. What

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1 he has a copyright to automatically is what he was the author
2 and the owner of, i.e., the source tapes and anything that arose
3 out of those source tapes that he put together, whether it was
4 in 2000 or 2001, the four-hour version or any subsequent
5 version.

6 That being the case, the factual or the evidentiary
7 question for this Court throughout this hearing is whether or
8 not Mr. Galster is the employer of Mr. Duda. I think the
9 evidence is unequivocal that he was. All of the plaintiff's
10 witnesses, I think seven total: Mr. Galster, Mr. Moss, Ms.
11 Smith, Mr. Case, Ms. Williams, Ms. Parker, Mr. Broening, all
12 unequivocally stated that they worked on the film and that Mr.
13 Galster was the employer of Mr. Duda and that he was also the
14 author and the creator of the film.

15 On the other hand, the defendant's witnesses: Mr. Ivan
16 Duda, Ms. Tona DeMers, Ms. Linda Miller, Mr. Riable, Mr.
17 Ruffiner, Mr. Horn, Mr. Rothert, all candidly admitted that they
18 didn't know anything about the employer-employee relationship of
19 the plaintiff and the defendant one way or the other. And, in
20 fact, Mr. Nick Devlin, on his direct examination, admitted that,
21 in fact, Mr. Galster was the employer of Mr. Duda. So the
22 determination, the plaintiff's feel the question of the
23 employer-employee relationship is easily settled in the
24 plaintiff's favor.

25 Under the Hartman standard, the first criteria is ownership
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1 of a valid copyright. If Michael Galster is the employer, he is
2 the owner. If he is the owner, he is the automatic copyright
3 holder of the work. It's clear from the evidence that Mr. Duda
4 had abundant access to the work, all of the source tapes, all of
5 the compilations of the film. He had free access to it. And
6 then third, the similarity between the two works, all of the
7 plaintiff's witnesses, all seven people, said that they saw
8 Plaintiff's 25. And not only was it substantially similar to
9 what they saw back in 2001 and the preceding years, it was 95 to
10 97 percent identical.

11 Once those Hartman factors are met, the Court knows that we
12 move on to number one, the likelihood of success on the merits
13 for the plaintiff at trial in order to get the injunction. We
14 argue that that's self-evident. Second, irreparable harm to the
15 plaintiff. Again, we argue that's self-evident, because he is
16 the author and the owner. Plaintiff's 25 as it exists now is
17 not at all what the plaintiff intended to be a finished product.
18 And not only that, but it distorts the truth. It is not an
19 accurate telling of the story of the prison blood scandal.
20 Third is the balance of harm to the defendant. Out of respect
21 for the Court and respect for defense counsel, I won't use the
22 strong language that I would like to use about what we think Mr.
23 Duda did. I will use the language I used in the original
24 complaint. And that is we allege he unlawfully took possession
25 of what has always belonged to Mr. Galster. So there is no harm

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1 to the defendant, because he doesn't even have anything that he
2 ever had a right to in the first place. Then, fourth, the
3 public interest factor, we don't believe that any public
4 interest is at stake here in the sense of an emergency situation
5 like election results or something like that. Yes, the truth
6 should be told. But issuing this injunction is not going to
7 place any immediate harm or burden on the public as a whole.
8 Thank you, Judge.

9 THE COURT: Thank you both. I have been working on it
10 during the noon hour. And I think in about 15 or 20 minutes we
11 should have a decision. So if y'all will stand by, and we will
12 see if we can't put this thing to bed. Court will be in recess.
13 (Recess from 2:10 p.m. until 2:40 p.m.)

14 THE COURT: Let me advise the parties that this
15 afternoon a preliminary injunction will be entered in favor of
16 the plaintiff. The order granting it will include the following
17 findings of fact and conclusions of law.

18 The Court finds by preponderance of the evidence that the
19 plaintiff, Michael Galster, is the author and owner of the
20 documentary film Factor 8. And the version of the film Mr. Duda
21 claims as his own entitled Factor 8, The Arkansas Prison Blood
22 Scandal is substantially similar to Mr. Galster's film.

23 The Court finds that the plaintiff, Michael Galster,
24 provided the idea of the theme, the direction, the financing,
25 and much of the research and leads for the project to develop

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1 the film.

2 The Court finds that the defendant, Kelly Duda, in working
3 on and contributing to the production of the video documentary
4 was in the eyes of the law and in the contemplation of the
5 parties working for hire for the plaintiff and subject to
6 plaintiff's direction and control. The plaintiff provided the
7 basic idea and theme for the production, paid the cost of the
8 production and the labor and the research necessary to create
9 the film. The plaintiff had the right to control the manner and
10 means by which the film was made. The plaintiff provided the
11 camera equipment, computer equipment and software, editing
12 equipment, lighting equipment required for the making of the
13 film.

14 The Court credits the testimony of the plaintiff and his
15 accountant, Bill Moss, concerning the financial arrangements and
16 the amounts paid to the defendant for his work in making the
17 film. The Court also credits the testimony of the plaintiff and
18 Chris Case with respect to the control of the project, the work
19 done and the relationship between the plaintiff and the
20 defendant.

21 The Court finds that the defendant, Mr. Kelly Duda,
22 misappropriated the work product belonging to the plaintiff and
23 used same without plaintiff's authority in putting together the
24 85-minute version of the film entitled Factor 8, The Arkansas
25 Prison Blood Scandal, which has been introduced as Plaintiff's

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1 Exhibit 25.

2 The Court finds that the defendant added segments to the
3 film which were not authorized by the plaintiff, but that the
4 film in its present form which the defendant proposes to show at
5 the Slam Dance Film Festival in Utah on January 18, 2004,
6 nevertheless is substantially similar to plaintiff's version of
7 the film at the time the defendant stopped working for the
8 plaintiff and appropriated the plaintiff's property.

9 Conclusions of law. The Court concludes that the plaintiff
10 has satisfied the Dataphase requirements as set forth by the
11 Eighth Circuit for the issuance of injunctive relief. See
12 *Dataphase Systems, Inc., v. CL Systems, Inc.*, 640 F.2d 109, 111,
13 (8th Cir. 1991). The inquiry is an equitable one, requiring the
14 district court to consider, quote, whether the balance of
15 equities so favors the movant that justice requires the court to
16 intervene to preserve the status quo until the merits are
17 determined, unquote. *Dataphase*, 640 F.2d at 113, footnote
18 omitted.

19 The Court finds that the plaintiff will be irreparably
20 harmed if injunctive relief is not granted. I quote from *Taylor*
21 *Corporation*. "In copyright infringement cases, the general rule
22 is that a showing of a prima facie case raises a presumption of
23 irreparable harm." *Taylor Corporation v. Four Seasons*
24 *Greetings*, 315 F.3d 1039, 1041 to 1042 (8th Cir. 2003).

25 The Court finds that the plaintiff is likely to prevail

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1 upon the merits. The federal statutory controlling law is clear
2 that plaintiff is entitled to a copyright on the film which he
3 owns and is also entitled to prevent the defendant from claiming
4 as his own a film substantially similar to the plaintiff's film.
5 See *Hartman v. Hallmark Cards, Incorporated*, 833 F.2d 117 at 120
6 (8th Cir. 1987). Under *Hartman*, to establish a claim for
7 copyright infringement, the plaintiff must prove ownership of
8 the copyright in Factor 8, access by the defendant to the
9 plaintiff's work, and substantial similarity between the two
10 films in both ideas and expressions. The Court finds that the
11 plaintiff has produced substantial evidentiary support for all
12 three elements and is entitled to the relief requested.

13 The Court finds that the harm to the defendant in the
14 granting of the injunction is outweighed by the harm to the
15 plaintiff which would result if the injunction is not granted.
16 The public interest is served in protecting the holders of valid
17 copyrights from infringing activities. That's also *Taylor*
18 *Corporation v. Four Seasons*, 315 F.3d at 1042.

19 The Court reminds the parties that this hearing is not a
20 trial on the merits. A trial on the merits could conceivably
21 end up with a different result and different findings than those
22 arising out of this preliminary injunction. It is obvious that
23 all the evidence relative to the issues raised has not been
24 produced at this hearing. The primary purpose of the injunctive
25 relief is to preserve the status quo pending the outcome of the

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1 trial on the merits. The defendant, Kelly Duda, his attorneys,
2 agents, and employees are hereby ordered not to release the film
3 Factor Eight, The Arkansas Prison Blood Scandal or to permit the
4 film to be shown to or by anyone other than in connection with
5 this litigation pending the outcome of a trial on the merits.

6 Pursuant to Federal Rule of Civil Procedure 65(c), the
7 Court has considered whether to require posting of security for
8 the granting of this injunction. The Court in the exercise of
9 its discretion finds that no bond is required. The Court
10 intends to schedule this case for an expedited trial on the
11 merits. Additionally, although plaintiff has testified as to
12 the loss of an opportunity, there's been no showing of actual
13 monetary loss that is likely to occur as a result of the
14 granting of this preliminary injunction.

15 So that will be the order of the Court. And Mr. Duda
16 should be made aware of it. I will want the parties to confer
17 to consider when we might try this case on the merits. If
18 there's some discovery, a period for discovery that's needed,
19 that should be brief. And so if you will confer, work out a
20 scheduling order, and then advise my courtroom deputy as to your
21 views on the subject, then we'll enter a scheduling order and
22 get the case set for final disposition. Court will be in
23 recess.

24 MR. WOODSON: Your Honor, one further request. In
25 addition to the injunction, we would ask the Court to order the
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1 defendant to produce to the Court for safekeeping until a trial
2 on the merits is had of the source tapes, the 20,000 plus
3 documents, and the two Cheetah hard drives.

4 MR. BOWDEN: We have no objection to that, Your Honor.

5 THE COURT: Very good. An order will be entered to
6 that effect. Court will be in recess.

7 MR. BOWDEN: Your Honor, one further matter. We have
8 not had a chance to answer the amended complaint. We will be
9 answering that and likely be asking for a jury trial on the
10 issues properly triable to a jury.

11 THE COURT: For every issue entitled to be tried to a
12 jury, you will be welcome to have one. Court will be in recess.

13 (Proceedings concluded at 2:50 p.m.)

14 REPORTER'S CERTIFICATE

15 I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

16

17

Date: February 12, 2004.

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