

words in such advertisement or any part thereof complained of by the plaintiff taken in their ordinary or literal sense are libelous or defamatory, and this defendant further denies that they are libelous or defamatory according to their ordinary import of the language contained in such advertisement.

Beddow, Embry & Beddow, By: T. Eric Embry,
Attorneys for defendant, The New York Times
Company, a corporation.

[File endorsement omitted]

PLEA FIVE OF THE DEFENDANT, THE NEW YORK TIMES
COMPANY, A CORPORATION—Filed October 28, 1960

For answer to the complaint and to each and every count thereof, separately and severally, defendant, The New York Times Company, a corporation, saith:

That this defendant did in its issue of its newspaper of March 29, 1960, publish the advertisement made the basis of plaintiff's complaint, but this defendant denies that the words in such advertisement, or any part thereof, taken in their ordinary or literal sense or in the ordinary import of such language damaged the reputation of the plaintiff or injured the plaintiff in his present trade, business or profession, and this defendant further denies that such words taken in their ordinary or literal sense or in their ordinary import of such language impute to the plaintiff any incapacity or lack of due qualification to fill the public office held by plaintiff or charge him with any positive past misconduct which injuriously affects him in his public office or charges him with the holding of principles which are hostile to the maintenance of government.

Beddow, Embry & Beddow, By: T. Eric Embry,
Attorneys for defendant, The New York Times
Company, a corporation.

[File endorsement omitted]

[fol. 81]

PLEA SIX OF THE DEFENDANT, THE NEW YORK TIMES
COMPANY, A CORPORATION—Filed October 28, 1960

For answer to the complaint and to each and every count thereof, separately and severally, defendant, The New York Times Company, a corporation saith:

That this defendant did in its issue of its newspaper of March 29, 1960, publish the advertisement made the basis of plaintiff's complaint, but this defendant denies that the said advertisement or the words contained therein complained of by the plaintiff are libelous or defamatory of the plaintiff, and this defendant denies that the same were published of and concerning the plaintiff, and this defendant further saith that when this defendant published said advertisement in the City of New York, State of New York on the 29th day of March, 1960, it had no reason to believe, nor did it in fact believe, that any of the matters and things set forth therein or any of the words or language set forth therein was false and, in fact this defendant verily believed them to be true, and as a basis for such belief, this defendant saith that said advertisement was proffered to this defendant for publication by it as a paid advertisement by one John Murray, who is an individual whom this defendant believed to be trustworthy; and this defendant further saith that said advertisement was published pursuant to an advertising order for the publication of same by Union Advertising Service, which paid this defendant for the publication of said advertisement according to said order, and said Union Advertising Service was by this defendant believed to be a reputable, recognized advertising agency of the City of New York, State of New York, which this defendant believed to be trustworthy; and this defendant further saith that said advertisement was, by this defendant believed to be endorsed and signed by individuals, whom this defendant believed to be trustworthy; and this defendant further saith that the above and foregoing facts set forth in this, its Plea Six constitute a defense to this defendant in that the same show that said advertisement complained of by the plaintiff in

his complaint was published without malice upon the part of this defendant and in the belief by this defendant that the matters and things contained in said advertisement were true; and this defendant further saith that said advertisement was published in this defendant's newspaper in the City of New York, State of New York, on the 29th day of March, 1960, and therefore, the statutes and decisional law of the State of New York govern plaintiff's cause of action, if any, and this defendant further saith that such statutory law of the State of New York as governs plaintiff's cause of action in this regard is set forth and contained in Sections 338 and 339 of the New York Civil Practice Act, which sections are in words and figures as follows:

[fol. 82] "Section 338, Civil Practice Act.

Proof in action for libel or slander. In an action for libel or slander, the defendant may prove mitigating circumstances, including the sources of his information and the grounds for his belief, notwithstanding that he has pleaded or attempted to prove a justification.

Section 339, Civil Practice Act.

Proving mitigating circumstances in action for wrong. In an action to recover damages for personal injury, or an injury to property, the defendant may prove, at the trial, facts not amounting to a total defense, tending to mitigate or otherwise reduce the plaintiff's damages, if they are set forth in the action either with or without one or more defenses to the entire cause of action. A defendant, in default for want of an answer, may prove facts of that description upon a reference or inquiry to ascertain the amount of the plaintiff's damages."

and such decisional law of the State of New York as governs plaintiff's cause of action in this regard, if any, is expressed by the highest Appellate Court of the State of New York, which is the Court of Appeals, in the cases of *Fleckenstein vs. Friedman, et al*, 266 N.Y. 19, 193 N.E. 537, and *Crane vs. New York World Telegram Corporation*, 308 N.Y. 470, 126 N.E. 2d 753, and which said Court in

the case of *Fleckenstein vs. Friedman*, supra, held as follows:

“6. Libel and slander. Phrases ‘mitigating circumstances’ and ‘matter tending only to mitigate or reduce damages’ in statutes relating to pleading and proof in actions for libel and slander are synonymous, and mean circumstances bearing on defendant’s liability for exemplary damages by reducing moral culpability or on liability for actual damages by showing partial extinguishment thereof (Civil Practice Act, 262, 338)”

“8. Libel and slander. To be admissible, facts tending but failing to prove truth of libel should be pleaded expressly as partial defense to complaint or to one or more causes of action, and when so pleaded matter may be utilized for any proper purpose; statement of purpose of such partial defense being unnecessary (Civil Practice Act 262, 338).”

And which said Court in the case of *Crane vs. New York World Telegram Corporation*, held as follows:

“7. Libel and slander. Proof of facts tending to prove truth of libel’s charge is relevant in mitigation of punitive damages, for it may negative actual malice by showing that defendant, though mistaken, had reasonable grounds for believing the truth of charge contained in publication.”

“Well settled is the basic rule that the amount of plaintiff’s recovery may be reduced by proof of facts ‘tending but failing to prove the truth’ of the libel’s charge . . .” That proof is relevant in mitigation of punitive damages, for it may negative actual malice by showing that defendant though mistaken, had reasonable grounds for belief in the truth of the charge contained in publication . . .” “And, turning to compensatory damages, such evidence may serve to reduce them as well. See *Fleckenstein v. Friedman* supra . . .”

[fol. 83] And which statutory law of the State of New York has not been repealed by the Legislature of the State

of New York, and which decisional law as set forth and contained in the cases hereinabove set out has not been modified or overruled by subsequent decision of such Court of Appeals of the State of New York and is and remains the law of the State of New York and was in full force and effect at all times mentioned in plaintiff's said complaint.

Beddow, Embry & Beddow, By: T. Eric Embry,
Attorneys for defendant, The New York Times
Company, a corporation.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEMURRER OF PLAINTIFF, L. B. SULLIVAN—
Filed October 28, 1960

Now comes the plaintiff, L. B. Sullivan, and demurs to Plea 2 of the defendant The New York Times Company, a corporation, in this cause, and as grounds thereof assigns the following, separately and severally:

1. Said plea does not set forth facts, but contains mere conclusions of the pleader.
2. Said plea does not, within itself, present a complete defense to this action.
3. It affirmatively appears that said plea is not in the form prescribed by Title 7, pp. 225, Code of Alabama of 1940 as amended.
4. It affirmatively appears that said plea is a special traverse, and is not accordingly a proper plea.
5. It affirmatively appears that said plea is at most a denial of some of the averments of the complaint, and is accordingly improper as a special plea and subject to demurrer.

Now comes the plaintiff, L. B. Sullivan, and demurs to Plea 3 of the defendant, The New York Times Company,

a corporation, in this cause, and as grounds therefor assigns the following, separately and severally:

1. Said plea does not set forth facts, but contains mere conclusions of the pleader.

2. Said plea does not, within itself, present a complete defense to this action.

3. It affirmatively appears that said plea is not in the form prescribed by Title 7, pp. 225, Code of Alabama of 1940 as amended.

[fol. 84] 4. It affirmatively appears that said plea is a special traverse, and is not accordingly a proper plea.

5. It affirmatively appears that said pleas is at most a denial of some of the averments of the complaint, and is accordingly improper as a special plea and subject to demurrer.

Now comes the plaintiff, L. B. Sullivan, and demurs to Plea 4 of the defendant, The New York Times Company, a corporation, in this cause, and as grounds thereof assigns the following, separately and severally:

1. Said plea does not set forth facts, but contains mere conclusions of the pleader.

2. Said plea does not, within itself, present a complete defense to this action.

3. It affirmatively appears that said plea is not in the form prescribed by Title 7, pp. 225, Code of Alabama of 1940 as amended.

4. It affirmatively appears that said plea is a special traverse, and is not accordingly a proper plea.

5. It affirmatively appears that said plea is at most a denial of some of the averments of the complaint, and is accordingly improper as a special plea and subject to demurrer.

Now comes the plaintiff, L. B. Sullivan, and demurs to Plea 5 of the defendant, the New York Times Company, a

corporation, in this cause, and as grounds thereof assigns the following, separately and severally:

1. Said pleas does not set forth facts, but contains mere conclusions of the pleader.
2. Said plea does not, within itself, present a complete defense to this action.
3. It affirmatively appears that said plea is not in the form prescribed by Title 7, pp. 225, Code of Alabama of 1940 as amended.
4. It affirmatively appears that said plea is a special traverse, and is not accordingly a proper plea.
5. It affirmatively appears that said plea is at most a denial of some of the averments of the complaint, and is accordingly improper as a special plea and subject to demurrer.
6. It affirmatively appears that said plea purports to be in mitigation of damages and not in bar.

[fol. 85] Now comes plaintiff, L. B. Sullivan, and demurs to Plea 6 of the defendant The New York Times Company, a corporation, in this cause, and as grounds thereof assigns the following, separately and severally:

1. Said plea does not set forth facts, but contains mere conclusions of the pleader.
2. Said plea does not, within itself, present a complete defense to this action.
3. It affirmatively appears that said plea is not in the form prescribed by Title 7, pp. 225, Code of Alabama of 1940 as amended.
4. It affirmatively appears that said plea is a special traverse, and is not accordingly a proper plea.
5. It affirmatively appears that said plea is at most a denial of some of the averments of the complaint, and is accordingly improper as a special plea and subject to demurrer.

6. It affirmatively appears that said plea purports to be in mitigation of damages and not in bar.

7. It affirmatively appears that plaintiff was a resident of Alabama during the period specified in the complaint, and that the injury to plaintiff occurred mainly in Alabama, hence Alabama law and not New York law governs and said plea constitutes no defense to this action in this forum.

8. Said plea alleges the law of New York, which is not applicable to the pending action.

9. Said plea tenders an immaterial issue.

Calvin C. Whitesell; Steiner, Crum & Baker, Attorneys for Plaintiff.

[File endorsement omitted]

[fol. 86]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

JUDGMENT OF THE COURT ON PLEADINGS—November 1, 1960

This matter coming on before the Court on the demurrers as last amended of each defendant, separately and severally, and each defendant being present in court by and through their respective counsel, and the plaintiff being in court by and through his counsel, and all parties having been heard by oral argument, and the Court having considered and understood the demurrer of each defendant as last amended, it is hereby Ordered and Adjudged that the demurrer as last amended of each defendant, separately and severally, to the complaint in this case be and the same is hereby separately and severally overruled.

And now comes the defendant The New York Times Company, a corporation, by and through its counsel, and files its Plea No. 1, being the plea of the general issue, and Special Pleas numbers 2-6, inclusive and the plaintiff joins issue on Pleas No. 1, and files his demurrer to Special Pleas numbered 2-6, inclusive, and to each said plea, sepa-

rately and severally, and counsel for The New York Times Company, a corporation, and plaintiff having been heard on plaintiff's demurrers to said Special Pleas and same being considered and understood by the Court, the Court is of the opinion that the demurrers are well taken, and accordingly it is Ordered and Adjudged That plaintiff's demurrers to Pleas 2, 3, 4, 5, and 6 are hereby sustained as to said pleas.

And now come defendants Ralph D. Abernathy, Fred L. Shuttleworth, S. S. Seay, Sr., and J. E. Lowery, each separately and severally, and plead in short by consent the general issue, with leave to give in evidence anything and everything that might be specially pleaded, as fully as if pleaded at length, with like leave to the plaintiff to reply in short by consent on any matter that may be set out by replication, as fully as if pleaded at length.

Done at Montgomery, this November 1, 1960.

Walter B. Jones, Circuit Judge.

[File endorsement omitted]

[fol. 87]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF RALPH D. ABERNATHY TO EXCLUDE PLAINTIFF'S EVIDENCE—Filed November 2, 1960

Now comes Ralph D. Abernathy, one of the defendants in the above entitled cause, and moves this Honorable Court to exclude all of the plaintiff's evidence introduced in this cause and as grounds therefor, assigns the following separately and severally:

1. That as a matter of law the plaintiff has failed to make out a prime facie case against this defendant.
2. That the evidence conclusively shows that this defendant did not publish, nor cause to be published, the article that appeared in the New York Times on March 29, 1960, which article is the subject of this suit.

3. That any recovery against this Defendant under the evidence as presented by the Plaintiff would violate the Fourteenth Amendment to the United States Constitution in that it would deprive this defendant of his property without due process of law.

4. The case as presented by the Plaintiff is so devoid of evidentiary support of the allegations alleged in the Complaint with reference to this Defendant, the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant published the alleged defamatory matters complained of in the Complaint, that any verdict against this defendant upon the evidence introduced would deprive this defendant of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

5. That the plaintiff has failed to make out a prima facie case against this defendant in that the plaintiff has failed to show any causal connection between the plaintiff, the alleged libelous ad which is the subject of this suit, and this defendant.

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery,
Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Mont-
gomery, Ala.;

Vernon Z. Crawford, 570 Davis Ave., Mobile, Ala-
bama, By: Fred D. Gray,

Attorneys for named defendant.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF FRED L. SHUTTLESWORTH TO EXCLUDE PLAINTIFF'S
EVIDENCE—Filed November 2, 1960

Now comes Fred L. Shuttlesworth, one of the defendants in the above entitled cause, and moves this Honorable Court to exclude all of the plaintiff's evidence introduced in this cause and as grounds therefor, assigns the following separately and severally:

1. That as matter of law the plaintiff has failed to make [fol. 88] out a prima facie case against this defendant.

2. That the evidence conclusively shows that this defendant did not publish, nor cause to be published, the article that appeared in the New York Times on March 29, 1960, which article is the subject of this suit.

3. That any recovery against this defendant under the evidence as presented by the Plaintiff would violate the Fourteenth Amendment to the United States Constitution in that it would deprive this defendant of his property without due process of law.

4. The case as presented by the plaintiff is so devoid of evidentiary support of the allegations alleged in the Complaint with reference to this defendant, the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant published the alleged defamatory matters complained of in the Complaint, that any verdict against this defendant upon the evidence introduced would deprive this defendant of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

5. That the plaintiff has failed to make out a prima facie case against this defendant in that the plaintiff has failed to show any causal connection between the plaintiff, the alleged libelous ad which is the subject of this suit, and this defendant.

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough, Montgomery, Alabama;

Vernon Z. Crawford, 570 Davis Ave., Mobile, Alabama;

Attorneys for Named Defendant.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF S. S. SEAY, SR., TO EXCLUDE PLAINTIFF'S
EVIDENCE—Filed November 2, 1960

Now comes S. S. Seay, Sr., one of the defendants in the above entitled cause, and moves this Honorable Court to exclude all of the plaintiff's evidence introduced in this cause and as grounds therefor, assigns the following separately and severally:

1. That as a matter of law the Plaintiff has failed to make out a prima facie case against this defendant.

2. That the evidence conclusively shows that this defendant did not publish, nor cause to be published, the article that appeared in the New York Times on March 29, 1960, which article is the subject of this suit.

3. That any recovery against this defendant under the evidence as presented by the plaintiff would violate the Fourteenth Amendment to the United States Constitution in that it would deprive this defendant of his property [fol. 89] without due process of law.

4. The case as presented by the Plaintiff is so devoid of evidentiary support of the allegations alleged in the complaint with reference to this defendant, the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant published the alleged defamatory matters complained of in the complaint, that

any verdict against this defendant upon the evidence introduced would deprive this defendant of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

5. That the plaintiff has failed to make out a prima facie case against this defendant in that the plaintiff has failed to show any causal connection between the plaintiff, the alleged libelous ad, which is the subject of this suit, and this defendant.

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough, Montgomery, Alabama;

Vernon Z. Crawford, 570 Davis Ave., Mobile, Alabama.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF J. E. LOWERY TO EXCLUDE PLAINTIFF'S
EVIDENCE—Filed November 2, 1960

Now comes J. E. Lowery, one of the defendants in the above entitled cause, and moves this Honorable Court to exclude all of the plaintiffs evidence introduced in this cause and as grounds therefor, assigns the following separately and severally:

1. That as a matter of law the plaintiff has failed to make out a prima facie case against this defendant.

2. That the evidence conclusively shows that this defendant did not publish, nor cause to be published, the article that appeared in the New York Times on March 29, 1960, which article is the subject of this suit.

3. That any recovery against this defendant under the evidence as presented by the Plaintiff would violate the Fourteenth Amendment to the United States Constitution

in that it would deprive this defendant of his property without due process of law.

4. The case as presented by the plaintiff is so devoid of evidentiary support of the allegations alleged in the Complaint with reference to this defendant, the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant published the allegedly defamatory matters complained of in the Complaint, that any verdict against this defendant upon the evidence introduced would deprive this defendant of due process [fol. 90] of law in violation of the Fourteenth Amendment to the United States Constitution.

5. That the plaintiff has failed to make out a prima facie case against this defendant in that the plaintiff has failed to show any causal connection between the Plaintiff, the alleged libelous ad which is the subject of this suit, and this defendant.

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough, Montgomery, Alabama;

Vernon Z. Crawford, 570 Davis Ave., Montgomery, Alabama, By: Fred D. Gray,

Attorneys for named Defendant.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF J. E. LOWERY FOR SPECIAL FINDINGS—
Filed November 3, 1960

Comes now J. E. Lowery, one of the defendants, by and through his attorneys of record herein, and respectfully requests special findings of the issues in this cause, including but not limited to the following:

1. Whether the matters and things set forth in the advertisement entitled "Heed Their Rising Voices" were of and concerning the plaintiff?
2. Whether as a direct and proximate result of the advertisement complained of the plaintiff was injured in his "trade, profession, or business"?
3. Whether the defendant, or anyone acting for him or authorized by him, wrote the advertisement entitled "Heed Their Rising Voices"?
4. Whether the defendant, or anyone acting for him, in his behalf, or authorized by him published the advertisement complained of?
5. Whether this defendant had knowledge or notice that the advertisement complained of would appear in the March 29, 1960 edition of the New York Times, or any other edition thereof?
6. Whether this defendant had knowledge or notice that his name would appear on the advertisement complained of?
7. Whether this defendant, on to-wit: March 29, 1960 was a member of "The Committee to Defend Martin Luther King and the Struggle for Freedom in the South?"
8. Whether this defendant consented to the publication of the advertisement complained of?

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Vernon Z.
Crawford, Attorneys for the Defendant, By: Sol-
omon S. Seay, Jr.

[File endorsement omitted]

[fol. 91]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF RALPH D. ABERNATHY FOR SPECIAL FINDINGS—
Filed November 3, 1960

Comes now Ralph D. Abernathy one of the defendants, by and through his attorneys of record herein, and respectfully requests special findings of the issues in this cause, including but not limited to the following:

1. Whether the matters and things set forth in the advertisement entitled "Heed Their Rising Voices" were of and concerning the plaintiff?

2. Whether as a direct and proximate result of the advertisement complained of the plaintiff was injured in his "trade, profession, or business"?

3. Whether the defendant or anyone acting for him or authorized by him, wrote the advertisement entitled "Heed Their Rising Voices"?

4. Whether the defendant, or anyone acting for him, in his behalf, or authorized by him published the advertisement complained of?

5. Whether this defendant had knowledge or notice that the advertisement complained of would appear in the March 29, 1960 edition of the New York Times, or any other edition thereof?

6. Whether this defendant had knowledge or notice that his name would appear on the advertisement complained of?

7. Whether this defendant, on to-wit: March 29, 1960 was a member of The Committee to Defend Martin Luther King and the struggle For Freedom in the South".

8. Whether this defendant consented to the publication of the advertisement complained of?

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Vernon E.
Crawford, Attorneys for Defendant, By: Solomon
S. Seay, Jr.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF S. S. SEAY, SR. FOR SPECIAL FINDINGS—
Filed November 3, 1960

Comes now S. S. Seay, Sr., one of the defendants by and through his attorneys of record herein, and respectfully requests special findings of the issues in this cause, including but not limited to the following:

1. Whether the matters and things set forth in the advertisement entitled "Heed Their Rising Voices" were of and concerning the plaintiff.

2. Whether as a direct and proximate result of the advertisement complained of the plaintiff was injured in his "trade, profession, or business."

3. Whether the defendant, or anyone acting for him or authorized by him wrote the advertisement entitled "Heed Their Rising Voices"?

[fol. 92] 4. Whether the defendant, or anyone acting for him, in his behalf, or authorized by him published the advertisement complained of?

5. Whether this defendant had knowledge or notice that the advertisement complained of would appear in the March 29, 1960 edition of the New York Times, or any other edition thereof?

6. Whether this defendant had knowledge or notice that his name would appear on the advertisement complained of?

7. Whether this defendant, on to-wit: March 29, 1960 was a member of "The Committee to Defend Martin Luther King and the Struggle for Freedom in the South"?

8. Whether this defendant consented to the publication of the advertisement complained of?

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Vernon Z.
Crawford, Attorneys for Defendant, By: Solomon
S. Seay, Jr.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF FRED L. SHUTTLESWORTH FOR SPECIAL FINDINGS—
Filed November 3, 1960

Comes now Fred L. Shuttlesworth one of the defendants, by and through his attorneys of record herein, and respectfully requests special findings of the issues in this cause, including but not limited to the following:

1. Whether the matters and things set forth in the advertisement entitled "Heed Their Rising Voices" were of and concerning the plaintiff?

2. Whether as a direct and proximate result of the advertisement complained of the plaintiff was injured in his "trade, profession, or business"?

3. Whether the defendant, or anyone acting for him, in his behalf, or authorized by him published the advertisement complained of?

4. Whether the defendant or anyone acting for him, in his behalf or authorized by him wrote the advertisement entitled "Heed Their Rising Voices"?

5. Whether this defendant had knowledge or notice that the advertisement complained of would appear in the March 29, 1960 edition of the New York Times, or any other edition therefor?

6. Whether this defendant had knowledge or notice that his name would appear on the advertisement complained of?

[fol. 93] 7. Whether this defendant, on to-wit; March 29, 1960 was a member of "The Committee to Defend Martin Luther King and the Struggle for Freedom in the South?"

8. Whether this defendant consented to the publication of the advertisement complained of?

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Vernon L. Crawford, Attorneys for the Defendant, By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 94]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

STIPULATION WITH REFERENCE TO THE TRANSCRIPT OF THE
RECORDS IN THE ABOVE STYLED CAUSES—

Filed November 23, 1960

Whereas each of the above styled causes now pending in the Circuit Court of Montgomery County, Alabama involve common questions of law and fact relating to the jurisdiction of that court over the person of The New York Times, a corporation; and

Whereas the case first styled above, namely L. B. Sullivan v. The New York Times Company, a corporation, et al. (hereinafter referred to as the Sullivan case) has been tried before this court, and the matter of the jurisdiction of that court over the person of The New York Times Company, a corporation, has been adjudicated in the Sullivan case in that court upon said defendant's Motion to Quash service of process had upon it in two manners or modes; and

Whereas, upon the hearing of such Motion to Quash service of process in the Sullivan case, oral and documentary evidence were adduced by both parties; and

Whereas, it is the sense of the parties to this stipulation that the hearings of the Motions to Quash service now pending in each of the other two cases above captioned (hereinafter referred to as the James and Parks cases) involve common questions of law and fact with those questions in the Sullivan case relating to the jurisdiction of the said Circuit Court; and

Whereas it is the intention of the parties hereto to relieve in every way feasible the physical burden which would be imposed upon both the trial court and any appellate court in the event of an appeal in any of said cases by a repetition of the taking and transcribing of the same oral and documentary evidence on this common question of law and fact relating to jurisdiction;

It Is Further Agreed by and between the parties hereto, through their attorneys of record in each of the above styled cases, as follows:

1. The parties hereto do hereby stipulate and agree that [fol. 95] the motions to quash service of process now pending in the James and Parks cases may be submitted on the evidence contained in the transcript of the proceedings on the motion of The New York Times Company to quash service of process in the Sullivan case.

2. It is further stipulated and agreed that upon a hearing of said motions to quash service of process in the James and Parks cases, either party hereto may introduce additional evidence by way of testimony or documents as either party may see fit so to do.

3. In the event of an appeal in any of the above styled cases, the transcript of that portion of the record in the Sullivan case pertaining to the motion to quash service will be considered a master record on the question of jurisdiction of the Circuit Court of Montgomery County, Alabama, over the person of The New York Times Company, a corporation, and it will not be necessary that a separate transcript be filed in the Supreme Court of Alabama in the event of an appeal in the James and Parks cases; and this master record may become a part of the transcript in the James and Parks cases by reference to said record as found and contained in the Sullivan case, together with any supplemental evidence adduced in accordance with paragraph 2 of this agreement.

4. The evidence on the motion to quash service of process in the Sullivan case was heard ore tenus by the trial court. It is the intent of this stipulation that the submission of the James and Parks cases to the trial court on the transcript of the proceedings on the motion to quash service of process in the Sullivan case in writing shall have the same force and effect as if heard ore tenus by the court in those cases.

5. The purpose and intent of this stipulation is physically to abridge the transcript of the record in the James

and Parks cases, without deleting the contents thereof, and treating the Sullivan transcript pertaining to the motion to quash in that case as a common transcript and part of the transcripts in the James and Parks cases by this agreement and by reference to said Sullivan transcript.

[fol. 96] 6. In each of the above styled cases, the defendant New York Times Company, a corporation, has filed special appearances expressly objecting to the jurisdiction of the Circuit Court of Montgomery County, Alabama over its person. By entering into this agreement, this defendant does not in any wise waive its said limited or special appearance, or consent to the jurisdiction of that court over its person, but maintains its express objections thereto. And the plaintiff, by entering into this agreement, does not waive the finding and judgment of the Circuit Court of Montgomery County, Alabama on August 5, 1960 in the Sullivan case that this said defendant has made a general appearance in that case.

Witness our hands and seals this 21st day of November, 1960.

L. B. Sullivan, Earl D. James and Frank W. Parks,
Parties Plaintiff, by their respective attorneys of
record:

Steiner, Crum & Baker, By: M. R. Nachman, Jr.

The New York Times Company, a Corporation,
Party Defendant appearing specially for the pur-
pose of objecting to the jurisdiction of the Circuit
Court of Montgomery County, Alabama, by its
Attorneys:

Beddow, Embry & Beddow, By: T. Eric Embry.

[File endorsement omitted]

[fol. 97]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

TRANSCRIPT OF PROCEEDINGS ON DECEMBER 16, 1960

Mr. Embry: Under our stipulation, we don't want to add any more evidence, if the Court please. We don't wish to do that but we are filing amendments to the Motion to Quash in the James and Parks cases and also under the stipulation we had originally and this stipulation. We want to add further grounds of objection to the questions propounded to the Sullivan witnesses and to the introduction of certain documents.

The Court: All of this is on the Motion to Quash?

Mr. Embry: Yes, Your Honor. Now, on the additional grounds of objection, I don't know how we can handle that physically unless it can be—on the additional grounds of objection I think it would be best to simply state for the Record those additional grounds with the understanding that those additional grounds apply in each place where an objection is made and grounds are assigned because on the original hearing we had various understandings throughout that we could add grounds. As far as re-typing this, I don't think that would be necessary if the Record will show that all of these additional grounds are treated as assigned as additional grounds to the objections where the objections were originally made.

Mr. Nachman: In the Sullivan case?

Mr. Embry: In the Sullivan case and this one too. I don't know whether I am making myself clear or not. Let me back track. I am thinking out loud, Your Honor. Now, on the hearing on the Motion to Quash in the Sullivan case we got into a long series of—particularly documentary evidence and then we got into a particular line of inquiry that grew out of that on Cross Examination of each of our witnesses and I am sure I don't have to point out what it was as these gentlemen will remember what I am talking about. During that time we had an understanding and a stipulation that appears in the transcript as to that. We objected and the stipulation was that that would be as to each question and answer an exception. Then we had a

stipulation that we could later assign additional grounds to [fol. 98] those already assigned and what we want to do on this hearing is to assign those additional grounds by stating the grounds and letting them appear in the Record and that it was done pursuant to the stipulation made at that time. That's the only way I know how to put it, Your Honor.

Mr. Nachman: Well, I just didn't know what objection you were referring to. We did have that stipulation and it seems to me, again thinking out loud, that the simplest way would be for you to write out the additional objections and let the Court Reporter show them as having been made and they will appear in the Master transcript.

Mr. Embry: Well, where do you think that should be done? Do you think it should be put into the front of the transcript or in the back or where?

Mr. Nachman: That's right. He has already transcribed it.

Mr. Embry: Should we add an additional sheet where each witness' testimony begins or what?

Mr. Nachman: Well, I should think that anything that appeared in the Record just so you could refer to it as being in the Record would suffice, wouldn't it?

Mr. Embry: Well, suppose if it is agreeable that under that original understanding that at the place where each witness' cross examination begins, we will have the Court Reporter put in an extra sheet—where the first objection is made we can let those additional grounds appear. If we can have that agreement, then that will be all we will want to do today, Your Honor. We will submit the case as we don't care to argue the Motion.

Mr. Nachman: (Nodding affirmatively) If the Court please, we move to strike the attempted amendment to the Motion to Quash Service in both cases as to Ground A which is the ground that asked that Ground 6 of the original Motion be stricken. Ground 6 of the prayer of the original Motion is the one to be stricken. We would like to assign these grounds and these authorities, Your Honor. Ground 6 of the prayer of the original Motion and I am reading, Your Honor, Ground 6 of the prayer of the original Motion [fol. 99] which is as follows: "That this Court dismiss this

action as to The New York Times Company, a corporation, for lack of jurisdiction of the subject matter of said action.” Your Honor has held, as I am sure Your Honor will recall, in your order or opinion of August 5th, 1960—

The Court: Jurisdiction of the subject matter?

Mr. Nachman: Yes, sir. In Your Honor’s Order of August 5th, 1960 in Sullivan against The New York Times which we have stipulated was submitted on the same Record that this case is being submitted on, Your Honor held that Ground 6 of the prayer of the Motion to Quash Service in the Sullivan case, the same language if not the same words, constituted a general appearance on the part of The New York Times. Now, we feel that the attempted amendment in the James and Parks cases now constitute an effort on the part of this defendant to withdraw what Your Honor has held to be a general appearance.

The Court: What does the amendment say?

Mr. Nachman: The amendment says that they amend the Motion to Quash in James and in Parks quote “by striking Ground 6 of the prayer of said Motion.” Now, Ground 6 of the prayer is what I just read about no jurisdiction of the subject matter. Now, as authority for our Motion to Strike on this point we would like to cite Your Honor to Liseter against the C.I.T. Corporation—

Mr. Embry: Is that one of the cases you cited before?

Mr. Nachman: No, it is not. It is in 220 Ala. 19 at page 20 and the Southern citation is 152 So. 607. In that case, the Court below allowed the demurrer which constituted a general appearance to be withdrawn and a Plea in Abatement substituted for it and the Supreme Court of Alabama held that this was error and that there was no area of discretion in the Circuit Court in that matter. This is what they said. “We are of opinion that the defendant by entering a general appearance and filing a demurrer to the original complaint and allowing this general appearance to stand until the statute of limitation of one year had barred the plaintiff’s action elsewhere irrevocably waived its right to plead in abatement and that the county in which the action was brought was not the proper venue. The facts [fol.100] in this case bring it clearly within the rule

evolved in the following cases.” Then there are three cases cited. The Supreme Court granted the certiorari to the Court of Appeals. It is, of course, true that the statute of limitations has not yet run in this case, but it is also true that by the time any Appellate review could be undertaken it would have run. I think that with this case coming on for trial in late January that it would be impossible for there to be any Appellate review in this case until after the statute of limitations had run. This Motion to Quash Service in the James case and Parks case—

The Court: What is the statute? One year or—

Mr. Nachman: Yes, sir. The Motion to Quash Service in this case has been on file since we were served, as the Motions show, on the 20th of May of this year in both cases and we feel that it would be prejudicial to allow them to try to do what is, in effect, a withdrawal of what Your Honor has held to be a general appearance and we do not think they are entitled to do this and we think that would be in effect a striking of Ground 6 of these Motions, and we rely on the authorities which I have just cited to Your Honor. There are three other cases which are cited in the portion of the Liseter case which I read. As to the other grounds which are under the heading of “D”, they are grounds numbered from 28 to and including 62. We think that there, there is, as there is not, we submit, as to “A” and that the Court has a considerable area of discretion and we certainly concede that but we do feel that to present us with whatever the arithmetic of 28 through 62 is—thirty-four additional grounds on the day of submission when this Motion to Quash Service has been on file in this Court since May 20th and when Your Honor took submission and heard lengthy arguments on the Sullivan case in late July and that when Your Honor ruled in August that to present us on the morning of the hearing with thirty-four additional grounds raising questions such as going to the Commerce Clause and freedom of speech and other sections of the Alabama Code—we think that is unduly prejudicial and burdensome and we submit that due diligence on the part of counsel for The New York Times certainly required that we be presented with these things before today

[fol. 101] and we do not think there should be a submission on these additional grounds and we do not think the Court should permit their addition to the original Motion to Quash but, as I say, we think there is a considerable area of discretion with Your Honor on that point. But as I said, under the Liseter theory, there is no such discretion in regard to striking Ground 6 in the prayer.

Mr. Embry: Your Honor, I might say this. If there is some action they wish to take because of the additional grounds, we would be most willing to have a continuance of this hearing until some other date.

The Court: Well, what do they cover?

Mr. Nachman: Well, Your Honor, Mr. Embry could probably tell you better than I can.

Mr. Embry: Your Honor, they are more specific elaborations on the grounds in the original Motion having to do with Constitutional questions relating to this statute in the service of process.

The Court: That is the proposition of the service of process on the Secretary of State?

Mr. Embry: Yes, sir. And also on the purported agent. In the original Motion we had some grounds with respect to the constitutional questions that we wanted to raise but these are further elaborations and additional grounds on that under the Constitution of Alabama and the Constitution of the United States.

The Court: Is there any new matter or is it just an elaboration of what is already on hand?

Mr. Embry: Well, Your Honor, I think that would be a matter of interpretation. We don't consider it new matter but you might take that view. It is stated differently and some additional sections of the Constitution of Alabama have been added and of the Constitution of the United States but, as I said, if there is some action they wish to take about it—

The Court: Well, they claim you had this here since May 20th.

Mr. Embry: We would be happy to have a continuance [fol. 102] of this if there is something—in other words, if there is something they want to do about the additional

grounds—I don't know what it would be on a Motion to Quash and they are just additional grounds under the same evidence but if there is some action they wish to take about it, of course, a continuance would afford them that opportunity.

The Court: Let me make this suggestion. Unless somebody wants to argue some more, I am pretty clear that you cannot withdraw that ground No. 6. I don't believe you can strike that out. Now, on these other things, they might want a few days to read them over and study them and I see no objection to that. If you want to submit the whole thing today, it will be agreeable with the Court. It is sort of within the discretion of the Court and I will let in this 28 through 62 but I am absolutely clear that you can't strike out paragraph 6 and I will so rule.

Mr. Nachman: Your Honor, could my statement on our Motion be—

Mr. Embry: We except to the Court's ruling. Let the Record show an exception to that ruling, Mr. Reporter.

Mr. Nachman: Your Honor, could my statement to the Court Reporter as to our Motion to Strike be transcribed and be considered as a written Motion?

Mr. Embry: Certainly. I don't think you have to make a written Motion but if you want it that way then it is all right with me.

Mr. Nachman: Well, the Court Reporter's transcription of my statement will constitute a written Motion then.

The Court: Yes.

Mr. Embry: Your Honor, would you note in your order—would you note our exception which would save me the necessity of filing a written exception on your ruling on the Motion to Quash?

The Court: Yes.

[fol. 103] Mr. Embry: Under the stipulation and agreements had throughout the hearing on the Motion to Quash in the L. B. Sullivan case wherein it was agreed that counsel for The New York Times Company could assign any additional grounds of objections to questions propounded to the various witnesses and to the introduction of documentary evidence that they saw fit to do, such stipulation being for

the purpose of saving the Court's time on the original hearing, the defendant, The New York Times Company wishes to and does assign the following additional grounds of objection. To each objection made originally to questions propounded to the witnesses and the introduction of documentary evidence, that the questions called for a mental operation of the witness and not facts and that the questions called for an answer which does not tend to prove or disprove whether Don McKee and John Chadwick were agents of The New York Times Company so that purported service upon McKee would constitute valid service upon this defendant. It does not tend to prove whether or not The Times did business in Alabama or whether the cause of action attempted to be stated in the complainant's cause accrued from or was incident to the doing of business or performance of work or service in Alabama by The New York Times Company or its agents, servants or employees and that these same grounds of objection apply to the introduction of the various exhibits offered by the Plaintiff. Further grounds of objection to questions propounded to the various witnesses as well as to the introduction of documentary evidence are that the question and the evidence sought to be adduced by an answer thereto and the documents would not be material or legal evidence such as would authorize a construction by the Court of Section 199 (1) of Title 7, Code of Alabama, 1940, that would permit the Court to assert jurisdiction over the person of The New York Times Company, a corporation, and to admit such evidence for such purpose would be such a misapplication of the law as would deprive this defendant of its property without due process of law in contravention or violation of the Fourteenth Amendment of the Constitution of the United States and in contravention or violation of Article 1, Section 6, of the Constitution of Alabama, [fol. 104] 1901, and would deny to this defendant equal protection of the law in contravention or violation of the Fourteenth Amendment of the Constitution of The United States and would constitute an abridgement of freedom of the press in contravention or violation of the First Amend-

ment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Interstate Commerce in contravention or violation of Article I, Section 8 of the Constitution of the United States and such questions and the evidence sought to be adduced therefrom and such documents would be illegal and immaterial as a basis for the Court construing or holding that Don McKee was an agent of this defendant upon whom service of process might be had so as to support a holding by the Court that any purported service upon him would subject this defendant to the jurisdiction of this Court and the admission of such evidence and the holding on the basis of such evidence that he was an agent so as to subject this defendant to the jurisdiction of this Court, would deprive this defendant of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States and in violation of Article I, Section 6 of the Constitution of Alabama, 1901, and would deny to this defendant equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States and would abridge freedom of the press in violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Interstate commerce in violation of Article 1, Section 8 of the Constitution of the United States.

[fol. 105]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

At Law

Case No. 27416

L. B. SULLIVAN, Plaintiff,

vs.

THE NEW YORK TIMES COMPANY, a Corporation; RALPH D.
ABERNATHY, FRED L. SHUTTLESWORTH, S. S. SEAY, SR.,
and J. E. LOWERY, Defendants.

Transcript of Proceedings on Motion to Quash

BEFORE: HON. WALTER B. JONES, Circuit Judge, Presiding
at the Court House, Montgomery, Alabama, Monday,
July 25th, 1960, Tuesday, July 26th, 1960 and Wednesday,
July 27th, 1960.

APPEARANCES:

For the Plaintiff: (L. B. Sullivan)

Messrs. Steiner, Crum & Baker, Attorneys at Law,
Montgomery, Ala. By: S. R. Baker, Esq., Robert
Steiner, III, Esq., M. R. Nachman, Jr.

Messrs. Scott, Whitesell & Scott, Attorneys at Law,
Montgomery, Ala. By: Calvin M. Whitesell, Esq.

For the Defendant: (The New York Times Company)

Messrs. Lord, Day & Lord, Attorneys at Law, New
York, N. Y. By: Louis M. Loeb, Esq. and Ronald S.
Diana, Esq.

Messrs. Beddow, Embry & Beddow, Attorneys at Law,
Birmingham, Ala. By: Roderick Beddow, Esq., T. Eric
Embry, Esq., and Roderick M. MacLeod, Esq.

[fol. 105a]

MOTION TO FILE AN AMENDMENT TO MOTION TO QUASH,
COURT'S RULING AND EXCEPTION THERETO

Mr. Embry: If the Court please, we have an amendment to the Motion we would like to file in Open Court.

The Court: Very well. Let the Record so note. I shall be glad to hear you, gentlemen.

Mr. Embry: Your Honor, we take the position that the burden is on the plaintiff to go forward in this matter having filed a sworn Motion to Quash which overcomes the prima facie correctness or validity of the service which was purported to have been obtained under the provisions of Section 199 (1), Title 7 primarily for the reason, as we view it, that the statute which would attempt to extend the jurisdiction of the Court to a foreign corporation under certain conditions which are set out in that statute that for the purpose of that statute and the Court being under that statute a Court of limited jurisdiction where the plaintiff must satisfy the Court that it comes within the purview of that statute in order to establish that the Court has jurisdiction to proceed with the trial of the case subjecting the foreign corporation to its jurisdiction. Of course, when they make the affidavit initially and the Sheriff serves a summons on the Secretary of State, at that moment, probably prima facie, it would show service but when the sworn motion denying the facts as set forth in the affidavit of the plaintiff is filed, as we view the matter, that overcomes that prima facie correctness and shifts to the plaintiff the burden of satisfying the Court of the fulfillment of the conditions imposed by the statute, that the cause of action accrued from the performance of some act or the performance of some work or service in the State by the foreign corporation or its agents or servants out of which the cause of action sued on in the Complaint accrued. Now, this particular question—I am satisfied in my own mind hasn't been passed on in the State of Alabama—

The Court: This would be a case of first impression. Is that what you would call it?

Mr. Embry: Yes, I think so, Your Honor. That is our view of it, Your Honor. We have one case which indicates

that is not under this statute and as a general proposition is found in 102 Sou. 19. That is where the guts of it is. That is where the Sheriff's return showed execution of [fol. 105b] process on an officer of the defendant corporation which had been overcome by the filing of the defendants' special plea in that case rather than a Motion being sworn to. The Court took the position that the burden existed to show the jurisdiction of the Court after that was done as being upon the plaintiff and we feel that there is no difference in that one when compared to this. This statute has a very limited field of operation and to come in here the plaintiff must satisfy the requirements of 199 (1) that he has undertaken to travel under. I will leave it up to Your Honor to decide whether I am correct or not.

The Court: All right. I will hear from the other side.

Mr. Nachman: If the Court please, I don't think it necessary to go into the question of whether this Court is a statutory Court or a constitutional court. I have always assumed that it was and I know Your Honor knows the extent of your powers and I see no need to cite authority on that. We disagree not only with the statements Mr. Embry made about the burden of proof but we disagree also with the authorities he cited in support of his statement. There is nothing in the substituted service statute as we read them and there was nothing in Mr. Embry's argument to show otherwise that the ordinary rule of procedure whereby a person who moves the Court has the burden of proof in support of the facts on which he relies for his Motion or that those ordinary rules should be abrogated in a case such as this because there is substituted service on a foreign corporation which we have by affidavit stated was doing business in Alabama. The case Mr. Embry cited makes it quite plain that the Alabama Supreme Court is not holding that the burden is on the plaintiff to prove that a foreign corporation does business in the State of Alabama. They say that once the regular matters incident to service have been shown, namely, service by the Sheriff and a return and the ordinary matters which are contained in a service and return, that that is the end of it and the Court, as I say, in that case makes it perfectly plain that they are not holding that where

there was a special plea as was filed in that case that the plaintiff has the burden of proving all of the business operations of this company. Now, there is also, we respectfully submit, authority in 199 (1). That case is *Ex Parte Smith*, 258 Ala. 319. That is a non-resident motorist case. Another is in 266 Ala. which is a later case which applied to the non-resident motorist situation and to substituted service against foreign corporations which do business in this State. Justice Foster in that case on page 323 in 258 Ala. Reports said, "In order for such service to be sufficient under the provisions of that statute there are certain steps necessary: (One) Service of a process shall be made by the Sheriff leaving three copies of it with the Secretary of State, together with a fee of three dollars; (Two) Forthwith the Secretary of State shall send by registered mail to the defendant a copy of the summons and complaint with a demand for a return receipt, and shall make a certificate which shall be filed in the office of the Clerk of the Court in which the action is pending, showing the date of the mailing of such registered letter containing a copy of the summons and complaint, and the date of the receipt of the return card. The certificate must be signed by the Secretary of State. When those matters appear of Record in the cause they show on the face of the proceeding a sufficient service on the defendant to support a personal judgment against him as if personally served within the State." Moreover, we not only obtained service under the substituted service statute, we also obtained personal service by having the Sheriff serve directly one Don McKee as agent of The New York Times. That service was also accomplished in this case. We say on both grounds we have taken care of any prima facie burden that exist on us under this *Ex Parte Smith* to establish regularity of the service in this case. I have in my hand here the original complaint which shows the Sheriff's return and it reads as follows: "Executed by serving three copies of the within summons and complaint on Betty Frink as Secretary of State of Alabama for defendant, The New York Times. 4-21-60. Also a copy on Don McKee as agent for The New York Times and further executed by serving"— That is not involved in this ar-

gument. Now, Your Honor, their Motion to Quash says they don't do business in Alabama. Our affidavit says they do. They have moved to quash service on the grounds [fol. 106] that they don't do business in Alabama and we respectfully submit that since it is their motion that they have the burden of going forward with the evidence to prove the facts they set out in their motion and we are certainly prepared this morning to meet by our evidence any evidence which they may submit in that regard. We also are prepared to show to the Court at an appropriate time that by their acts in this case that they have made a general appearance in this cause and have waived any special appearance on jurisdictional grounds.

Mr. Embry: Your Honor, I would like to call the Court's attention to the opinion in *Burch vs. Ingham Lumber Company* in 102 Sou. 19, where the Court had this to say. "That the prima facie effect of the Sheriff's return, showing the execution of the process on an officer of the defendant corporation had been overcome, and that the original burden in that behalf had been revived, that burden is imposed and exists, irrespective of a special plea to the jurisdiction." That's all the Court said about it, Your Honor.

The Court: Under the facts of the case as shown here, I believe that the burden on the Motion to Quash would rest on the defendants and that is the ruling of the Court. You may proceed, gentlemen.

Mr. Embry: We would like the Record to note an exception to Your Honor's ruling.

The Court: Very well. Proceed.

Mr. Embry: Before proceeding with the taking of testimony, I would like to ask opposing counsel if there is any contention—if it can be stipulated for the Record that *The New York Times* is a foreign Corporation?

Mr. Nachman: We have said that it is in our affidavit.

Mr. Embry: Well, I believe that is true but I don't know whether that is actually in evidence. I don't know whether the law would treat it as being in evidence or not.

Mr. Nachman: We will stipulate that it is incorporated in the laws of New York, is it not?

Mr. Embry: Yes.

Mr. Nachman: And not qualified to do business in the State of Alabama. Is that correct?

Mr. Embry: Yes, sir.

Mr. Nachman: Now, before we start on the testimony—I don't know whether Mr. Martin of the Western Union Company is here or not but we have subpoenaed some documents from him and I wonder if we could stipulate as to whether the documents that he will bring are the documents regularly kept by the telegraph company in the course of business of the company so that he will not have to wait—

Mr. Embry: Oh, yes.

Mr. Nachman: I don't know whether he is here or not but—

Mr. Embry: Well, of course, if we can see them first—

Mr. Nachman: Well, we will wait until he gets here then. I just wanted to have an understanding on that.

The Court: Go ahead.

HAROLD FABER, having been duly sworn, was called as a witness for the Defendant and testified as follows:

Direct examination.

By Mr. T. Eric Embry:

Q. What is your name, sir?

A. Harold Faber. That is spelled F-a-b-e-r.

Q. Mr. Faber, where do you reside, sir?

A. At Pleasantville, New York.

Q. Are you employed by The New York Times Company?

A. Yes, sir. I am.

Q. How long have you been employed by that concern?

A. Since 1940.

Q. What is your present title or designation of employment with The New York Times.

A. I am the day National News Editor.

The Court: What?

The Witness: I am the day National News Editor, sir.

By Mr. T. Eric Embry: (Continuing)

Q. How long have you occupied that position, sir?

A. Since 1952.

Q. In connection with your duties as the day National News Editor, do you have occasion to deal with individuals [fol. 108] whom you term and designate as stringers or string correspondents?

A. Yes, sir.

The Court: Could we have a definition of a "string correspondent?"

Mr. Embry: Yes, Your Honor.

By Mr. T. Eric Embry: (Continuing)

Q. Before I ask you about string correspondents in detail, I will ask you this. By what sources do you as the day National News Editor of The New York Times Company—by what sources does the New York Times Company gather news together?

A. We gather the news—we receive the news from the wire services, the Associated Press and the United Press. We receive regular reports from our staff correspondents in the United States and elsewhere and we receive reports occasionally from our string correspondents.

Q. What is a string correspondent with regard to that means of The New York Times Company gathering news through or by means of string correspondents? What do you call a string correspondent?

A. A string correspondent is generally a person who works for another newspaper or news agency upon whom we call for news occasionally or who calls us to offer news occasionally.

Q. From and since the first day of January, 1960 were there any individuals or persons in the State of Alabama whom you referred to or designated as string correspondents, who from time to time or on any occasion, have sold to you, news from within the State of Alabama?

A. I think so, yes.

Q. Since January 1st, 1960, have you purchased any news stories or news from any such persons in the State of Alabama?

A. Yes.

Q. Do you know the names of any of those persons or who they are that you have purchased news stories from?

A. Mr. John Chadwick in Birmingham and Mr. Don McKee in Montgomery.

Q. Is Mr. McKee an employee of The Montgomery Advertiser?

[fol. 109] Mr. Nachman: Your Honor, we object to that. It calls for a conclusion.

The Court: Well, it might be a shorthand rendition—you can go into it on cross examination. You may have an exception.

Mr. Baker: We except, if the Court please.

Mr. Embry: You may answer.

The Witness: Yes, he is.

Mr. Nachman: Your Honor, may we interrupt for a moment? We have the Manager of the Western Union Company here with some documents and he is the only man down there and he has to go back and we want to see whether we can stipulate that the documents he has with him are regular records of the company so that he may go back to his business.

The Court: All right. Go ahead.

Mr. Nachman: We want to stipulate for the Record that Mr. J. W. Martin, Manager of the Montgomery office of the Western Union Telegraph Company, was issued a subpoena duces tecum by the Plaintiff with regards to telegraphic communications sent by Don McKee from Montgomery to The New York Times Company in New York. In response to that subpoena Mr. Martin has brought with him two telegrams. I have checked with the counsel for defendant, New York Times, and as I understand the stipulation, we are stipulating that they are regular records of the Western Union Telegraph Company and kept in the regular course of business of the Western Union Telegraph Company and are not objectionable on that ground.

Mr. Embry: But, Your Honor, without waiving any objection as to the admissibility as to the content or—

The Court: Yes. Subject to all legal objections.

Mr. Nachman: Yes, Your Honor.

The Court: Go ahead.

By Mr. T. Eric Embry: (Continued)

Q. Is Mr. Chadwick an employee of South Magazine in Birmingham, Alabama?

A. Yes, sir.

[fol. 110] Mr. Baker: Your Honor, we doubt that he is competent to testify as to whether a man is an employee of a corporation located in Alabama.

The Court: Well, I believe it is a shorthand rendition and I will give you an exception and on cross examination you may go into whether he knows or not. If he doesn't know, we will throw it out.

Mr. Baker: We except, if the Court please.

By Mr. T. Eric Embry: (Continuing)

Q. Are either one of those individuals, or have they been at any time since the 1st day of January, 1960, an employee of The New York Times Company?

Mr. Baker: Same objection, if the Court please.

The Court: What was that question again?

Mr. Embry: My question was, were they or have they been since January, 1960 employees of The New York Times Company.

The Court: Well, if he hires them or has some knowledge of it he could testify, otherwise, I don't believe he could. Do you have anything to do with engaging or employing correspondents in Alabama or people who work for you if any at all?

Mr. Embry: There is no engaging at all, Your Honor. He is the one that deals—

The Court: Well, you will have to lay a little more predicate there.

By Mr. T. Eric Embry: (Continuing)

Q. Are you the person with The New York Times Company who would have any dealings with any string correspondents in Alabama if there were any in Alabama and I believe you testified that there are two?

A. Yes, sir. I am.

Q. Since the 1st day of January, 1960, have either Mr. Don McKee or Mr. Chadwick been employees of The New York Times Company?

[fol. 111] Mr. Baker: We object—

Mr. Nachman: We object to that, if the Court please. The word “employee” is a legal phrase—

The Court: Well, couldn't you just ask if he has done anything—

Mr. Embry: I can, Your Honor, but I believe I am entitled to show from the man they contend hired them and they contend that they are employees and now they object—

The Court: Well, Mr. Nachman is upset because you might be usurping a function of the Court by calling them employees. Couldn't you just go into what their relationship with him was or something like that?

Mr. Embry: All right, Your Honor. We except. We will go into the details, Your Honor.

By Mr. T. Eric Embry: (Continuing)

Q. Mr. Faber, have you had any business transactions with either of those two gentlemen since the first day of January, 1960?

A. Well, I have had transactions with them. Yes, sir.

Q. What have you done with respect to John Chadwick during 1960?

A. On several occasions I got in touch with Mr. Chadwick and asked him to file stories to me or to The New York Times and on several occasions Mr. Chadwick got in touch with me on his own initiative and suggested stories and I either accepted or refused them.

The Court: By telephone or telegraph or what means of communication?

The Witness: Basically by telephone, sir.

By Mr. T. Eric Embry: (Continuing)

Q. Can you give his Honor your judgment as to about how many occasions you have done what you have just described with Mr. Chadwick during 1960—from the 1st day of January, 1960 until the 26th day of April, 1960?

A. Well, there were several occasions but I don't know [fol. 112] the number of them.

Q. Would it be as many as six occasions?

A. Possibly six, yes, sir. Something of that nature.

Q. Did you purchase from him on either of these occasions any news stories?

A. Yes, sir. I did.

Q. Did you pay for those news stories?

A. Yes, sir.

Q. Do you have any rate by which they were paid for? Do you have any method by which you compute the amount of money you pay for those news stories?

A. Yes, sir. We have a basic rough rate of about a penny a word which we pay for our news stories.

Q. Now, on each of those occasions, whether you were contacted by Chadwick or whether you contacted Chadwick, were the news stories offered to you—to The New York Times Company, your paper, were they offered to you by Mr. Chadwick?

A. On the occasions when Mr. Chadwick got in touch with me, yes. On the other occasions I asked for a story and he usually accepted. Yes, sir.

Q. Now, on occasions when he contacted you and offered you a story, did you,—I believe you testified that the total of these was approximately six occasions. A. Yes.

Q. Did he send to you some written material which we will describe as a news story? Is that what took place?

A. Yes, sir.

Q. Now, upon receipt of any written material, did you either accept it or reject it on those occasions you testified about?

A. Yes, sir.

Q. On those occasions where you accepted it, what did you do with regards to payment for that?

A. A duplicate copy of it is sent to the auditing department [fol. 113] which keeps records of all the stories sent in by Mr. Chadwick and others and at the end of the month they send it back to me for authorization of payment?

Q. Was payment made to him for those news stories which you accepted?

A. Yes, sir.

Q. By what means was payment made? By that I mean was it made by check, money order or draft—

A. Check.

Q. A check drawn to the order of the recipient, Mr. Chadwick?

A. I assume so. Yes, sir.

Q. And on the New York Times Company?

A. Yes, sir.

Q. All right. From that compensation, I will ask you to state whether or not on those occasions when you did buy news stories from him, were any deductions from that amount of money made by way of withholding or income tax or Social Security tax, insurance contributions of any type or kind such as are normally deducted from the checks that are paid to you and other employees of The New York Times?

Mr. Nachman: We object to that question, Your Honor. We object to the latter part of it "such as are normally deducted for employees of The New York Times."

Mr. Embry: Well, first let me—

Mr. Nachman: All you have to do is ask him whether he deducted or not—

Mr. Embry: Well, let me do my own questioning if you don't mind.

Mr. Nachman: Well, quit leading him.

Mr. Embry: Well, you may address yourself to the Court, Mr. Nachman—

The Court: Gentlemen, all of you should address your remarks to the Court. If you object to it on the grounds that it is a leading question—

Mr. Baker: We object to it on the grounds that it is a leading question, Your Honor.

[fol. 114] The Court: Well, I think—

Mr. Beddow: I know that Your Honor likes to proceed with decorum and we want to proceed in the way and manner you would have us to and we don't want any such conduct manifested toward us and we want to put it on the line now in the beginning. That is not the way for counsel to address other counsel—

The Court: Well, I think I understand—

Mr. Beddow: And we resent it, Your Honor.

The Court: Well, everyone address their remarks to me and we will get along all right. I think the latter part of the question might be bad and I sustain the objection. Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Were any deductions made from the amount computed for the payment of those news stories?

A. No, sir.

Q. Now, as an employee of The New York—

The Court: Let me ask it this way. Say a fellow sent in some words and wants twenty-five dollars and you accepted that and everything, in other words, would you just send him a check for twenty-five dollars for that particular news story?

The Witness: No, sir. A check is sent out at the end of the month. All stories are paid for at the end of the month.

The Court: All right. Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Is that the method by which the amount is computed for all the stories which you may have purchased during that month?

A. Yes, sir.

Q. As I understand it, no deductions are made from that amount so computed?

A. Yes, sir.

Q. Now, as an employee of The New York Times Company [fol. 115] I assume that you are paid some sort of compensation.

A. Yes, sir.

Q. I assume further that it is on some sort of periodic basis.

A. A weekly check.

Q. A weekly check. Now, from the checks that you receive as compensation from The New York Times Company, are any deductions made therefrom?

A. Yes, sir.

Q. Will you relate to His Honor some of the deductions that are made from those checks?

A. Yes, sir. Federal Income Tax, New York State Income Tax, a pension plan, hospitalization and Social Security.

Q. Do you have anything left?

A. A little bit.

Q. Were any of those deductions that you have just described at any time during the period that I have specified deducted from the checks that were sent to Mr. Chadwick in payment for the news stories that you testified you purchased from him?

A. No, sir.

Q. Now, Mr. Faber, from the 1st day of January, 1960 until and including April 26th, 1960, did you have occasion to purchase from Mr. McKee of The Montgomery Advertiser any news stories?

A. Yes, sir.

Q. Can you give His Honor your judgment as to about how many occasions you purchased stories from him?

A. Very few. Possibly two or three at the most.

Q. Were they paid for in the same manner and at the same rate and on the same basis you testified that payment was made to Mr. Chadwick for the stories that he sold?

A. Yes, sir.

Q. Now, you have indicated and I will ask you whether it is a fact that on occasions that you have testified about that stories were forwarded to you or submitted to you by Mr. Chadwick and I will first confine my question to him—that were not by you accepted? Is that correct?

[fol. 116] A. Yes, sir.

Q. Now, what do you mean? Do you mean that they were not run in the paper?

A. Well, I think I mean two things. One, sometimes they offered a story and I said, no, we don't want it and he didn't send it and on another occasion he may have sent a story which we just didn't print in the paper.

Q. All right. Now, did you make any payment for those stories which were not accepted?

A. We paid for all the stories we asked for. I mean, if he called and offered a story and I turned him down, we would not pay for that.

Q. But you paid for that which you requested whether you used it or not.

A. Yes, sir.

Q. Was that true with respect to Mr. McKee also?

A. Yes, sir.

Q. On the couple of occasions that you dealt with him and on the six occasions that you testified you dealt with Mr. Chadwick.

A. Yes, sir.

Q. Now, I assume and I will ask you to state if it is a fact whether or not during the same period of time that I have specified, the 1st day of January, 1960 through April 26th, 1960, there appeared in The New York Times newspaper a story or stories relating to news events which had occurred within the State of Alabama?

A. Yes, sir.

Q. Now, you testified that you gathered news by means of the wire services, The Associated Press and the United Press, and that the news is sold to you by stringers which you have already described and that you have staff correspondents. Is that correct?

A. Yes, sir.

Q. Do you have any staff correspondent or employee of the news department of The New York Times that resides in Alabama? During this period of time I have been talking about now.

[fol. 117] A. No, sir.

Q. Do you know whether any staff correspondent or employee of the New York Times has come into the State of Alabama within the period that I have asked you about?

A. Yes, sir.

Q. Do you know who that man might be?

A. Well, there were two of them. Mr. Claude Sitton and Mr. Harrison Salisbury.

Q. Do you know on what occasions Mr. Claude Sitton came into the State of Alabama from January 1st, 1960 to April 26th, 1960?

A. I don't remember the specific stories, no.

Q. Do you know how many times he came into the State?

A. It may have been once or twice.

Q. What about Mr. Salisbury?

A. Mr. Salisbury came in once during April.

Q. How many staff correspondents does The New York Times have on its payroll as regular employees of The New York Times?

A. About two hundred fifty.

Q. In other words, of those two hundred fifty staff correspondents, how many staff correspondents reside—let me strike that question. You have indicated that you had one of those gentlemen named, Sitton. Claude Sitton. Is that correct?

A. Yes, sir.

Q. What do you call him?

A. He is our Southern correspondent.

Q. Where does he reside?

A. In Atlanta, Georgia.

Q. Does he have delineated by you a geographical area which it is his duty to within that area cover the news for The New York Times Company?

A. Yes, sir.

Q. Can you tell the Court the extent of that area and what it embraces?

A. Generally the Southern States. Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Arkansas and Louisiana.

[fol. 118] Q. Within that area, is he the only one of the approximately two hundred and fifty staff correspondents employed by The New York Times who resides within that area and whose duty it is to cover news within that area?

A. Yes, sir.

Q. Does he have any regular, systematic schedule by which he enters the State of Alabama periodically on a fixed plan basis?

A. No, sir.

Q. Is it his duty to go into any of those places when and if news event occur that he deems are sufficiently newsworthy to cover?

Mr. Nachman: We object to the leading, if the Court please. We have tried to be patient but—

The Court: That question might be construed to be leading, yes.

By Mr. T. Eric Embry: (Continuing)

Q. What are his duties with respect to the States embraced within the geographical area to which he is assigned which you have described?

A. He is to cover news events within those States whenever we send him to cover such events.

Q. When do you send him to cover those events?

A. Well, whenever we think there are some news events going on of sufficient importance to merit his attention.

Q. Do you have a pre-planned schedule by which you send him from place to place?

A. No, sir.

Q. Does your news department maintain in the State of Alabama any office?

A. No, sir.

Q. Does it rent or lease or own any real estate in the State of Alabama?

A. No, sir.

Q. Does it have any bank account in the State of Alabama?

A. No, sir.

[fol. 119] Q. Do you have any listing for mailing address, telephone, cable or other communication address within the State of Alabama?

A. We have a listing of the stringers names and phone numbers and addresses.

Q. I mean, The New York Times Company.

A. No, sir.

Q. You said you had a listing of stringers. You have their names in your files in New York?

A. Yes, sir.

Mr. Baker: We object to the leading, if the Court please.

The Court: Yes. You will just have to tell what they do up there.

By Mr. T. Eric Embry: (Continuing)

Q. Is Mr. Chadwick or Mr. McKee listed in the telephone directories of the Cities of Birmingham and Montgomery respectively as a representative of The New York Times, listing along with their names The New York Times representative?

A. I don't know.

Mr. Baker: We think the directories would be the best evidence, if the Court please.

The Court: Well, I think that would be admissible. I give you an exception.

Mr. Embry: Mr. Reporter, did you get that answer?

The Reporter: Yes, sir. The witness answered, "I don't know."

The Witness: That's right. I don't know.

By Mr. T. Eric Embry: (Continuing)

Q. Do you have any contract of employment between The New York Times Company and either McKee or Chadwick?

A. No, sir.

Q. All right, sir. That's all.

[fol. 120] Mr. Embry: Under the stipulation and agreements had throughout the hearing on the Motion to Quash in the L. B. Sullivan case wherein it was agreed that counsel for The New York Times Company could assign any additional grounds of objections to questions propounded to the various witnesses and to the introduction of documentary evidence that they saw fit to do, such stipulation being for the purpose of saving the Court's time on the original hearing, the defendant, The New York Times Company, wishes to and does assign the following additional grounds of objection. To each objection made originally to questions propounded to the witnesses and the introduction of documentary evidence, that the questions called for a mental operation of the witness and not facts and that the questions called for an answer which does not tend to prove or disprove whether Don McKee and John Chadwick were agents of The New York Times Company so that purported service upon McKee would con-

stitute valid service upon this defendant. It does not tend to prove whether or not the Times did business in Alabama or whether the cause of action attempted to be stated in the complainant's cause accrued from or was incident to the doing of business or performance of work or service in Alabama by The New York Times Company or its agents, servants or employees and that these same grounds of objection apply to the introduction of the various exhibits offered by the Plaintiff. Further grounds of objection to questions propounded to the various witnesses as well as to the introduction of documentary evidence are that the question and the evidence sought to be adduced by an answer thereto and the documents would not be material or legal evidence such as would authorize a construction by the Court of Section 199 (1) of Title 7, Code of Alabama, 1940, that would permit the Court to assert jurisdiction over the person of The New York Times Company, a corporation, and to admit such evidence for such purpose would be such a misapplication of the law as would deprive this defendant of its property without due process of law in contravention or violation of the Fourteenth Amendment to the Constitution of the United States and in contravention or violation of Article 1, Section 6, of the Constitution of Alabama, 1901, and would deny to this defendant equal protection of the law in contravention or violation of the Fourteenth Amendment of the Constitution of The United States and would constitute an abridgement of freedom of the press in contravention or violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Interstate Commerce in contravention or violation of Article I, Section 8 of the Constitution of the United States and such questions and the evidence sought to be adduced therefrom and such documents would be illegal and immaterial as a basis for the Court construing or holding that Don McKee was an agent of this defendant upon whom service of process might be had so as to support a holding by the Court that any purported service upon him would subject

this defendant to the jurisdiction of this Court and the admission of such evidence and the holding on the basis of such evidence that he was an agent so as to subject this defendant to the jurisdiction of this Court, would deprive this defendant of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States and in violation of Article 1, Section 6 of the Constitution of Alabama, 1901, and would deny to this defendant equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States and would abridge freedom of the press in violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Interstate commerce in violation of Article 1, Section 8 of the Constitution of the United States.

[fol. 122] Cross examination.

By Mr. M. R. Nachman, Jr.:

Q. Mr. Faber, there are three string correspondents in the State of Alabama, are there not?

A. Yes, sir.

Q. One in Birmingham; one in Montgomery; one in Mobile. Is that correct?

A. Yes, sir.

The Court: Let me see now. You mentioned Chadwick and McKee. Who is the third one?

Mr. Nachman: The third one is a Mr. Castle. Isn't that right?

The Witness: That's right.

The Court: How do you spell it?

The Witness: It is spelled, C-a-s-t-l-e.

Mr. Nachman: He lives in Mobile.

The Witness: Yes.

The Court: All right. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Is it important to the business of The New York Times to have those stringers in Alabama?

Mr. Embry: We object to that, if the Court please. It calls for a conclusion on the part of the witness and that's a matter for the Court to decide from all the facts in the case—

The Court: I think that's a good question. I give you an exception to the ruling of the Court.

Mr. Embry: We except, Your Honor.

Mr. Nachman: You may answer the question.

The Witness: What was the question again?

Mr. Nachman: Will you read the question, Mr. Reporter?

The Reporter: Question: "Is it important to the business of The New York Times to have those stringers in Alabama?"

[fol. 123] The Witness: No, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Haven't you made an active effort to obtain stringers in Montgomery when there were no stringers or it would appear there would be no stringers in the immediate future, Mr. Faber?

A. Yes—

Mr. Embry: Just a minute. Don't answer that. Give me a chance to object before you answer a question. Your Honor, that calls for an unauthorized conclusion on the part of the witness and it asks for an answer which is impossible—to factually ascertain what an active effort is—

The Court: Well, the term is not too definite but I will give you an exception. It is cross examination. Go ahead.

Mr. Embry: We except, if the Court please.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer.

A. Yes, sir.

Q. You did make such effort.

A. We did make such effort. Yes.

Q. Now, am I correct, sir, that The Times as a matter of business policy wants to have three stringers in Alabama at all times?

Mr. Embry: We object to that, Your Honor. It is a question of policy and not of facts and it doesn't shed any light on the issue of whether or not The New York Times Company was doing business in Alabama and it doesn't specify any period of time during which the witness is called upon to relate events.

The Court: Fix the period of time—

Mr. Nachman: During the time of your active concern with the stringers—I believe you testified on direct examination that you were in charge of the stringers, did you not?

The Witness: Yes, sir.

Mr. Embry: We object to that, Your Honor. That wasn't [fol. 124] his testimony—

The Court: I will let it in and give you an exception. The evidence would have a pretty wide range, I believe. Now, Mr. Embry, we have this rule here in Montgomery and you can follow it if you wish to. If you do not wish to follow it, it is quite all right. If you make an objection, that puts the Court on notice that you are objecting and we don't generally assign any grounds and afterwards you can assign any that you want to. However, if you do assign one or two grounds you are cut off from any others. However, you may follow any practice you wish on that now.

Mr. Embry: I don't follow you, Your Honor.

The Court: Well, here in Montgomery, unless the Court asks for your reasons for objecting, later on you can assign any grounds you want to. Any procedure you wish to follow will be quite all right with the Court.

Mr. Embry: Well, now, was there a question put to the witness? What was the last question?

Mr. Nachman: Yes, there was before all these objections.

The Court: Well, go ahead with another question.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I believe that the question that was objected to was, it is a policy of The New York Times, as you know it, Mr. Faber, to maintain three string correspondents in Alabama.

Mr. Embry: Same objection, Your Honor.

The Court: Yes, same ruling.

The Witness: No. I wouldn't say the policy was to maintain three correspondents in Alabama but to maintain correspondents in Alabama and other States.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Well, restricting it to Alabama for the moment, on occasions when you were aware that a string correspondent was about to discontinue his duties with The New York Times, have you not made an active effort to find a replacement for him?

Mr. Embry: We object to that, if the Court please.

The Court: I will let it in and give you an exception.

The Witness: Yes. We made an effort to replace him.

By Mr. M. R. Nachman: (Continuing)

Q. And I take it that the obvious reason for that effort is so that you would continue to have a stringer in Alabama at the place where one was about to depart. Is that correct?

A. Yes, sir.

Q. Now, what is the overall purpose of a string correspondent?

Mr. Embry: Your Honor, we object to that question as not specifying any period of time.

The Court: Well, can we assume that you are asking about since January 1st, 1960 through April 26th, 1960? Or somewhere in there?

Mr. Nachman: No, sir. Unless the Court so limits us, we would like to go beyond that.

The Court: Well, a reasonable time around that, yes. You can't go way back now.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do you know of any change within the last five years of the activities of the string correspondents making those activities different from what they have been during the first six months of 1960?

Mr. Embry: We object, Your Honor, to going back for a period of five years—

The Court: Well, I will let it in and give you an exception. It might have some evidential value.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Has there been any change in their activities in that [fol. 126] period of time?

A. No, sir.

Q. It is the same now as it was five years ago, isn't it?

A. Approximately, yes.

Q. All right. Now, I will ask you again, during that period of time, what is the purpose insofar as The New York Times is concerned of having those string correspondents in Alabama?

Mr. Embry: We object to that question, Your Honor, as calling for a mental operation of the witness.

The Court: I will let it in and give you an exception.

Mr. Embry: We except, if the Court please.

The Witness: The purpose of having string correspondents in Alabama and elsewhere is to have someone upon whom we can call when we think there is a news event we want covered or who will call us when they think there is a news event we would be interested in.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. And to perform any other service the New York Times may want performed in that area. Isn't that correct?

Mr. Embry: We object to that question—

The Court: I will let it in and give you an exception.

Mr. Embry: It invades the province of the Court—

The Court: Connect it with the publication of the news—

The Witness: I am only connected with the publication of the news and the gathering of the news.

By Mr. M. R. Nachman: (Continuing)

Q. Do you mean to say that the activities of the stringers are limited to sending stories in to The New York Times for publication?

A. No. Occasionally I call them for information about news stories.

Q. Do they occasionally assist regular staff correspondents of The New York Times in their news gathering activities in Alabama?

Mr. Embry: We object to that question, Your Honor.

The Court: I believe it is competent. I give you an [fol. 127] exception.

The Witness: They help correspondents by furnishing them information. Yes, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Are they sometimes assigned by The New York Times to help regular staff correspondents?

Mr. Embry: We object to that question, Your Honor.

The Court: I will let it in and give you an exception.

Mr. Embry: We except, Your Honor.

The Witness: Are they told? What was your question?

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Are they assigned by The New York Times to assist regular staff correspondents of The New York Times in the news gathering activities of those staff correspondents in the State of Alabama?

Mr. Embry: Same objection, Your Honor.

The Court: Same ruling.

The Witness: No, they are not.

Mr. Beddow: Your Honor, where a question is asked and an exception is taken after an objection is made and then when the question is repeated, as lawyers are prone to do, does Your Honor treat the exception as covering the—

The Court: The objection applies to the whole thing. You don't have to make a separate objection.

Mr. Beddow: I see. It applies to the whole thing. Thank you, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I would like to show you this brown manila envelope which has been produced in this Court in response to an order by the Court and I will ask you if you are familiar with that?

A. Yes, sir.

Q. Now, I show you this brown envelope which has been [fol. 128] marked and identified as Plaintiff's Exhibit No. 1 for identification and I will ask you to examine the contents of the envelope I have just removed, being two slips of paper. Those were in the envelope?

A. Yes, sir.

Q. Now, for the Record, one of those envelopes—one of those slips of paper which the witness has identified as being in the envelope marked and identified as Plaintiff's Exhibit No. 1 for identification reads as follows: "McKee—Montgomery. Allowance ten dollars. Alabama forming race-riot posses. For authorization see memo, 4-10-60."

A. Yes, sir. That's right.

Q. Now, another slip of paper contained in the envelope identified as Plaintiff's Exhibit No. 1 for identification reads as follows: "McKee-Montgomery. Allowance twenty-five dollars for help given to Salisbury on his swing through South. For authorization see memo, 4-18-60." Now, Mr. Faber, what is meant by the word "authorization?"

Mr. Embry: Your Honor, we object to that. He hasn't laid any predicate showing that this witness has any knowledge of those memos.

The Court: I will let it in. If he doesn't know he may say so.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do you know what those memos inside the envelope mean, Mr. Faber?

A. I assume that they mean I sent a note up saying to pay Mr. McKee ten dollars and twenty-five dollars on these occasions.

Q. Now, the occasion referred to by the slip as to Mr. Salisbury is not a situation in which Mr. McKee is sending any news story in to The New York Times, is it?

A. No, sir.

Q. And it is not an occasion when you have assigned him to send in a news story to The New York Times, is it?

A. No, sir.

Q. He was to have no writing activity whatsoever insofar as that authorization was concerned, was he?

[fol. 129] A. No, sir.

Q. But he was to assist on special assignment from The New York Times a regular staff reporter, Mr. Salisbury, in his news gathering activities, was he not?

Mr. Embry: We object to that question, Your Honor. It was assuming he was giving assignments and he hasn't any right to give assignments—

The Court: I will let it in and give you an exception. He can just tell what he did. That's all he can do.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer the question.

A. No, sir.

Q. He was not so assigned?

A. No, sir.

Q. Whose idea was it that he assist Mr. Salisbury?

Mr. Embry: We object to that question, Your Honor. That is absolutely incompetent, irrelevant and immaterial. It calls for a mental operation of the witness—

Mr. Nachman: Your Honor, I am trying to—

The Court: I will let it in and give you an exception.

The Witness: May I have the question repeated, please?

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Whose idea was it for Mr. McKee to assist Mr. Salisbury?

Mr. Embry: Same objection.

The Witness: I don't know.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You authorized the payment without knowing whose idea it was or whether he was on official business—

Mr. Embry: We object to that question, if the Court please—

The Court: I will let it in and give you an exception [fol. 130] to each question and will entertain a motion to strike out the answer if you need it which I don't think you do.

Mr. Nachman: You may answer the question—

The Witness: I said that the—

Mr. Embry: Just a minute—

Mr. Beddow: Your Honor, I don't see how this Court Reporter, no matter how good he is—

The Court: Well, he is very excellent.

Mr. Beddow: He appears to be, Your Honor, but I don't see how he can take three men all talking at once—

The Court: Well, you ought to talk one at a time and if the Court Reporter gets in trouble and wants to cut you down to one, we will help him out.

Mr. Beddow: If we are going to protect the Record, the Court Reporter ought to be given a chance.

Mr. Baker: We will stipulate, Your Honor, that they can have an objection to every question we ask and they can assign the grounds they want to and that will shorten it—

Mr. Embry: We prefer to make our objections, if the Court please.

The Court: All right. Go ahead.

Mr. Nachman: Am I correct—

The Court: We have a rule in Circuit Court here that only one lawyer can question a witness at one time.

Mr. Baker: I haven't asked the witness any questions, Your Honor.

The Court: All right. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Am I correct then, Mr. Faber, that your testimony is that you authorized the payment of twenty-five dollars to Mr. McKee without knowing whether his activities were connected with any assignment from The New York Times? [fol. 131] A. I am sorry, I think that's the question—it is not clear to me. I authorized the payment—

Q. You authorized the payment, didn't you?

A. Yes, sir.

Q. Now, as I understood your testimony, it was that you aren't sure whether he was assigned, that is, he, McKee, was assigned to perform these duties or whether he was not assigned to perform these duties.

Mr. Embry: We object to that. It was his testimony that he was not assigned.

The Court: I will let it in and give you an exception.

The Witness: I don't think I ever said whether he was assigned or not.

Mr. Nachman: Well, was he?

The Witness: He was not assigned.

Mr. Nachman: Well, then, I repeat, then whose idea was it that he help Mr. Salisbury?

Mr. Embry: We object to that, if the Court please.

The Court: Well, if he knows. If he doesn't know, he can't answer it.

Mr. Embry: Who is to know who has an idea? That question—

The Court: Well, if he knows. If you don't know then you cannot answer.

The Witness: When Mr. Salisbury went down, I told him we had three stringers in Alabama and that he could call upon them if he chose to and ask them things if he wanted to but I made no assignment of Mr. McKee or Mr. Chadwick.

By Mr. M. R. Nachman: (Continuing)

Q. When Mr. Salisbury called upon these stringers, he was doing so as an agent of The New York Times with authority from you, wasn't he?

Mr. Embry: We object to that question, if the Court please.

The Court: I will let it in and give you an exception.

[fol. 132] Mr. Embry: We except, if the Court please.

The Witness: Well, Mr. Salisbury certainly had information from me that we had stringers there and he could call on them.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. And you expected him to take your statement as authorization to call on them if he saw fit, didn't you?

A. Yes, sir. Certainly.

Q. That was the purpose of your telling him that.

A. Mr. Salisbury. Certainly.

Q. Now, I show you another brown manila envelope similar to the one identified as Plaintiff's Exhibit No. 1 which is headed, John Chadwick. Would you examine the contents of this envelope, please?

A. Yes, sir.

Q. Now, Mr. Faber, I will identify these with you. There are two slips of paper in the envelope just identified as Plaintiff's Exhibit No. 2 for identification and the first one reads, "Chadwick—Birmingham. Allowance twenty-five dollars for help given to Salisbury on his swing through South. For authorization, see memo 4-18." The other slip says, "Chadwick. Allowance ten dollars. Stadium survey. See memo 5-6." Then there is an adding machine tape there also.

A. That's right.

Mr. Embry: Were you asking him a question?

Mr. Nachman: I simply wanted Mr. Faber to identify the fact that these two slips were in the envelopes previously identified as Plaintiff's Exhibit No. 2 for identification.

Mr. Beddow: You are not identifying the third one there, are you?

Mr. Nachman: Well, it is just an adding machine tape but if you want me to—

Mr. Embry: No, that won't be necessary.

Mr. Nachman: If the Court please, we offer these two [fol. 133] envelopes and their contents into evidence. One for Don McKee and the other for John Chadwick and they have been previously identified as Plaintiff's Exhibit 1 and Plaintiff's Exhibit No. 2 for identification.

(Envelope, Don McKee, Montgomery Advertiser, Montgomery, Alabama, dated April, 1960, and contents of envelope, offered and received in evidence and identified as Plaintiff's Exhibit No. 1.)

(Envelope, John Chadwick, Room 505—Massey Building, South Magazine, Birmingham, Alabama, dated April, 1960, and contents of envelope, offered and received in evidence and identified as Plaintiff's Exhibit No. 2.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, did the same situation obtain with regard to Mr. Chadwick, namely, that you also gave Mr. Chadwick's name to Mr. Salisbury as a stringer and told him that he could call on him for assistance if he wanted to?

A. Yes, sir.

Q. And you also, I take it, authorized the payment of Mr. Chadwick for his services in that regard.

A. Yes, I did.

Q. Now, I am not entirely clear from your direct testimony as to who assigns the staff correspondents to come into Alabama to gather news. Do you do that?

A. Well, it is a little more complicated than that. I do the actual assigning but I get authorization from my superiors before I do so but I actually tell them to go in when it is necessary.

[fol. 134] Q. Do they sometimes decide themselves, that is, they, the staff correspondents, that there is a news situation worthy of coverage in Alabama and they go in on their own?

Mr. Embry: We object to that, Your Honor. How would he know what is in the mind of another man, Your Honor?

Mr. Nachman: I will re-phrase the question, Your Honor.

The Court: All right. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do these staff correspondents sometimes come into Alabama without prior direction from you or from The New York office?

Mr. McCleod: Your Honor, we object to that on the grounds that he doesn't specify any time. We can't tell from the question whether it is a time that is relevant to the—

The Court: Well, if he has a general idea within the

last four or five years prior to January 1st, 1960 or any reasonable length of time—

Mr. Embry: If Your Honor is holding that a period of four or five years is pertinent and holding that it is pertinent within that period of time—

The Court: Well, pursuing a policy and the manner and course of doing business—it might be admissible. I will give you an exception.

Mr. Embry: We except.

Mr. Nachman: Your Honor, we would like to state that they have asked generally about the activities of these people and we made no objection as to time.

The Court: Well, I am letting it in. I have ruled with you. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do the staff correspondents, Mr. Faber, sometimes come into Alabama and gather news and submit news stories without having prior direction from you or from somebody in the New York office?

[fol. 135] Mr. Embry: If the Court please, we object to that unless the period of time is stated specifically.

The Court: I will let it in and give you an exception.

The Witness: No, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. They never do that?

A. No, sir.

Q. Did you order Mr. Sitton to come into Alabama to cover the Martin Luther King trial?

Mr. Embry: We object to that. No time is stated—

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. The trial that took place in May of 1960 when he was charged with filing false income tax returns to the State of Alabama?

A. What date was that?

Q. Did you direct Mr. Claude Sitton to come into the

State of Alabama to cover the criminal trial of Martin Luther King who was charged with Alabama Income Tax fraud and who was tried in May of 1960? Did you direct that Mr. Sitton come into Alabama to cover that trial?

Mr. Embry: We object to that, if the Court please because the date specified is following the date of the last service attempted to be obtained against—

The Court: We will let it in and give you an exception.

Mr. Embry: We except.

The Witness: Sitton in May, 1960—the King trial. Yes, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You directed him to come in to cover that trial.

A. Yes, sir.

Q. Did you direct Mr. Salisbury to come into Alabama and to write the news story about Birmingham which appeared in The New York Times of April 12th and April 13th, 1960?

[fol. 136] Mr. Embry: If the Court please, we object to that. It is assumed that he wrote the article in Alabama. That has not been established.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

Mr. Nachman: Did you direct him to come in and write those stories?

Mr. McCleod: Your Honor, we object on the grounds that that asks two different questions in one.

The Court: Well, now, we have a rule whereby only one lawyer at a time can object while a witness is on the witness stand. I will overrule the objection and give you an exception.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer the question.

A. I made Mr. Salisbury a list of cities of which Birmingham was included in that series of articles which he did write.

Q. Your answer is, yes?

Mr. Embry: We object to that. He has already answered the question.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Did you direct him to write an article about Birmingham when you gave him this list of cities, Mr. Faber?

A. No, sir.

Q. You did not?

A. No, sir.

Q. I see. It was up to him then to decide whether he wrote an article about Birmingham.

A. No, sir.

Q. Did you decide that The Times was to have an article about Birmingham?

A. Ultimately, yes, sir.

Q. You did submit to him a list of cities which included [fol. 137] Birmingham before he came into Alabama, did you not?

A. Yes, sir.

Q. What was the purpose of submitting to him that list of cities?

Mr. Embry: We object to that, Your Honor.

The Court: I will let it in and give you an exception.

The Witness: I gave him a list of cities so that he could make a swing through these cities and recommend back to me whether or not we should do an article about the individual cities on that list.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I would like to read to you a memorandum or writing and ask you whether or not you recognize this as being a memorandum that you wrote. "Harrison Salisbury is leaving tonight for the South. He will do a spot story Saturday or Sunday in Andalusia, Alabama and then proceed to Baton Rouge where he will do a background piece on what is going on there. His instructions are not to try to file daily pieces, not to chase after spot developments from one city to another but to do a thorough situationer on the sit-downs in each city he visits. Presumably,

the Baton Rouge piece will be ready on Wednesday or Thursday and he will then go to either Birmingham or Memphis depending on developments. During the trip he will take as days off April 11th, 12th and 13th, resuming his surveying on April 14th.”

Mr. Embry: We object to that, if the Court please, unless the document is exhibited to the witness and he is permitted to see it.

The Court: I will let it in and give you an exception.

Mr. Embry: Sir?

The Court: I will let it in and give you an exception to the Court’s ruling.

Mr. Nachman: Do you recall writing any such memorandum?

The Witness: Yes, sir.

[fol. 138] Mr. Embry: We except, if the Court please.

Mr. Nachman: Your answer was, yes?

The Witness: Yes, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Salisbury, he did write an article about Andalusia which appeared in one issue of The New York Times, didn’t he?

A. Yes, sir.

Q. He wrote two more stories about Birmingham which also appeared in The New York Times, did he not?

A. Yes, sir.

Q. Now, Mr. Faber, I show you two sheets of paper and ask you if you can identify those or if you recognize them?

A. Yes, sir. I do.

Q. What are they?

A. Well, they are entitled “Rules for Correspondents.”

The Court: They are entitled Rules for what?

The Witness: They are entitled, “Rules for Correspondents,” Your Honor.

Mr. Nachman: If the Court please, we would like to introduce these two sheets to be marked as our next exhibit, if the Court please.

Mr. Embry: We object, Your Honor. No predicate has been laid as to the relevancy of these documents on the issue of the defendant doing business or not in the State of Alabama within the limited period of time to the date of purported service being April 21st, 25th and 26th, 1960.

The Court: I think it is admissible provided it is shown that those rules are applicable to any person that might have been sent into the State of Alabama.

Mr. Nachman: I am just getting ready to ask that question, Your Honor.

The Court: I overrule the objection.

Mr. Embry: We except, if the Court please.

[fol. 139] (Rules for Correspondents, The New York Times, National News Desk, signed Harold Faber, Day National News Editor, Page 1 and 2, offered and received in evidence and identified as Plaintiff's Exhibit No. 3.)

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Mr. Faber, your signature or facsimile thereof appears on the bottom of both sheets, Page 1 and Page 2 of this exhibit, Plaintiff's Exhibit No. 3, does it not?

A. Yes, sir.

Q. Now, would you state to the Court what these Rules for Correspondents are and to whom they apply and specifically whether they apply to the three stringers who are in Alabama, namely, Mr. Chadwick, Mr. McKee and Mr. Castle?

Mr. Embry: We object to that, if the Court please. The document itself is the best evidence.

The Court: Well, the Court can read it or he can give a brief summary—

Mr. Nachman: Well, Your Honor, I was just asking that in consideration of Mr. Embry's last objection that there was no indication that these documents apply to anything or had anything to do with this case. It was asked by way of clarification—

The Court: All right. Go ahead. I will give you an exception.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. All right. Go ahead.

A. What was the question now?

Q. The question was, what these documents are, to whom they apply and specifically whether they apply to the three [fol. 140] stringers in Alabama, Mr. Chadwick, Mr. McKee and Mr. Castle?

A. Well, these are rules for correspondents and they apply to all our string correspondents and specifically the three in Alabama as well as the others. What they are is a listing of rules of time and sequence and how to file stories with The New York Times and how we pay for stories that we order and what kind of stories generally we are interested in or that they can offer to us.

Mr. Nachman: Now, Your Honor, we have a group of envelopes here which we would like to introduce into evidence at this time but in order to save the time of the Court and if counsel for the defendant, the Times, is agreeable, and if the Court is agreeable, we will introduce them into evidence in bulk and let the Court Reporter identify them at some later time and if that procedure is agreeable I will, of course, have them identified by Mr. Faber. They are envelopes that are similar to the envelopes already introduced into evidence as Plaintiff's Exhibits No. 1 and 2.

Mr. Embry: Do they contain anything?

Mr. Nachman: Yes, there are contents in most of the envelopes.

Mr. Embry: Well, of course, Your Honor, we wouldn't be able to agree to that because we don't know what the dates are or the contents—

The Court: Well, perhaps if we take a recess at this point we might save some time.

Mr. Nachman: I might state also, Your Honor, that all of these envelopes were produced by the defendant, New York Times, in response to the Court's order on the Motion to Produce.

The Court: Well, I will give you a ten minute recess and perhaps you can go into the counsel room and perhaps save time.

Mr. Embry: We can at least find out wherein we don't agree, Your Honor.

The Court: All right. Court is in recess for ten minutes.

Mr. Embry: Now, Your Honor, it hasn't been stated for [fol. 141] the Record, but I assume that we are in the L. B. Sullivan case now. Is that correct, sir?

The Court: That's the way the Motions are headed.

Mr. Embry: Well, we couldn't agree to introduce these except for the four which evidenced payment in 1960. We will have to object to the others as being too remote and as not being competent, relevant or material evidence in this case.

Mr. Nachman: Your Honor, Mr. Faber's testimony as I recall it is that there has been no change in the relationship of these stringers to The New York Times, that is, the Alabama stringers, during a five year period. Therefore, on the basis of that testimony that their duties are the same in 1960 as they were in 1959, 1958 and so forth—

The Court: Well, go ahead and put in those agreed on and you can go into the others separately.

Mr. Nachman: Could I inquire of counsel as to whether that is the only basis of objection, namely, that they are too remote in time and that there isn't any other grounds of objection—

Mr. Embry: We object on the grounds that they are incompetent and irrelevant on this question before the Court and one specific more detailed ground being that they are all too remote other than the four in 1960.

The Court: They are too what?

Mr. Embry: Too remote other than the four in 1960.

The Court: Well, go ahead with those.

Mr. Nachman: We offer in evidence these four then.

Mr. Embry: We have no objection to those.

The Court: Then, we can take up each one separately.

Mr. Nachman: We introduce into evidence these four envelopes which have been identified as Plaintiff's Exhibits 4 through 7.

[fol. 142] (Four Envelopes for John Chadwick, Birmingham, Alabama, dated January, 1960; John Chadwick, Birmingham, Alabama, dated March, 1960; Don McKee, Mont-

gomery, Alabama, dated March, 1960; Don McKee, Montgomery, Alabama, dated February, 1960; offered and received in evidence and identified as Plaintiff's Exhibit No. 4, Plaintiff's Exhibit No. 5, Plaintiff's Exhibit No. 6 and Plaintiff's Exhibit No. 7, respectively.)

Mr. Nachman: As I stated before the recess, Your Honor, in order to save the time of the Court, we have no objection to introducing the other envelopes all of which, as we understand it, relate to payment to stringers and in some instances described as services in bulk for later identification by the Court Reporter.

Mr. Embry: We object to that, Your Honor, on the grounds previously stated.

Mr. Beddow: It is rather a dangerous thing to do, Your Honor.

The Court: All right. We will take them separately then. Don't worry about imposing on the time of the Court as I will be here as long as necessary.

Mr. Nachman: Shall I introduce these one by one, Your Honor?

The Court: Go ahead.

Mr. Nachman: We would now like to introduce an envelope captioned, Don McKee, dated February, 1959.

Mr. Embry: We object to it, Your Honor, on the grounds that it is incompetent, irrelevant and immaterial. It doesn't shed any light on the issue before the Court on the question of doing business by this defendant during the period relevant to the purported date of service in April, 1960. We also object on the grounds that it is too remote in point of time.

The Court: I will let it in and give you an exception. [fol. 143] Mr. Embry: We except.

Mr. Baker: Your Honor, we will stipulate that he can have the same objections to each and every envelope with his exception.

Mr. Embry: All right. That will be fine. That means, Your Honor, that we have the same objection to each exhibit—

The Court: Yes, same objection, same ruling and same exception.

Mr. Nachman: The next exhibit will be Don McKee, March, 1959. The next one is Don McKee, July, 1959. Next is Don McKee, November, 1959. Next is Don McKee, December, 1959. Next is John Chadwick, October, 1959. Next is John Chadwick, September, 1959. Next is John Chadwick, August, 1959. Next is John Chadwick, July, 1959. Next is John Chadwick, June, 1959. Next is John Chadwick, April, 1959. Next is John Chadwick, January, 1959. John Chadwick, November, 1958. John Chadwick, October, 1958. John Chadwick, August, 1958. John Chadwick, July, 1958. John Chadwick, May, 1958. John Chadwick, March, 1958. John Chadwick, January, 1958. John Chadwick, December, 1957. John Chadwick, September, 1957. John Chadwick, August, 1957. Another one, John Chadwick, August, 1957. John Chadwick, June, 1957. John Chadwick, May, 1957. John Chadwick, March, 1957. John Chadwick, February, 1957. John Chadwick, January, 1957. John Chadwick, December, 1956. John Chadwick, November, 1956. John Chadwick, September, 1956. John Chadwick, August, 1956. John Chadwick, June, 1956. John Chadwick, May, 1956. John Chadwick, April, 1956. John Chadwick, February, 1956. John Chadwick, January, 1956. The next one is Maurice Castle, Jr., October, 1958. Next is Maurice Castle, Jr., January, 1959. Next is Maurice W. Castle, Jr., May, 1958. Next is Maurice Castle, Jr., January, 1958. Next is Maurice Castle, Jr., January, 1957. Next is Maurice Castle, Jr., May, 1956. Next is Maurice Castle, Jr., January, 1956. We also offer into evidence all the contents of these envelopes.

Mr. Embry: We have our objections and exceptions to these, Your Honor.

[fol. 144] The Court: Yes.

Mr. Nachman: As I understand it, Mr. Embry, there is no question but that these envelopes which have been just introduced are records of The New York Times which were produced in response to this Court's order. Is that right?

Mr. Embry: There is no question about that.

(Forty-five Envelopes, offered and received in evidence and identified as Plaintiff's Exhibits 8 through and including Plaintiff's Exhibit No. 52, respectively.)

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you three sheets of paper, the top sheet of which is dated February 29, 1960. I will ask you to identify those if you can.

A. Yes, sir. The top one is a telegram signed with my name saying, "Please send Tuesday, day press, collect, one hundred fifty words direct quotation from your latest editorial on civil rights debate in Senate with specific reference to Lyndon Johnson's role and possible effects on his Presidential hopes. Thanks. Faber, New York Times."

Q. Does it show to whom it is directed?

A. Not on that sheet. On the second sheet it shows to whom it was directed. It was directed to the Managing Editor of about twenty newspapers. Do you want me to read them?

Q. Not unless opposing counsel wants it—

Mr. Embry: I would like to have him identify the entire document.

The Witness: It says on this second sheet, "February 29, 1960 at 5:00 P.M. Managing Editor of: Baltimore Sun, [fol. 145] Louisville Courier Journal, New Orleans Times-Picayune, Richmond Times Dispatch, Charlotte Observer, Raleigh News and Observer, Charleston News and Courier, Jacksonville Times Union, Tampa Tribune, Birmingham News, Nashville Tennessean, Memphis Commercial Appeal, Chattanooga Times, Jackson Daily News, Arkansas Gazette, Atlanta Constitution, and Atlanta Journal." There is a third sheet here which says, "Austin Statesman, Austin, Texas; Dallas Morning News, Dallas, Texas; Ft. Worth Star Telegram, Ft. Worth, Texas; and Daily Oklahoman, Oklahoma City, Oklahoma."

Mr. Nachman: We offer this in evidence, if the Court please.

Mr. Embry: We object to that, Your Honor. I can't see the relevancy of that.

The Court: What is the purpose of that, Mr. Nachman?

Mr. Nachman: The purpose of this, Your Honor, is that

this is once again an attempt by the Times to gather news from a source in Alabama here—

The Court: Let me see those papers for a minute.

Mr. Nachman: Here they are, Your Honor. The Birmingham News—

Mr. Embry: What is the date of that?

The Witness: February 29th, 1960.

The Court: Let me read them. I think this would be admissible. I will give you an exception.

Mr. Embry: We except, Your Honor.

Mr. Nachman: Will it be all right to make these one exhibit as they are stapled together?

Mr. Embry: That will be all right.

Mr. Nachman: We offer this in evidence, if the Court please.

(Three sheets of paper, dated February 29, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 53.)

[fol. 146] Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Now, Mr. Faber, I show you another document which is dated March 24, 1960 and ask you to state to the Court what that is.

A. This is a telegram which I sent to Mr. Chadwick which reads, "March 24, 4:30, John R. Chadwick, South Magazine, Birmingham, Alabama. On Friday please send five hundred Governors actions on salaries after he meets with teachers. Thanks. Faber, New York Times."

The Court: After the Governor meets with who?

The Witness: Teachers, Your Honor.

Mr. Nachman: We would like to introduce this as our next exhibit, if the Court please.

Mr. Embry: We object to that on the same grounds, if the Court please.

The Court: Overruled.

Mr. Embry: We except.

(One sheet of paper addressed to John R. Chadwick, South Magazine, Birmingham, Alabama, dated March 24, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 54.)

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Next I show you two documents clipped together with a gem clip, Mr. Faber, and ask you to state to the Court what those documents are.

A. Well, the first is a telegram on a Western Union telegram blank which reads as follows: "Don McKee, Advertiser, Montgomery, Alabama. Like five hundred word week-ender for Watch Tower feature on new attempt [fol. 147] of negroes to enter Alabama University covering AAA how important is effort BBB how does it tie in with wave of demonstrations throughout South CCC what it reflects about new mood of negro stop copy Thursday Please acknowledge. Signed Desmond, New York Times Sunday Review." It is dated 3-23-60. The second sheet is a piece of paper that says, "D P R Collect W U X Montgomery, Alabama, March 23, 4:08 P.M. Desmond. New York Times, New York, Sunday Review. Will do, Re five hundred words University of Alabama Negro Entry Try Thursday Don McKee, The Advertiser, Montgomery 5:34 P.M."

Mr. Nachman: We offer this in evidence if the Court please.

Mr. Embry: We object to it on the same grounds, if the Court please.

The Court: I will let it in and give you an exception.

Mr. Embry: We except, if the Court please.

(Western Union telegram, addressed to Don McKee, Advertiser, Montgomery, Alabama, dated 3-23-60 signed Desmond, New York Times Sunday Review and reply thereto dated March 23, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 55.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I next show you two documents also clipped together with a gem clip, Mr. Faber, and I ask you what those two documents are?

A. The first page is a Western Union telegram blank dated March 2nd, 1960 addressed to Don McKee, The Advertiser, Montgomery, Alabama. "Can you get figures on area of City of Tuskegee both old and new boundaries, also population of old city and new city broken down by negro and white stop. Please wire reply soonest. Desmond, New York Times, Sunday Review." The second sheet says, "N. P. R. Collect, Montgomery, Alabama, March 2nd, 7:40 P.M. Mr. Desmond. New York Times Sunday Review, [fol. 148] New York City. Exact figures on Tuskegee boundary change not immediately available. Can check further Friday if so desire. Gerrymandering took approximately three thousand Negroes out of the City Limits including an estimated four hundred Negro voters. There were previously six hundred Negro voters. No white voters effected. Negroes outnumber whites seven to three in City and six to one in County. Tuskegee Institute and heavily populated residential sections were eliminated from the City leaving only four to ten Negro voters. Have engraving of artist sketch of area before and after, if interested. Signed Wayne Powell, Montgomery Advertiser, 9:18 P. M."

Mr. Nachman: We offer this into evidence, if the Court please.

Mr. Embry: We object to that, if the Court please, on the grounds previously assigned.

The Court: Same ruling, same exception.

Mr. Embry: We except, if the Court please.

(One Western Union telegram, dated March 2, 1960, to Don McKee, Advertiser, Montgomery, Alabama, signed Desmond, New York Times Sunday Review and reply thereto, offered and received in evidence and identified as Plaintiff's Exhibit No. 56.)

Mr. Nachman: Your Honor, could I ask opposing counsel for the Record whether there is any objection based

on the question of whether or not these are documents produced by The New York Times in response to the Motion to Produce?

Mr. Embry: I would have to ask the witness about that.

Mr. Nachman: Well, let me go back then and get that straight.

Mr. Embry: I assume that it is.

Mr. Nachman: Well, I just want to get it straightened out now, if the Court please.

[fol. 149] Mr. Embry: I think these are things that we produced.

Mr. Nachman: Then, there is no question as to Plaintiff's Exhibits No. 53, 54, 55 and 56. There is no question that the documents contained in those exhibits were produced by the Times in response to the Court's order. Is that correct?

Mr. Embry: Over our objection, of course, yes.

Mr. Nachman: Well, I mean, that there is no objection based on that ground.

Mr. Embry: No.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you another set of two documents clipped together dated April 13th, 1960 and ask you to identify these, if you will.

A. These are two sheets of paper and they read as follows: "April 13, 1960 at 4:35 P.M. John Chadwick, South Magazine, Birmingham, Alabama. Send text editorial on Salisbury story soonest. Signed, Potter, New York Times." The second sheet attached to it reads as follows: "D P R Collect. Birmingham, Alabama, April 13, 2:40 P.M. Harold Faber or National News Desk. New York Times, Times Square, New York. You interested in Birmingham News editorial comment on Salisbury Tuesday piece. Signed, John Chadwick, 4:08 P.M."

Mr. Nachman: If the Court please, we offer these two sheets into evidence to be identified as our next exhibit. Now, Mr. Embry, could we have a stipulation that if there is any objection to the effect that these are not part of

the records produced that the question will be raised each time or do you prefer that we ask you the question each time?

Mr. Embry: No. I will raise the question if it is not. I assume that it came from our records.

Mr. Nachman: Well, then, unless the witness indicates to the contrary it will be assumed that the instrument in question came from the records produced.

Mr. Embry: Yes, that will be all right.

[fol. 150] Mr. Nachman: All right. I just wanted to get it straight.

Mr. Embry: We have the same objection and exception.

The Court: Yes.

(Western Union telegram dated April 13, 1960 to John Chadwick, Birmingham, Alabama, signed Potter, New York Times and answer thereto, offered and received in evidence and identified as Plaintiff's Exhibit No. 57.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you another set of two documents and ask you to state what they are.

A. There are two sheets, the first of which says: "John R. Chadwick, South Magazine, Birmingham, Alabama. Please file text of editorial. Signed O'Neall, New York Times. 5:20 P.M., April 15, 1960." The second sheet reads as follows: "D P R Collect. Birmingham, Alabama, April 15, 3:24 P.M. Harold Faber or National News Desk. New York Times, Times Square, New York. Shall I file text of Birmingham News editorial of today commenting on Salisbury story? News critical of 'amazing recital of untruths and semi-truths' and 'shoddy reporting.'" Signed, "John Chadwick. 5:07 P.M. E S T."

Q. Was that date April 15th, 1960?

A. Yes, sir.

Mr. Nachman: If the Court please, we offer this as our next exhibit.

Mr. Embry: If the Court please, we object on the same general grounds previously assigned and on the ground that it does not shed any light on the issues involved.

The Court: Yes. Same ruling, same exception.

Mr. Embry: We except, if the Court please.

[fol. 151] (Western Union Telegram dated April 15, 1960 to John R. Chadwick, Birmingham, Alabama, signed O'Neill, New York Times and answer thereto, offered and received in evidence and identified as Plaintiff's Exhibit No. 58.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I show you now, Mr. Faber, two more documents stapled together and ask you what they are.

A. These are two sheets stapled together and the first one reads as follows: "N D R Collect. Birmingham, Alabama. 8:28 P.M. National News Week. New York Times, New York. J. C. Laney, Center of Brotherhood Locomotive Engineer Dispute unavailable at this point for comment on possible ouster. Will try again Saturday morning and file briefly for Sunday. Signed, John Chadwick. 10:12 P.M." The second sheet reads, "D B R Collect, Birmingham, Alabama. 5:55 P.M. Harold Faber or National News Desk. New York Times, New York. Laney unavailable until about 8:00 P.M. your time. Will file briefly as soon as contacted on Railroad Featherbed Dispute. Signed, John Chadwick. 7:40 P.M. E.S.T."

Mr. Embry: If the Court please, may I show on voir dire by the witness that there is no indication of any date?

The Court: Yes.

The Witness: No, sir. That's right. There is no indication of any date.

Mr. Embry: If the Court please, we object to that.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, those two documents were produced and were in response to the Court's order to produce, were they not?

A. I assume so. Yes, sir.

Q. The Court's order to produce had certain time limitations in it, did it not?

A. Well, I don't think I ever saw the Court order.

Mr. Embry: Well, it was the 1st day of January, 1956 up until and through April, 1960, Your Honor and we cannot tell from that document what date it purports to have been sent or received. We object to it because of that defect and omission and also because of the fact it is not evidence confined to a period which is relevant to the inquiry before the Court.

Mr. Nachman: If the Court please, we submit that the testimony is that these two documents were produced in response to the Court's order and the Court's order, as Mr. Embry has stated, specified a certain period of time during which the production of documents should take place, that is, the documents having been in existence during that period of time and the witness has testified that the documents are here—

The Court: I think it is admissible, Mr. Embry. I will let it in and give you an exception.

Mr. Embry: We except, if the Court please.

(Western Union telegram, undated, to National News Week, New York Times, New York and Western Union telegram to Harold Faber, National News Desk, New York Times, New York, from John Chadwick, offered and received in evidence and identified as Plaintiff's Exhibit No. 59.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I show you now two documents, Mr. Faber, and ask you to state to the Court what they are.

A. The first one is a letter addressed to me, dated January 26, 1959 which says: "Dear Mr. Faber. Would you be interested in a round-up, backgrounder, and so forth, on these two stories, that is, that of loyalty oath fight and expected all-out fight on loan sharks (which are thicker [fol. 153] than flies in this State) by new administration? Signed, Don McKee." The second sheet is a letter from me to Mr. Don McKee dated January 30th, 1959. It says, "Mr. Don McKee, Montgomery Advertiser, Montgomery, Alabama. Dear Mr. McKee: Although we cannot use either of your two suggestions, I hope you will continue to make them. It's just been a tight two-weeks. Signed, Harold Faber, Day National News Editor."

Mr. Nachman: If the Court please, we offer these two letters into evidence.

Mr. Embry: If the Court please, we object to them on the grounds that the time is too remote and they are incompetent, irrelevant and immaterial.

The Court: The same ruling and you have an exception.

Mr. Embry: We except.

(Letter to Mr. Harold Faber, Day National News Editor, New York, New York, dated January 26, 1959 from Don McKee and letter to Don McKee, Montgomery, Alabama, dated January 30, 1959 from Harold Faber, Day National News Editor, New York Times, New York City, New York, offered and received in evidence and identified as Plaintiff's Exhibit No. 60.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Next, Mr. Faber, I show you three documents clipped together with a gem clip. Would you state to the Court what they are? I have no desire that you read the entire three documents unless Mr. Embry wants you to do so.

A. Well, these are three letters and the first one is a letter addressed to me by a man by name of Mr. Edward Swietnicki, and it is dated July 25th, 1957 and it says that he would like to work with us as a stringer. The second letter is from me dated July 28th, 1957 addressed to Mr. Swietnicki saying that we are not going to replace a stringer [fol. 154] at this time.

Q. Will you read the third letter?

A. The third letter is dated September 15th, 1957 and it says, "Mr. Edward Swietnicki, Montgomery Advertiser, Montgomery, Alabama. Dear Mr. Swietnicki: If you are still interested in becoming our stringer in Montgomery here is a copy of our rules for correspondents and a card to be filled out and returned. If you have any questions, please don't hesitate to ask them. With best wishes, Sincerely, Harold Faber, Day National News Editor."

Mr. Nachman: We offer these three letters to be identified as our next exhibit, if the Court please.

Mr. Embry: We object, if the Court please, on the grounds that the documents show on their face that they

are an exchange of correspondence in January of 1957 and that 1957 is too remote and they are incompetent, irrelevant and immaterial and wouldn't shed any light on the inquiry for the Court as to the question of doing business or not by this defendant during the pertinent period at or about April 21st to 26th, 1960.

The Court: I will let them in and give you an exception.

Mr. Embry: We except, Your Honor.

(Three letters being letter to Harold Faber, National News Desk, New York Times, New York, from Edward Swietnicki, Montgomery Advertiser, Montgomery 2, Alabama, dated July 25, 1957 and two replies thereto, dated July 28, 1957 and September 15, 1957 from Harold Faber, Day National News Editor, offered and received in evidence and identified as Plaintiff's Exhibit No. 61.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, referring to the third page of Exhibit No. 61, that is, your letter of September 15th, 1957 to Mr. Edward Swietnicki in Montgomery, Alabama, what is contained on the card or cards which you have referred to in this letter?

A. This is a card which contains blanks for filling out names and addresses, working hours, phone numbers and the date when this transaction took place to be filled out by the men to whom it is sent.

Q. Now, I don't recall that any such cards were produced in response to the Court's order. Do you have any of those cards with you at this time?

A. No, sir. I don't.

Mr. Embry: I don't think the motion called for it but we will be glad to give you one. I think I can find you one if you will give me a minute to look through my papers here. Here is one you can have.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I show you now a blank card with printing on it. Is that the type card you had reference to?

A. Yes, sir. These are the cards we sent out.

Mr. Nachman: If the Court please, we offer this card into evidence to be identified as our next exhibit.

(Blank card containing printing, offered and received in evidence and identified as Plaintiff's Exhibit No. 62.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, am I correct in stating that the last line on this blank card, Plaintiff's Exhibit No. 62, says, "Date of Appointment as New York Times correspondent."

A. Yes, sir. That's right.

Q. These cards are filled out when all stringers in Alabama or elsewhere become connected with the New York Times? Is that correct?

A. Yes, sir.

Q. Is there a card in your files presently for Mr. McKee [fol. 156] like this one?

A. Yes, sir.

Q. Is there a card for Mr. Chadwick like this one?

A. Yes, sir.

Q. And a card for Mr. Castle like this one?

A. Yes, sir.

Q. When I said "this" I mean, Plaintiff's Exhibit No. 62.

A. Yes, sir.

Q. Now, I show you a letter dated January 14th, 1957 and ask you what that is, please, sir.

A. This is a letter addressed to me from Mr. Robert J. Murphy of The Montgomery Advertiser dated January 14th, 1957.

Q. Tell us what it says.

A. It is dated January 14th, 1957 and addressed to Mr. Hal Faber, Day National News Editor, The Times, New York, New York. It says, "Dear Mr. Faber: As per your instructions—"

Q. Well, just tell us what the letter says in substance rather than reading the entire letter, Mr. Faber.

Mr. Embry: Well, that would be his interpretation of it and we would prefer that the whole letter be read. We object to it unless the entire letter is read.

The Court: Read the letter.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. All right, Mr. Faber. Go ahead and read it.

A. It says, "Mr. Hal Faber, Day National News Editor, The Times, New York, New York. Dear Mr. Faber: As per your instructions to Bill McDonald and Phil Benjamin for clarification of my status as correspondent for The Times, here is the information you requested: Bill asked me to take over his duties with The Times on, I believe, December 27th. You are acquainted with his reasons, I'm sure. I filed material on that and subsequent dates and I have worked with both Benjamin and Clarence Dean on the bus situation here. I would like to continue working with you [fol. 157] as your regular Montgomery area correspondent. Bill mentioned that he had sent you a resume of my background. If there is anything further you require, I will be pleased to forward it to you. I look forward to a pleasant working relationship. Sincerely, Robert J. Murphy."

Mr. Nachman: We offer this letter into evidence, if the Court please, to be marked and identified as our next exhibit.

Mr. Embry: If the Court please, we object to that on the grounds that it is too remote to shed any light on the issues before the Court with reference to the question of doing business by this defendant at or about the time of the purported service in April of 1960 and on the further ground that it is a communication which on its face shows it to have been written to The New York Times and to Mr. Faber as their representative by a third person and would therefore constitute in the use of the language and material contained in that document a statement by a third person which by its introduction into evidence would attempt to bind this defendant with reference to the use of the words contained therein referenced to the subject matter of the letter, Your Honor.

The Court: I will let it in and give you an exception.

Mr. Embry: We except, if the Court please.

(Letter, to Mr. Harold Faber, Day National News Editor, New York Times, New York, New York, dated January 14, 1957, from Robert J. Murphy, The Advertiser Company,

Inc., Montgomery 2, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 63.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you a letter dated January 17th, 1957 and ask you to read that to the Court.

A. This is a letter from me to Mr. Murphy, dated January 17th, 1957. It reads as follows: "Mr. Robert J. Murphy, Montgomery Advertiser, Montgomery 2, Alabama. Dear Mr. Murphy: Will you please fill out the enclosed card [fol. 158] and return it. I am also enclosing a set of the rules for our correspondents. With best wishes, Sincerely, Harold Faber, Day National News Editor."

Mr. Nachman: If the Court please, we offer this letter into evidence.

Mr. Embry: We object to that, if the Court please, on the grounds that it is incompetent, irrelevant and immaterial and too remote in point of time.

The Court: Same ruling.

Mr. Embry: We except, if the Court please.

(Letter, to Robert J. Murphy, Montgomery Advertiser, Montgomery, Alabama, from Harold Faber, Day National News Editor, dated January 17th, 1957, offered and received in evidence and identified as Plaintiff's Exhibit No. 64.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, in terms of Mr. Embry's objection to the prior exhibit, Plaintiff's Exhibit No. 64, the use of the phrase "our correspondents" in that letter is your own, is it not?

A. It is my phrase, certainly.

Q. Now, Mr. Faber, I show you another letter dated January 17th, 1957. I will ask you to identify that document.

A. This is a letter to me from Mr. Robert J. Murphy, dated January 17th, 1957, which is, basically, a resume of Mr. Murphy's experience.

Mr. Nachman: Do you want this letter read in its entirety, Mr. Embry?

Mr. Embry: I don't care to have it read. It will be before Your Honor if you admit it into evidence.

Mr. Nachman: We offer this letter into evidence then, if the Court please.

Mr. Embry: We object, if the Court please, on the [fol. 159] grounds that it is incompetent, irrelevant and immaterial and too remote to shed any light on the issue before the Court on the questions involved in this inquiry having been, on its face, shown to be a communication dated January 17th, 1957.

The Court: I will let it in.

Mr. Embry: We except, if the Court please.

(Letter, to Mr. Harold Faber, Day National News Editor, The Times, New York, New York, from Mr. Robert J. Murphy, dated January 17th, 1957, offered and received in evidence and identified as Plaintiff's Exhibit No. 65.)

Mr. Beddow: Now, if these exhibits are submitted into evidence, don't you think that for the convenience of the Court that they ought to be read? I think they ought to be read.

Mr. Nachman: Well, we were trying to save a little time but we certainly have no objection to their being read.

Mr. Embry: Well, what does Your Honor say to that?

The Court: Well, go ahead and introduce them into evidence and the Court can read them.

Mr. Beddow: Well, Your Honor, we want to do it in whatever manner your Honor suggest.

The Court: Well, I am in favor of saving time if we can. Why not just introduce the letter and if the witness says it is his letter, he can identify it and it can go into the Record and the Court will read it when it is ready to rule.

Mr. Nachman: Well, we will continue to read anything that we consider especially noteworthy and I will assume that Mr. Embry will do the same.

The Court: All right. Continue, gentlemen.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, this is another document that I am [fol. 160] presenting to you and I would ask you to identify this for the Court if you will.

A. This is another letter to me from Mr. Murphy dated January 20th, 1957 which says that he is returning our card and that he has read our letter of instructions but has kept no record of requested and filed stories.

Mr. Nachman: If the Court please, we offer this letter dated January 20th, 1957 into evidence and ask that it be identified as our next exhibit.

Mr. Embry: If the Court please, we object to that. The letter was written in January of 1957 and we object on the grounds that it is too remote in point of time and it is completely irrelevant, incompetent and immaterial.

The Court: I will let it in and give you an exception, Mr. Embry.

Mr. Embry: We except, if the Court please.

(Letter, dated January 20th, 1957 to Mr. Harold Faber, Day National News Editor, The Times, New York, New York, from Mr. Robert J. Murphy, The Montgomery Advertiser, Montgomery, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 66.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you another document dated July 15th, 1957 and I will ask you to identify this and ask you to read it, please.

A. This is a duplicate of the letter sent by me to Mr. Murphy and it is dated July 15th, 1957. It says, "Robert J. Murphy, The Advertiser, Montgomery, Alabama. Dear Mr. Murphy: We sent you a check for the Tuskegee assignment before your bill arrived, which may explain the difference between them. The check was designed to take care of your expenses, but I see they were under estimated. An additional check will be authorized; but you may have to [fol. 161] wait a month for it. It will go on our July payroll, which won't go out until about the 10th of August. I am sure it, plus the previous check, will take care of the situation. Sincerely, Harold Faber, Day National News Editor."

Mr. Nachman: If the Court please, we offer this letter dated July 15th, 1957 into evidence to be marked and identified as our next exhibit.

Mr. Embry: If the Court please, we object to it on the same grounds that it is incompetent, irrelevant and immaterial and too remote in point of time being dated July 15th, 1957.

The Court: Same ruling.

Mr. Embry: We except, if the Court please.

(Letter, dated July 15th, 1957 to Robert J. Murphy, The Advertiser, Montgomery, Alabama, from Harold Faber, Day National News Editor, offered and received in evidence and identified as Plaintiff's Exhibit No. 67.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, is there any difference in the way financial transactions were handled between The New York Times and Don McKee were handled and the way the financial transactions in that letter identified as Plaintiff's Exhibit No. 67, dated July 15th, 1957, were handled between The New York Times and Robert J. Murphy?

Mr. Embry: If the Court please, we object to that question on the same grounds previously assigned and that it is incompetent, irrelevant and immaterial and because of the remoteness of time, the letter being dated in July, 1957.

The Court: Same ruling.

Mr. Embry: We except.

The Witness: No, sir.

[fol. 162] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. In other words, the financial transactions with McKee and The New York Times are handled in the same way as the financial transactions between Murphy and The New York Times described in Plaintiff's Exhibit No. 67. Is that correct, sir?

A. Yes, sir.

Q. Am I also correct in stating that the same handling occurs with regard to Mr. Chadwick and Mr. Castle?

A. Yes, sir.

Q. Now, Mr. Faber, I show you another letter dated February 12th, 1956 and ask you to identify that if you will.

A. This is a letter to me from Mr. Murphy but it doesn't seem to have any date on it, addressed to Mr. Harold Faber, Day National News Editor, New York Times, New York. It says, "Dear Mr. Faber: Following is a list of expenses in connection with assignments covering the situation in Tuskegee, Alabama—"

Q. Mr. Faber, may I interrupt you a moment? Unless Mr. Embry insists, we do not insist that you read the entire letter—

Mr. Embry: Let me see it, if you will.

Mr. Nachman: Here it is.

Mr. Embry: Your Honor, we object to this instrument even being read. It bears no date and the subject matter is—

Mr. Nachman: If the Court please, we withdraw that.

Mr. Embry: Furthermore it says that—

The Court: Well, he said that he would withdraw it. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you a letter dated February 12th, 1956 and I will ask you to identify that and read it to the Court, please, sir.

A. This is a letter from me to Mr. Chadwick dated February 12th, 1956 and it reads as follows: "Mr. John R. [fol. 163] Chadwick, Birmingham News, Birmingham, Alabama. Dear Mr. Chadwick: May I thank you for the fine work you have been doing for us on the University of Alabama story. We have received compliments for your sketch of Miss Lucy from many sources; both Wayne Phillips and Pete Khiss have told me that they couldn't have done their stories without your help. You will find our appreciation reflected in your check for the month of February. With best wishes, sincerely, Harold Faber, Day National News Editor."

Mr. Nachman: If the Court please, we offer this letter dated February 12th, 1956 into evidence.

Mr. Embry: If the Court please, we object to that on the grounds that it is incompetent, irrelevant, immaterial and too remote in point of time and doesn't attempt to prove or disprove the grounds of the Motion to Quash.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

(Letter, dated February 12th, 1956, to Mr. John R. Chadwick, Birmingham News, Birmingham, Alabama, from Harold Faber, Day National News Editor, offered and received in evidence and identified as Plaintiff's Exhibit No. 68.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, referring to this letter, Plaintiff's Exhibit No. 68, am I correct in stating that Mr. Wayne Phillips is a regular staff correspondent of The New York Times and was so employed as of the dates referred to in that letter?

A. Yes, sir.

Q. Is the same true of Peter Kihss?

A. Yes, sir.

Q. Now, Mr. Faber, I show you a letter dated April 20th, 1958 and ask you to identify that, please, sir.

A. This is a letter from me to Mr. Chadwick dated April 20th, 1958.

[fol. 164] Q. Would you read the letter, please, sir?

A. The letter reads as follows: "Mr. John E. Chadwick, care of South, Massey Building, Room 505, Birmingham, Alabama. Dear Mr. Chadwick: Can you prepare and send to me, in duplicate, a 600-word advance story on the Alabama Primary, for use in the paper of May 4? If desegregation plays a role in the primary, will you kindly note it in an appropriate place in the story. Also, if Negro voting rights play any part in the primary, will you note that, too? I would like to have the copy in hand here Monday, April 28th. Of course, if developments overtake the air mailed story, we would want you to substitute with another story, telephoned to our recorder, L. A. 4-4554. Sincerely, Harold Faber, Day National News Editor."

Mr. Nachman: We offer this letter dated April 20th, 1958 into evidence to be identified as our next exhibit, if the Court please.

Mr. Embry: We object to that, if the Court please, on the grounds that it is incompetent, irrelevant and immaterial and doesn't tend to prove or disprove the grounds of the motion to quash and it is too remote in point of time.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

(Letter, dated April 20, 1958 to Mr. John E. Chadwick, Birmingham, Alabama, from Harold Faber, Day National News Editor, offered and received in evidence and identified as Plaintiff's Exhibit No. 69.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you next a series of sheets clipped together with gem clips consisting of five sheets and I will ask you to identify this and particularly whether it represents a request by Mr. Chadwick to obtain a story about fire-ants in Alabama and whether the material as [fol. 165] reflected on the last two sheets represents a compliance with that request?

A. The first sheet is a letter from me to Mr. Chadwick dated May 9th, 1958 and it says because of illness my query on fire-ants reached him late and therefore he was sending me a reply from the Alabama Department of Conservation and the second sheet is a letter dated May 8th, 1958 to Mr. John R. Chadwick from the Department of Conservation and the next three sheets are a duplicated handout from the Department of Conservation on fire-ants.

Mr. Nachman: We offer these in evidence, if the Court please.

Mr. Embry: Your Honor, we object to that on the same grounds previously assigned and that they are incompetent, irrelevant and immaterial and that they do not shed any light on the issue before the Court on the question of whether the defendant is doing business or not and they don't tend to prove or disprove any grounds on the Motion to Quash and they are too remote in point of time.

The Court: I will let them in.

Mr. Embry: We except, if the Court please.

(Letter, dated May 9, 1958 to Mr. Harold Faber, Day National News Editor, New York Times, New York, New York, from John R. Chadwick and letter, State of Alabama, Department of Conservation, Montgomery, Alabama, dated May 8, 1958 to Mr. John R. Chadwick, Birmingham, Alabama and three pages on fire-ant controls from the State Department of Conservation, Information and Education Section, Montgomery, Alabama, George M. Kyle, Editor, offered and received in evidence and identified as Plaintiff's Exhibit No. 70.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you two more sheets and I will ask you if they are in relation to the fire-ant story?

[fol. 166] A. These are duplicates of two letters from me to Mr. Chadwick and one is dated May 2nd, 1958 and one is dated May 11th, 1958 asking me to check something, each one, but there is no indication on there as to what they wanted me to check. Obviously, there was an enclosure with these letters.

Q. Well, Mr. Faber, we will withdraw those letters. Now, I show you two letters, one dated January 21st, 1959 and the other dated January 24th, 1959, and I will ask you to identify these letters for us.

A. The first one is a letter to me from Mr. Chadwick on the stationery of the South Magazine asking me to check on a payment that was apparently not made and also saying that he submits this as an expense account for a round-up for the Birmingham area for which he was asked for previously and the second letter is a letter to him—it is a duplicate of a letter to him which says, "Dear Mr. Chadwick: Since we didn't run the financial reviews until mid-January, we are putting all those payments on our January payroll, as you suspected, also, your expenses. Sincerely, Harold Faber, Day National News Editor."

Mr. Nachman: If the Court please, we offer these two letters into evidence.

Mr. Embry: We object on the same grounds previously assigned, if the Court please.

The Court: Same ruling.

Mr. Embry: We except, if the Court please.

(Letter, dated January 21, 1959 to Mr. Harold Faber, Day National News Desk, New York Times, New York, New York, from John R. Chadwick, Birmingham 3, Alabama; and reply thereto dated January 24, 1959, offered and received in evidence and identified as Plaintiff's Exhibit No. 71.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you another letter dated [fol. 167] January 23rd, 1959 and ask you to identify that letter and read it to the Court, please.

A. This is a duplicate of a letter from me to Mr. McKee, dated January 23rd, 1959. It says, "Mr. Don McKee, The Montgomery Advertiser, Montgomery, Alabama. Dear Mr. McKee: Claude Sitton tells me you are ready, willing and able to take over as our Montgomery correspondent. Enclosed is a card to be filled out and returned and a set of rules for our correspondents. Good luck. Sincerely, Harold Faber, Day National News Editor."

Mr. Nachman: If the Court please, we offer this letter dated January 23rd, 1959 into evidence to be marked and identified as our next exhibit.

Mr. Embry: We object to that, if the Court please, on the grounds that it is incompetent, irrelevant and immaterial and too remote in point of time and doesn't shed any light on the issues before the Court.

The Court: Same ruling.

Mr. Embry: We except, if the Court please.

(Letter, dated January 23rd, 1959, to Mr. Don McKee, The Montgomery Advertiser, Montgomery, Alabama, from Harold Faber, Day National News Editor, offered and received in evidence and identified as Plaintiff's Exhibit No. 72.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, referring to Plaintiff's Exhibit No. 72, are the "rules for our correspondents" which you have mentioned in that letter the same as the rules for correspondents previously introduced in evidence as Plaintiff's Exhibit No. 3?

A. Yes, sir.

Q. All right. Now, Mr. Faber, I show you a letter dated January 7th, 1957 and ask you to identify that, if you will.

A. This is a letter—this is the duplicate of a letter dated [fol. 168] January 7th, 1957 from me to Mr. James H. Strickland and it says, "Mr. James H. Strickland, Birmingham Post-Herald, Birmingham, Alabama. Dear Mr. Strickland: I'm sorry, but we already have a correspondent in Birmingham, who has been doing fine work for us and, of course, we have no plans for making a change. Sincerely, Harold Faber, Day National News Editor."

Mr. Nachman: If the Court please, we offer this letter dated January 7th, 1957 into evidence to be marked and identified as our next exhibit.

Mr. Embry: If the Court please, we object to that on the grounds that it is incompetent, irrelevant and immaterial and is too remote in point of time to shed any light on the issues on the inquiry before the Court.

The Court: Same ruling.

Mr. Embry: We except, Your Honor.

(Letter, dated January 7th, 1957, to Mr. James H. Strickland, Birmingham Post-Herald, Birmingham, Alabama, from Mr. Harold Faber, Day National News Editor, offered and received in evidence and identified as Plaintiff's Exhibit No. 73.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, is the word "correspondent" referred to in Plaintiff's Exhibit No. 73 Mr. John Chadwick?

A. Well, I assume that Mr. Chadwick was with us on those dates, yes.

Q. Mr. Faber, I show you another letter dated March 25th, 1957 and ask you to identify that for us.

A. This is a letter from me dated March 25th, 1957 to a Mr. H. D. Cullen and it reads as follows: "Mr. H. D. Cullen, 753—9th Avenue West, Birmingham 4, Alabama. Dear Mr. Cullen: I'm sorry but we already have a correspondent in Birmingham, who furnishes all the stories we need. Very truly yours, Harold Faber, Day National News [fol. 169] Editor."

Mr. Nachman: If the Court please, we offer this letter dated March 25th, 1957 into evidence.

Mr. Embry: We object to that, if the Court please, on the grounds that it is incompetent, irrelevant and immaterial and is too remote in point of time—

The Court: Same ruling.

Mr. Embry. We except.

(Letter, dated March 25, 1957 to Mr. H. D. Cullen, 753—9th Avenue West, Birmingham 4, Alabama, from Mr. Harold Faber, Day National News Editor, offered and received in evidence and identified as Plaintiff's Exhibit No. 74.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you two documents clipped together and ask you to identify those and read them if you will.

A. The first one is a duplicate of a letter, I assume by me, dated February 24th, 1957 and it says, "Dear Mr. Brown: A check for that story will be forthcoming, but it may take two or three weeks to get to you because of bookkeeping problems. Thanks for letting me know about it; we certainly would have authorized the payment sooner if someone hadn't neglected it. Sincerely." The second one is a letter on Montgomery Advertiser Company stationery dated February 21st, 1957 addressed to The National News Desk, The New York Times, New York, New York and it says, "Gentlemen: On December 21st, 1956, at the request of Bill McDonald who was at that time your correspondent here, I filed an 800 word round-up on the first day of Montgomery bus integration. Mr. McDonald advised me at that time that I would be paid directly by you, but to date

I have not received payment. Feeling certain that this is due to oversight rather than any intentional neglect, I call this to your attention. Very truly yours, Hy Brown.”

[fol.170] Mr. Nachman: If the Court please, we offer these two letters into evidence to be identified as our next exhibit.

Mr. Embry: We object, if the Court please, on the grounds that they are incompetent, irrelevant and immaterial and too remote in point of time.

The Court: Same ruling.

Mr. Embry: We except, if the Court please.

(Letter, dated February 24th, 1957, addressed to Mr. Brown and unsigned; and letter, dated February 21st, 1957 to National News Desk, The New York Times, New York, New York, from Hy Brown, offered and received in evidence and identified as Plaintiff's Exhibit No. 75.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I have here photostats of checks which I assumed were produced in response to the Court's order to produce which relates to the payment of stringers in Alabama and, again, we are willing to have them introduced in bulk and later have them marked and identified by the Court Reporter unless opposing counsel objects to that procedure.

Mr. Embry: Your Honor, I think I can save Mr. Nachman some time by eliciting from this witness on voir dire the fact that he had nothing to do with the actual checks. May I proceed, Your Honor?

The Court: Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Mr. Faber, do you have anything to do in the line and scope of your duties as the National News Editor with the issuance of these checks other than to authorize the payment of a certain sum of money to these stringers? [fol.171] A. No, sir.

Q. All right. That's all.

Mr. Nachman: Is there any question about whether these checks were produced in response to the Court's order?

Mr. Embry: Well, if they came out of the big box over there—

Mr. Nachman: They came out of the big box and were contained in a little envelope.

The Court: Well, I will hold that they are admissible subject to all legal objections.

Mr. Nachman: We would like to introduce them then—

Mr. Embry: If the Court please, we object to them in bulk for the same reasons previously stated. If my recollection serves me, on the motion to produce, these checks are for a period of time beginning in January, 1956 through a period in April or May of 1960 and, of course, each particular check bears a different date and they are to different individuals and we say that the introduction of these checks in bulk is incompetent, irrelevant and immaterial and there is no showing that they are pertinent or relevant and no showing that they relate to a period of time relevant to the inquiry before the Court as to the question of whether or not this defendant was doing business in the State of Alabama within a reasonable length of time beginning in April 26th, 1960—

The Court: Well, do we assume that the payees of each one of these checks which you call a stringer or a staff correspondent—do we assume that they are the people testified about by Mr. Faber?

Mr. Nachman: Yes, Your Honor.

The Court: Well, let me let them in subject to all legal objection.

Mr. Embry: We except.

Mr. Nachman: We will stipulate that the defendant can make any objection at any time in regard to any check just as though each check were introduced individually at this time.

[fol. 172] The Court: Well, I will let them in.

Mr. Embry: We except. It will take the Reporter some time to mark these and, Your Honor, inadvertently Your Honor referred to these as payments to staff correspon-

dents or stringers. And I would like to point out to Your Honor that there are none of these checks that represent a payment to staff correspondents—

The Court: Do they represent payments to the so-called stringers or somebody like that?

Mr. Nachman: They all relate to payment to stringers.

Mr. Embry: That's right.

The Court: Well, I think they are admissible.

Mr. Embry: We except, if the Court please, and we wish to object on the further grounds that they have not been identified, Your Honor.

The Court: All right. Proceed.

(Cover letter from Beddow, Embry and Beddow, 204-211 Massey Building, Birmingham 3, Alabama to John R. Mathews, Court House, Montgomery, Alabama, dated July 13, 1960; and photostats of checks Nos. 059948, 006633, 075166, 025638, 107332, 088921, 059950, 094743, 049538, 114007, 013553, 006634, 052407, 082352, 075170, 031162, 097062, 073852, 066495, 097149, 089869, 019396, 040672, 075249, 082428, 031243, 052487, and 039356, offered and received in evidence and identified as Plaintiff's Exhibit No. 76.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I show you a document photostat of a page of The New York Times dated March 11th, 1956 and I ask you what that is?

Mr. Embry: We object to any reference to that article because it is too remote in time and—

The Court: What is the date of the publication? Does [fol. 173] that show there?

The Witness: Yes, sir. It is dated March 11th, 1956.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Would you state to the Court what that is or what this looks like?

A. This looks like a photostat of an advertisement in The New York Times by the New York Times.

Q. The New York Times ran that ad itself in The New York Times. Is that correct?

A. Yes, sir. It is about an upcoming story on desegregation and it has some typed matter and material and some pictures of ten different reporters for The New York Times.

Q. What is the subject matter of the ad? Would you read that, please?

Mr. Embry: If the Court please, we object to that. There is no showing that it is relevant in any respect either in point of time or subject matter and Your Honor can see that by reading it yourself.

The Court: What is the particular relevancy of that, Mr. Nachman?

Mr. Nachman: The ad, Your Honor, relates to the News gathering activities of ten top reporters of The New York Times in the South and there are pictures of these reporters and statements as to what the news gathering activities will be and we think that it shows that not only does The New York Times send its staff reporters into Alabama but it advertises the fact that it does do that and makes capital out of it and presumably hopes that its readers will buy The New York Times in order to find out what its staff reporters have to say about Alabama, among other things.

Mr. Embry: I might point out, Your Honor, that there is no reference at all to Alabama in that article.

Mr. Nachman: I will tie that up too, Your Honor.

The Court: Let me read the article. I think it will be admissible and I will give you an exception to each paragraph or sentence or—

[fol. 174] Mr. Embry: We except, if the Court please.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, would the State of Alabama be included in "17 southern states" as the phrase is used in this ad?

Mr. Embry: We object to that, if the Court please. The document speaks for itself for whatever probative value it may have.

The Court: Well, if he knows. Of course, if he doesn't know, he cannot answer.

The Witness: Well, Alabama I would assume is included in seventeen southern and southwestern states.

The Court: How many Southern States is that? Seventeen?

The Witness: Southern and Southwestern, Your Honor.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. As a matter of fact, George Barrett came into Alabama and wrote stories about Alabama, did he not?

Mr. Embry: We object to that, if the Court please. No predicate has been laid with reference to when Mr. Barrett came into Alabama.

The Court: Does Mr. Barrett's picture appear there?

Mr. Nachman: Yes, sir.

The Witness: That's right.

The Court: I will let it in and give you an exception.

Mr. Embry: We except, if the Court please.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Did he?

A. Mr. Barrett has been in Alabama on stories. Yes, sir.

Q. Has Mr. Clarence Dean also been in Alabama and written stories whose picture appears also in this ad?

A. Yes, sir.

Mr. Embry: We object to that, if the Court please, and [fol. 175] move to exclude the answer—

The Court: Overruled.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Has Peter Kihss, whose picture appears in this ad, also—

A. Yes, sir.

Mr. Embry: We object to the question and move to exclude the answer—

The Court: Overruled.
Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Has Mr. John N. Popham, whose picture appears in this ad also—

A. Yes, sir.

Mr. Embry: We object to that, if the Court please. We object to the reference to Mr. Popham as there has been no specific time mentioned—

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Did you answer the question?

A. I said, yes. Yes, sir.

Q. Has Mr. Russell Porter, whose picture appears in this ad—

Mr. Embry: We object to that. There is no specification as to when or where and—

The Court: Overruled.

Mr. Embry: We except.

The Witness: Yes, sir.

Mr. Nachman: We offer this in evidence to be marked and identified as our next exhibit.

Mr. Embry: We renew our objection, if the Court please.

The Court: Overruled.

[fol. 176] Mr. Embry: We except.

(Advertisement, The New York Times, Sunday, March 11, 1956, regarding “What the South is doing about desegregation” and ten photographs of New York Times reporters, offered and received in evidence and identified as Plaintiff’s Exhibit No. 77.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, have you now during the course of your cross examination and direct examination detailed all of

the services performed by Alabama stringers for The New York Times?

Mr. Embry: If the Court please, we object to that question. It presupposes and assumes that there are services performed. That is a question for the Court, if the Court please.

The Court: I think that is admissible—

Mr. Embry: It invades the province of the Court and doesn't call for what was done or what was not done—

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

The Witness: May I have that question repeated, please?

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Have you, during the course of your direct and cross examination up to this time detailed all of the services performed by the Alabama stringers or are there other services that you have not detailed, that is, services that relate to The New York Times?

Mr. Embry: Same objection, Your Honor.

The Court: Same ruling.

Mr. Embry: We except.

The Witness: I think I explained them all.

[fol. 177] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Was any request made to Don McKee after a demand for retraction was made to The New York Times in this law suit to investigate in any of the matters contained in any letter of retraction which you may have received and by you, I mean The New York Times, from the plaintiff in this case?

Mr. Embry: We object to that, Your Honor. It is a privileged communication and concerns an investigation made for the purpose of defending against this litigation that we are presently engaged in—

The Court: I will let it in.

Mr. Embry: It is also incompetent, irrelevant and immaterial. We except, Your Honor.

Mr. Nachman: You may answer.

The Court: We have an Alabama statute but I don't believe it covers this situation—

The Witness: Of my own knowledge, I have none.

Mr. Nachman: You do not know.

The Witness: Of my own knowledge.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do you know whether or not Don McKee sent in to The Times a telegram purporting to be the result of such an investigation?

A. I was told he did so. I didn't see it.

Mr. Beddow: We move to strike that answer, if the Court please.

The Court: Same ruling.

Mr. Beddow: What was that, Your Honor?

The Court: Same ruling.

Mr. Beddow: We except, if the Court please.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Was he paid for doing so?

[fol. 178] Mr. Embry: We object to that question, Your Honor.

The Court: I will let it in.

Mr. Embry: It is a privileged communication and it occurred after the demand for retraction which was made pursuant to the Alabama statute as a predicate to filing a libel suit and represents the defendant's investigation for the purpose of the preparation of his defense to the action—

The Court: Overruled.

Mr. Embry: We except.

Mr. Nachman: Now, let me ask you—

Mr. Embry: We offer to prove, Your Honor, that that was a request—that investigation was made at the request of general counsel for The New York Times Company, an attorney representing the company at the time he made the request and is a product of the attorney's investigation and report constituting a part of his file with reference to