

the defense of this action with which we are presently concerned.

Mr. Baker: If the Court please, one of the issues in this case is the sufficiency of the service on Don McKee and the Supreme Court of the United States held in the International Shoe case that one of the tests of sufficiency is whether or not it would be reasonable to expect this particular agent to communicate the fact that the summons was served on him. Now, we propose to show that the very agent who was served with a summons and complaint was the same agent that this defendant called on to investigate the truth of the matters involved in this summons and complaint and all of this happened before suit was filed. It is clearly relevant on the question of doing business and on the authority and scope of the activities of Don McKee, the person who was served with process and who this witness just testified—he has outlined all of his activities. Now, we propose to show an activity that has occurred and we think it is clearly relevant both on the sufficiency of service and on the question of the authority of McKee and the scope of his duties with The New York Times.

[fol. 179] The Court: You have the close, Mr. Embry.

Mr. Embry: I have made my statement, Your Honor.

The Court: Well, I believe it has evidential value and I will let it in subject to all objections.

Mr. Embry: We except, Your Honor.

Mr. Nachman: Your answer was then that you assumed he was paid?

The Witness: I didn't answer it.

Mr. Nachman: Excuse me. I thought you answered the question.

The Witness: The question was, I assume, was he paid?

Mr. Nachman: Yes.

The Witness: And the answer is—

Mr. Nachman: Well, we will let the Court Reporter read the question. Read the question, Mr. Reporter.

The Reporter: Question: "Was he paid for doing so?"

The Witness: I assume he was. I didn't authorize the payment.

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

Q. Mr. Faber, do you know a Mr. Robert Garst?

A. Yes, sir.

Q. What is his position, if any, with The New York Times, the defendant in this case?

A. He is an Assistant Managing Editor of The New York Times.

Mr. Nachman: Your Honor, at this time we would like to introduce into evidence a telegram which was brought here this morning by Mr. Martin pursuant to a subpoena duces tecum and with the Court's permission I would like to read it to the Court.

Mr. Embry: We object to the introduction of that telegram, Your Honor.

The Court: Who does the telegram purport to be from?

Mr. Nachman: The telegram, Your Honor, purports to be to Mr. Robert Garst, who this witness has identified as [fol.180] being the Assistant Managing Editor of The New York Times.

The Court: Who is the telegram supposed to be from?

Mr. Nachman: The telegram purports to be from Mr. Don McKee of Montgomery, Alabama.

Mr. Loeb: Your Honor, may I be heard?

The Court: I will be glad to hear from you, Mr. Loeb.

Mr. Loeb: If Your Honor please, on this subject, I would like to be heard because this telegram results from my own actions. I am general counsel for the New York Times in New York. When the letter was received demanding a retraction and apology by reason of an ad which we published and which we did not originate, naturally I wanted as a lawyer for the client to request an investigation to find out the correctness of the facts surrounding the circumstances depicted in that ad and to check their veracity. I asked the Assistant Managing Editor of The New York Times if he could wire somebody in Montgomery and get some information for me so that I could reach a decision on the basis of which I could advise my client, the defendant in this case. This telegram was a result of that inquiry and was intended for me and upon its receipt was

delivered to me as counsel. Now, Your Honor, I submit that if counsel has any privilege whatsoever that he has a privilege to direct an investigation and not have the result of that investigation introduced into evidence in a collateral motion as to whether or not The New York Times is doing business in Alabama.

Mr. Embry: May I ask your Honor to swear Mr. Loeb and let me get his statement in the Record under oath officially—

The Court: Well, we usually do not swear lawyers in Alabama as they are under oath—

Mr. Nachman: Your Honor, there is not a word on this telegram that mentions any counsel at all.

The Court: Let me look at the telegram a minute and if I see anything I ought not to see, I will strike it out.

Mr. Nachman: Here is the telegram, Your Honor.

The Court: All right. Now, what do you say in answer [fol. 181] to Mr. Loeb's argument?

Mr. Nachman: Your Honor, I repeat in summary just what Mr. Baker has said before. It is relevant on two issues. First of all, the status of Mr. McKee with The New York Times—

The Court: As to whether he was an agent or not?

Mr. Nachman: Yes, sir. Mr. Baker said that the Supreme Court in the International Shoe case said that one of the questions in the matter of due process which they raised in this case and, of course, the Warren Paint Company case equates our substitute service statute with the scope of due process and says one of the issues here on due process is whether the agent on whom service was had is sufficiently close, so to speak, to his principal, the foreign corporation, that it is reasonable to assume that he will communicate that fact to his principal so that that principal will have a reasonable opportunity and reasonable notice and an opportunity to defend the law suit. Now, we have also the fact that The Times is attempting to underplay the role of these stringers and to say that these residents in Alabama are not agents of this company and that they are not connected with this company but when they were sent a demand for retraction, the man they called on to

investigate the facts was this very stringer, Don McKee, in Montgomery, and this is evidence of the fact that he sent this communication in and we intend to introduce as our next exhibit from Mrs. Lord Day and Lord to the plaintiff in this case referring to an investigation. It is obvious from Mr. Loeb's statement that the investigation referred to in the next exhibit, which we will be happy to show Your Honor at this time, is the investigation consisting of that telegram to Don McKee or the telegram which Don McKee sent in. We think it is relevant on the matter of agency. There is no privilege involved at all. This is a communication from Don McKee to The New York Times and what The New York Times did with it after they got it and whether they conferred with counsel about it or whether they didn't, we are not advised and we are not asking about the details of this conference between The New York Times and Mr. Loeb. We subpoenaed this document which we have a right to do and [fol. 182] there it is. As we had a right to do under Alabama law and it shows a very substantial relationship between Don McKee and The New York Times and we think it is entirely relevant on that point and it can be no privileged communication between an agent and its principal and that's what we think we have here.

Mr. Embry: If it please the Court, we think very definitely that it is privileged and not only that, even if you concede, which we don't, that it could have any relevancy on the question of McKee as an agent, then the only thing about it that would be relevant would be the fact whether or not he did that and not what the contents of it was or what the subject matter of the communication was, but if it had any relevancy at all, it could be only whether or not he did do that thing or not, and not what is contained in the telegram, which is clearly a privileged communication.

The Court: You are saying that the contents might not be admissible—

Mr. Nachman: The contents show the scope of the activity of the agent in response to a request made by the principal, The New York Times, to investigate. It shows

all of the things he did in pursuing that activity for his principal and we haven't yet heard about what privilege we are being referred to. Is it the attorney-client privilege we are talking about or just what?

Mr. Embry: The communication between an attorney and his client or the product of that client's investigation—

The Court: It is a question between the common law rule and our statute. We have two different statutes on this question.

Mr. Embry: Another rule of law with respect to the product of an individual's own efforts in his file for the purpose, that is, created for the purpose of defending or prosecuting litigation which no Alabama Court has ever held to be admissible or available to the other side no matter where it may be found.

Mr. Loeb: If the Court please, I would like to say one more thing—

The Court: Go right ahead, Mr. Loeb.

[fol. 183] Mr. Loeb: I suppose counsel would have been perfectly justified in making an independent investigation and hiring a detective to come down here. It was five days that we had to do this and I don't suppose if a detective had been hired to come down here to make this investigation that that would have made him an employee of the New York Times or make The New York Times doing business in the State of Alabama. Now, the fact that we conceded that Mr. McKee was a string correspondent of The New York Times in the State of Alabama and when we wanted some information I naturally asked the Managing Editor of The New York Times to inform me—I had no knowledge about the correctness or incorrectness of any statements which were contained in that ad which The New York Times hadn't prepared and they naturally communicated with their string correspondent down here and asked for a report. That is perfectly evident. Our objection is that the contents of the report which were made pursuant to my request as counsel which was immediately upon receipt transmitted to me and communicated to me as counsel and I say that it is privileged and even though they may have some relevancy for the purpose, they are still privileged

and it should not be admitted in this kind of a collateral motion. I can understand an argument about it if we should ever get to a trial on the merits in the case but on this motion as to whether or not The Times is doing business, I really respectfully submit that it is carrying things to an extreme to say that an answer to a request for an inquiry as to the correctness of facts with regard to which we have been asked to give a correction and an apology is evidence that the man on whom we called for that investigation—it makes The New York Times subject to the jurisdiction of the State of Alabama because it is doing business in Alabama in asking him for a report.

Mr. Baker: Your Honor, they have brought up several things that we haven't had a chance to argue about. The kind of privilege that they are talking about comes into the picture when we try to get it out of their file. Now, we didn't get this telegram out of their file. We got this telegram from the Western Union by subpoena duces [fol. 184] tecum, the agency of transmission elected by their agent, Mr. McKee. They say they could have hired a detective. We say they didn't need to hire a detective. They had a trusted and loyal employee an agent which they could call on to do this job and whom they called on to do this job and they now disavow him and they say he is an independent contractor and he has got no connection with The New York Times and he doesn't do anything except furnish a little story when we call upon him, but they think enough of him to have him investigate a libel suit of this magnitude. They don't need a detective, they don't need an investigator, they don't need a lawyer. They had their own agent and they called on their own agent and what their own agent did and what he did at their request and what he transmitted and when we obtained it from other non-privileged sources is not privileged under any stretch of the imagination.

Mr. Embry: Your Honor, that wouldn't be any more valid than to contend, and I certainly don't think they would contend, that by the employment of our firm to represent The New York Times Company here that they make us as attorneys or characterize us as agents of The

New York Times for the purpose of indicating whether they are doing business when we are acting for them in this litigation. I just cannot see the validity of the argument, Your Honor. Privilege, as we pointed out, and I will not belabor Your Honor on that score, but if Your Honor were to decide that privilege didn't extend to excluding evidence of the fact that something was done, I still say to Your Honor even if you take that view, that the contents of the communication which was the direct consequence of an action initiated by their own general counsel is both privileged and could not be relevant to the inquiry before the Court.

The Court: I think argument on the question has been very ably presented to the Court. It is the Court's opinion that it is not privileged and you may have an exception to the Court's ruling.

Mr. Embry: We except, Your Honor.

Mr. Nachman: May I read the telegram, Your Honor?

The Court: Go ahead.

[fol. 185] Mr. Nachman: It reads as follows, Your Honor. "To Mr. Robert Garst, Assistant Managing Editor, The New York Times, Times Square, New York 36, New York. Re Info Request: Alabama State College sources are Dr. H. Council Trenholm, President, and Dr. Levi Watkins, Director of the Business Office which issues meal tickets, controls food and dormitory accommodations." Dr. Trenholm: "Absolutely no truth that the dining hall was 'padlocked' to 'starve students into submission.' I don't understand through what source, malicious or otherwise, that statement came." Trenholm further refutes reference to "entire student body refusing to re-register." Factually incorrect. Dr. Watkins (Personal interview and he has records to back up this): Gave background to situation: Quarter ended on Friday, March 4. Pre-registration was March 2-5. Standard procedure for students to register officially with business office by March 10. Under standard rules students required to have meal tickets (actually privilege card for both meals and dorms), which are valid by quarter. Temporary cards issued up through March 9; no further cards issued except on basis of actual registration. "Meal courtesies were extended to all (repeat all) students

through Sunday, March 6." "Two days after winter quarter ended." "The business office remained open all day Saturday and Sunday (March 5 and 6) to enable students to either register or make arrangements for privilege card." "As to entire student body" refusing to re-register as protest, college records show 1,182 of the approximately 1,900 students had pre-registered prior to the quarter's end March 4. On Monday (March 7), first day of the supposed protest, 214 students followed through on registration; on Tuesday, 194 more did so and by Wednesday a total of 803 had taken steps toward permanent registration. Dr. Watkins said emphatically the dining hall was never "padlocked"—except for being locked up at night as usual. No students who wanted meals were refused; those who had no privilege cards could have bought meals. "A number of students, who during the week simply stayed on and took no steps to register—those people didn't eat as far as the dining hall was concerned." (If students don't register, they aren't considered students.) "It is conceivable that [fol. 186] some students who for their own reasons did not choose to re-register or to request temporary campus living accommodations prior to their decision to register, were without college meal service," said Watkins. "The college presumed to serve those students who had actually registered for the quarter or who requested living accommodations, including meal service, which were available with or without the actual payment of fees and tuition prior to the deadline," he continued. There were about seventy-five students who never re-registered but who were given both meal and room privileges, Watkins said. Any number of student witnesses can be produced to prove the falsity of the "padlocked" statement, he said. As to expulsion of students, this was on grounds of their insubordination in refusing to stop demonstrations on orders of Trenholm and other officials—this is the official stand of the college. As to truckloads of police, etc., City police entered the campus only after a mob of students had threatened the building—and—grounds custodian (Negro) who tried to prevent an on-campus demonstration on orders of the President. A college police officer fired his pistol into the air in an effort to quiet the mob before a passing city



patrol car intervened. The police were actually seeing that orders of the officials were carried out. As to King's police record here: Montgomery Police files show two arrests. On January 26, 1956, he was arrested for speeding, released on bond, convicted and fined \$10 which he appealed and later paid, and on September 3, 1958, he was arrested for loitering, released on his own bond, fined \$14 which was paid by the Police Commissioner. In neither case was he jailed. King has been twice arrested by Montgomery County Sheriff's officers, on February 22nd, 1956, for violation of State boycott law, and on February 29, 1960, on charge of Income Tax Return Falsification. Total of four arrests. As to demonstrations, on Sunday, March 6, several hundred Negroes, including some students, attempted march to capitol in direct violation of Police warning against it; police proceeding on basis of preserving order, that is, averting race-riot, well within legal rights. Contrary to statements, the City, County, State police averted riot and saved lives no doubt of Negroes who at one point appealed [fol. 187] to State Public Safety Director for instructions and advice on how to leave the scene. Not one Negro was arrested during near-riot or attempted demonstration. Don McKee, Montgomery, Alabama." We offer this in evidence, if the Court please.

Mr. Embry: We renew our objections and point out to Your Honor that the contents of that communication just recited to Your Honor and into the Record demonstrates that it shed no light on the activities of McKee or on the question of whether or not he is an agent for this defendant but constitutes, in fact, an appeal to Your Honor's emotions and that is what it is designed to do—

The Court: I overrule the objections.

Mr. Embry: We move that it be excluded, if the Court please.

The Court: Overruled.

Mr. Embry: We except to the Court's ruling.

(Four page telegram, dated April 14, 1960, to Mr. Robert Garst, Assistant Managing Editor, The New York Times, Times Square, New York 36, New York, from Don McKee, Montgomery, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 78.)

(Court recessed at 1:30 P. M. and reconvened at 3:15 P. M.)

Mr. Embry: If the Court please, we want the Record to show that during the morning session, Mr. Clark of the firm of Lange, Simpson, Robinson and Sommerville, prominent attorneys of Birmingham, who represent the three City Commissioners of the City of Birmingham in a libel action against this same defendant in the United States District Court was exchanging information or conferring with the attorneys for this plaintiff in this cause and whether [fol. 188] or not he is in this case, I don't know, but I would like the Record to indicate his presence and that of the Assistant Attorney General, Mr. John Tyson.

The Court: All right. The Record so indicates.

Mr. Baker: Your Honor, since when does the Record have to show the spectators in the Court Room?

The Court: Well, they are sort of honorary spectators being members of this Bar and if he wants it in the Record—

Mr. Baker: Well, it is just a new one on me, Your Honor.

Mr. Beddow: It is not a new one on you to let the Record show the truth and facts about the circumstances that might be important later, is it, Mr. Baker?

Mr. Baker: I have never known any Record to show the spectators present in the Court Room.

Mr. Beddow: Well, we are not talking about spectators and you know—

The Court: Well, in order to hold it down, we are going to let it be in the Record if they want it.

Mr. Embry: The passing of the answers to the interrogatories in the United States District Court from Mr. Clark to Mr. Nachman when Mr. Nachman was examining the witness, Mr. Faber—

The Court: Well, why not let the Court adhere to its ruling that it may appear in the Record. Go ahead.

Mr. Nachman: May I go on now or do you have more you want to put into the Record.

Mr. Embry: Go ahead.

## Cross examination. (Continued)

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

Q. Mr. Faber, sometimes a news story in the New York Times is headed with a slug, "Special to The New York Times." You are familiar with that kind of slug, are you not?

A. Yes, sir.

[fol. 189] Q. Would you explain to the Court what that phrase is designed to connote?

A. Well, it means that it is not one of the wire stories from the AP or the UP and it may either be—it shows that the story originated somewhere else rather than New York.

Q. Well, assuming, as I say, if it has a Montgomery, Alabama date line it would have originated there?

A. It would have indicated that the information in the story originated from wherever the dateline was but we would not use a Special unless there was a dateline on it.

Q. Now, what does it mean positively?

A. The term Special means that it was something other than a wire services. In other words, it was special information to The Times from someone else besides the wire services.

Q. Would it be used to accompany a story that was sent in by a string correspondent?

A. Yes, it would.

Q. Would it be used in any other circumstance positively?

A. No.

Q. Would it be used to accompany a story by a staff correspondent of The New York Times?

A. It might, yes.

Q. Does The New York Times, in the course of its business, sell to other newspapers any of its special stories?

A. The Times has a news service which sells to other newspapers.

Q. Does it just sell special stories or does it also sell wire service stories?

A. No, it does not sell wire service stories.

Q. So, the stories that are sold by The New York Times are in connection with its wire service?

A. Yes, sir.

Q. Are the stories that are sent in by the staff correspondents—these are the stories sent in by the staff correspondents and stringers. Is that correct?

[fol. 190] A. And its local reporters too.

Q. And the local reporters.

A. Yes, sir.

Q. And I assume it charges such newspapers who buy such stories.

A. I assume so.

Q. Is that correct?

A. Well, I am not directly connected with the news service. It is a separate operation.

Q. Well, do you know as a result of your work with The Times over a period of years whether it gives those stories away or sells them?

A. I assume it sells them.

Q. Now, Mr. Faber, you mentioned collect calls from the stringers to The New York Times in your direct testimony. Now, suppose a stringer calls in a story to The New York Times or wires it in, and in either event, sends it in collect, and suppose also that The New York Times does not accept that story for publication, does The New York Times honor the collect charge?

Mr. Embry: We object to that, if the Court please. It is not confined to any particular time and it is not relevant to the issues before the Court—

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.

Mr. Embry: We except. I further object on the grounds that it is not confined to the stringers in Alabama.

Mr. Nachman: Well, I will limit it to those.

The Court: Go ahead.

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

Q. As so limited, would you answer the question, Mr. Faber?

A. We would pay the collect costs.

Q. Even though a story from Mr. Chadwick or Mr. McKee or Mr. Castle was not accepted for publication. You would still pay the collect charge.

[fol. 191] A. Yes, sir.

Q. Am I correct, Mr. Faber, in stating that The Times has a system whereby stories can be telephoned in and recorded on a recording machine in New York by staff correspondents or stringers in Alabama?

Mr. Embry: We object to that, Your Honor. It is not predicated on the facts in evidence and doesn't call for an answer relating to any activities within the State of Alabama within a period that might be pertinent to this inquiry before Your Honor today.

Mr. Nachman: Your Honor, I am simply asking if they have a recording machine.

Mr. Embry: And no time has been set—

The Court: Well, you will have to get it within a reasonable length of time.

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

Q. Do you presently and have you had for the last four years a recording machine in New York which is used to record, among other things, stories that are sent in by staff correspondents and stringers who are located outside of New York?

Mr. Embry: We object to that because it is not confined to what may have been done or what may not have been done in the State of Alabama within the period of time pertinent to the inquiry before Your Honor.

The Court: I think you will have to lay a little more predicate if you want to get it in.

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

Q. Do Alabama stringers and do staff correspondents who come into Alabama phone in stories for recordation on any machine in the offices of The New York Times in New York?

Mr. Embry: We object to that because he has not inquired as to whether that actually happened, and if so,

within what period of time and that period of time being [fol. 192] pertinent to the question before Your Honor.

The Court: I will let it in and give you an exception. If it isn't connected up in all of those details, we will throw it out.

Mr. Nachman: You may answer.

The Witness: Yes. They do record stories in New York.

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

Q. As a matter of fact, you give that number to the stringers situated in Alabama and have done so over the past four years as part of their instructions, have you not?

A. Yes, sir.

Q. They call at a certain hour and call on this number so that it can be recorded on a machine. Isn't that correct?

A. Yes, sir.

Q. Or do they always call and utilize the machine at any hour?

A. Whenever a machine is open, it is open for use.

Q. They are given a number with which to call in order to get on the machine, are they not?

A. Yes, sir.

Q. By the term "they", I mean the stringers located in Alabama.

A. Yes.

Q. I believe you have already testified, Mr. Faber, that you are familiar with the fact that over the last four years up to the present time regular staff correspondents of the New York Times have from time to time come into Alabama to gather news stories.

Mr. Embry: We object to a question that calls for an answer relating to a period covering four years as being too remote, Your Honor. It is too remote to the inquiry before the Court.

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. Are you familiar with that?

A. Yes, sir.

[fol. 193] Q. Are you familiar with the expense accounts which they turn in?

A. No, sir.

Q. You don't see the expense accounts?

A. No, sir.

Q. Who is in charge of that department?

A. Well, there are two people. First, somebody in the auditing department and the other is Mr. Garst who approves them.

Q. Are either of those gentlemen here today?

A. No, sir.

Q. Is there a Mr. Nuhut who has anything to do with that?

A. Yes, he is in the auditing department and in charge of expense accounts.

Q. Is he here today?

A. No, sir.

Q. But you are the man in charge of the trips they make into Alabama and you send them in on assignments.

A. Yes, sir.

Mr. Nachman: Your Honor, we have a series of documents here which are expense accounts for certain individuals and these documents were produced in response to the Court's order and we would like to introduce them at this time after having identified the person submitting them which we will do by Mr. Faber as being a staff correspondent.

The Court: All right. Let Mr. Embry look at them.

Mr. Embry: We object to them, Your Honor, unless he shows the relevancy of them.

The Court: Are they dated?

Mr. Nachman: Yes, sir. They are dated and they show the places where they have gone in Alabama and how much the expense was and whether or not they were paid.

Mr. Embry: Your Honor, of course, there is no identification as to what these purport to be and they certainly do not speak for themselves.

The Court: Let me see one of them. I will not look at [fol. 194] but one.

Mr. Embry: You may look at any of them you want to, Your Honor.

The Court: I believe we have had some testimony about Claude Sitton.

Mr. Nachman: Yes, sir.

The Court: He was not a stringer but what you called a staff correspondent?

Mr. Nachman: A staff correspondent, Your Honor, and the testimony was that he is at present the Southern correspondent of The New York Times. Now, Your Honor, Item Seven of the Motion to Produce—

The Court: What does Item No. 7 say?

Mr. Nachman: Item 7 asks for all documents and writings constituting expense accounts or statement of expenses submitted for or in behalf of the following individuals or any other agents, servants or employees of the Times relating to expenses incurred by them in the State of Alabama since January 1st, 1956 and then there appears a list of names.

Mr. Embry: That doesn't make them admissible, Your Honor, the fact that he made a Motion to Produce these documents which we have done—

The Court: I feel that the fact that they were produced—

Mr. Nachman: Your Honor, we have a case on it if they want to make a point out of it.

Mr. MacCleod: Your Honor, we produced a whole truck load of documents and how they can pick out a few and say they are expense accounts when this witness has specifically testified that he cannot tell—

Mr. Nachman: Your Honor, we have an authority in 84 Ala., 493 at Page 495, which says that when documents are produced by a party in response to an order of the Court that they are admissible without further identification on the theory that the party so producing admits by the production that they are correct records of the company. [fol. 195] Mr. Embry: Well, we produced those under protest as Your Honor will recall—

The Court: I understand that you produced them but you protest the admissibility of them—

Mr. Embry: I do, Your Honor, and I even question the propriety of our having been required to produce them but we have already passed that question and—



Mr. Nachman: You went all the way to the Supreme Court on that—

Mr. Embry: And we will go again, young man. Don't worry about that. It is just a question, Your Honor, and if you are going to permit these people to go all the way back to the birth of Christ—

The Court: Well, I am trying to limit it—

Mr. Embry: Permitting them to go into a four year period of time and into all these details when I can submit to Your Honor case after case which will conclusively persuade Your Honor, I am sure, that the time pertinent to the inquiry as to what this corporation may or may not have done in the State of Alabama is right at about the time of the service of process. This four year period is just—

The Court: Well, it looks like in order to show that someone is doing business in the State of Alabama, it covers a wide range. It is sort of like showing undue influence or something like that. It takes a lot of things to try to attempt to prove it. That was the theory the Court was going on there.

Mr. Embry: Let me submit this thought to Your Honor on that question.

The Court: Go ahead.

Mr. Embry: I view that thing as shown in the cases, if I may be permitted to argue it to Your Honor, that the pertinent time is about the time of the service of process and, of course, immediately before and immediately after might shed some light as to whether they were doing business at the time served, but a year prior to the time [fol. 196] served—of course, they may have been doing business. I am not saying in this case whether they were or not but it would not be pertinent as to whether they were doing business at the time of service.

The Court: Now, this particular voucher here says March 27, 1960. That's the date of this voucher before the Court.

Mr. Embry: I am not singling out that particular piece of evidence, Your Honor. I am going on the theory of Your Honor permitting them to go back for this period of

time and I am not saying that if properly identified that an expense account as of March 22nd, 1960 would not be admissible but for 1959, 1958, 1956 and 1957, I don't see how that period of time would have any admissibility. However, Your Honor, that document hasn't been identified to show whether it has any probative value or not other than the fact that we were made to produce it.

Mr. Nachman: Your Honor, Mr. Embry has made the same objections on the occasion when we argued on the Motion to Produce and the same objection was made to the Supreme Court when they sought mandamus to review that order and the same argument has been made over and over again this morning every single time we have introduced an item of evidence. Now, I think that they have made their point and Your Honor has ruled that a relevant period is important to this case to show a continuous course of conduct by this defendant and we think that the time of the Court and everyone's time is being wasted by arguing this same point every single time we introduce a document.

Mr. Embry: Well, I know that Your Honor does not have a closed mind on the law—

The Court: Oh, no. I try to keep it open all the time.

Mr. Embry: That's the reason I reiterate my objection when a particular type of document is offered into evidence.

The Court: Well, let me disagree with you and allow it in and give you an exception. I will let it in.

Mr. Embry: We except.

Mr. Nachman: May I ask Mr. Embry if there is any [fol. 197] question about the fact of whether these documents were submitted by the defendant in response to the Motion to Produce.

Mr. Embry: I don't know. I have never seen them, Your Honor. You will just have to prove them any way you can prove them. I am not going to aid you in doing that.

The Court: Well, you will have to go ahead and try to prove them if you can.

Mr. Nachman: All right, Your Honor. We offer these additional checks, if the Court please.

Mr. Embry: We object on the grounds previously assigned, Your Honor.

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

Mr. Embry: We except.

(New York Times checks No. 161139, 137441, 218187, 001390, 006460, 010670, 002864, 019539, 017650, 016953, 008437

014051, 004378, and 016279, offered and received in evidence and identified as Plaintiff's Exhibit No. 79.)

(New York Times checks Nos. 161139, 137441, 218187, 001390, 006460, 010670, 002864, 019539, 017650, 016953, 008437

014051, 004378, and 016279, offered and received in evidence and identified as Plaintiff's Exhibit No. 80.)

(New York Times checks Nos. 161139, 137441, 218187, 001390, 006460, 010670, 002864, 019539, 017650, 016953, 008437

014051, 004378, and 016279, offered and received in evidence and identified as Plaintiff's Exhibit No. 81.)

(Reverse side of eleven checks, offered and received in evidence and identified as Plaintiff's Exhibit No. 82.)

(Reverse side of eleven checks, offered and received in evidence and identified as Plaintiff's Exhibit No. 83.)

(Reverse side of eleven checks, offered and received in evidence and identified as Plaintiff's Exhibit No. 84.)

[fol. 198] (Reverse side of seventeen checks, offered and received in evidence and identified as Plaintiff's Exhibit No. 85.)

(New York Times checks Nos. 161139, 137441, 145339, 005048, 003636, 210105, 002863, 188104, 194800, 176621, 016344, 021632, 007716, 008475, 006504, 023801 and 210018, offered and received in evidence and identified as Plaintiff's Exhibit No. 86.)

(New York Times Checks Nos. 161139, 137441, 145339, 005048, 003636, 210105, 002863, 188104, 194800, 176621, 016344, 021632, 007716, 008475, 006504, 023801 and 210018,

offered and received in evidence and identified as Plaintiff's Exhibit No. 87.)

(Reverse side of seventeen checks offered and received in evidence and identified as Plaintiff's Exhibit No. 88.)

(New York Times checks Nos. 161139, 137441, 145339, 005048, 003636, 210105, 002863, 188104, 194800, 176621, 016344, 021632, 007716, 008475, 006504, 023801, and 210018, offered and received in evidence and identified as Plaintiff's Exhibit No. 89.)

(Reverse side of seventeen checks, offered and received in evidence and identified as Plaintiff's Exhibit No. 90.)

Cross examination. (Continued)

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

Q. Now, Mr. Faber, I show you a document which has been identified as Plaintiff's Exhibit No. 91 for identification. It purports to be The New York Times expense statement, Southern News, is that a regular expense account of The New York Times?

A. A photostat of it.

Q. Well, a photostat of it.

A. Yes.

Q. Is it for Claude Sitton?

[fol. 199] A. His name is on it.

Q. Is Claude Sitton a regular staff correspondent of The New York Times?

A. Yes, sir.

Q. What period of time does it purport to cover?

A. February 25th through March 7th.

Q. All right, sir. Does it show on there any period of time when he was in Alabama?

Mr. Embry: We object to that, if the Court please. It is a conclusion on the part of the witness. The instrument speaks for itself, Your Honor. Any inference drawn from it—

The Court: Well, he can read it for the information of

the Court or I can read it myself to save time. Does it say anything about Montgomery, Birmingham or Mobile?

The Witness: It says, "February 27th, departed Atlanta, 6:00 P. M. by air, arrived Montgomery, Alabama at 7:30 P. M. CST. The 28th Montgomery, the 29th, Montgomery."

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

Q. Is there an indication of the year on there?

A. I don't see any.

Q. I call your attention to the date of 3-22-60 on the right hand side of this page identified as Plaintiff's Exhibit No. 91 for identification.

A. Yes. It says, "Week ending March 22nd, 1960."

Q. Go ahead.

A. It says, "March 6th, departed Atlanta by air, 8:00 A.M., arrived Montgomery, Alabama, 9:00 A.M. March 7th, departed Montgomery 9:15 P.M. by air, arrived Atlanta, 12:15 A.M."

Q. Does this document contain an itemization of expenses submitted by Mr. Claude Sitton to The New York Times for reimbursement?

Mr. Embry: We object to that, if the Court please. The witness testified he didn't know what was in the document. The document will speak for itself.

[fol. 200] The Court: Well, he can read to the Court if it shows such things or I can read it either one. Read it if you can.

The Witness: Well, Your Honor, there are a lot of figures on it about a lot of things.

Mr. Nachman: It certainly does contain a lot of figures and we are not insisting that you read it but it is perfectly apparent what it is but if counsel wants to object to it, then we have no alternative but to have it read.

The Court: Go ahead.

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

Q. Go ahead, sir.

A. It says, "February 25th, departed Atlanta by air, 8:30 A.M. Arrived Chattanooga, Tennessee, 9:30 A.M."

Telephone \$1.25. Automobile taxi \$3.00. Meals, \$6.67. Tips, \$3.85. February 26th, departed Chattanooga 11:45 P.M. by air. Arrived Atlanta 1:00 A.M. February 27th. Telephone, \$1.35. Automobile Taxi, \$3.25. Hotel, \$18.24. Meals, \$8.25. Tips, \$5.80. Entertaining news sources, \$7.95. February 27th, departed Atlanta 6:00 P.M. by air, arrived Montgomery, Alabama at 7:30 P.M. C.S.T. Telephone 60¢. Automobile taxi, \$3.50. Tips, \$2.50. February 28th, Montgomery. \$2.00 telephone. Auto and taxi, \$5.50. Hotel, \$7.21. Meals, \$8.00. Tips, \$2.70.”

The Court: Wouldn't it be more reasonable and couldn't we save time by just showing trips to Montgomery without putting in taxi cab fare and meals and tips and so forth?

Mr. Nachman: Well, Mr. Embry, as I understood it, wanted everything read and we agreed to a shorthand rendition of—

Mr. Embry: My objection, Your Honor, was to asking the witness to interpret this thing. His interpretation of this instrument—

The Court: Well, let me do it this way. Let the Record show that the Court has read Plaintiff's Exhibit No. 91, Mr. Reporter.

[fol. 201] (The Court examines Plaintiff's Exhibit No. 91.)

Mr. Embry: Now, Your Honor, I call Your Honor's attention to the witness' testimony to the effect that he couldn't identify this instrument and he didn't know himself what it was and, therefore, we object to his being questioned about an instrument that he testified he knew nothing about.

Mr. Nachman: If the Court please, we offer this New York Times expense statement, dated March 22nd, 1960, into evidence to be identified as Plaintiff's Exhibit No. 91.

Mr. Embry: We object to it, Your Honor, on the further grounds that no proper predicate has been laid for the introduction or the identification of the instrument.

Mr. Nachman: I will make the statement for the Record and Mr. Loeb made a statement this morning that I obtained this statement out of a box produced in Court by The New York Times in response to this Court's order to produce.

Mr. Embry: That is not a self-proving instrument, Your Honor.

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

Mr. Embry: We except, Your Honor.

(One New York Times expense statement of Claude Sitton, Southern News, dated March 22, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 91.)

Mr. Nachman: Now, Your Honor, I will make the same statement for the Record about this series of documents which I am now offering in evidence.

Mr. MacLeod: Your Honor, we would like to make the further objection that this is going far beyond the bounds of cross examination—

The Court: I don't mind hearing both of you but we [fol. 202] have a rule here in our Circuit Court that one lawyer speaks at a time and when he is through another lawyer takes over—

Mr. MacLeod: Pardon me, Your Honor.

Mr. Embry: We except.

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

Q. Mr. Faber, you have already testified that Mr. Claude Sitton is a regular staff correspondent of The New York Times.

A. Yes, sir.

Mr. Nachman: Now, Your Honor, I would like to introduce into evidence as also obtained from the documents produced by the defendant another document—

Mr. Beddow: Your Honor, may I make a statement?

The Court: Yes. Go ahead.

Mr. Beddow: We will make an objection now and if you will let us adopt the objection to each one of the instruments being offered—

The Court: Yes. Why not do it that way. You can have an objection to each document—

Mr. Beddow: All right, Your Honor. We object to these on the grounds that it calls for illegal, irrelevant, incompetent and immaterial testimony and that they don't tend

to prove anything embraced in the Complaint in this case nor to deny anything. Further, we object on the grounds that no proper predicate has been laid for the introduction of those instruments and no proper foundation has been laid for the introduction of those instruments and the instruments, if they are introduced in the manner and the way that they are being offered, would be purely unadulterated hearsay. They have not been properly identified nor has the handwriting been identified nor they haven't been shown to have been abstracted from the records of The Times which were made in the due course of the Times' business either by some individual that made them or by someone who knows that they were, otherwise than by the order of the Court. Now, they are trying to get this witness here to testify to certain things and instead of [fol. 203] going in the front door they are trying to go in the back door. We don't think they are admissible. They call for testimony that is nowise connected with the claims of the plaintiff in this case and they in nowise attempt to show that The Times is doing business in this State and we adopt all these grounds of objection to all of the instruments if Your Honor overrules our objections.

The Court: Well, I will overrule your objections and let these objections apply to each one if you wish.

Mr. Beddow: And then, Your Honor, we may have an exception to each ruling that Your Honor has just made as applied to each document—

The Court: Oh, yes.

Mr. Nachman: Your Honor, may I inquire of counsel whether any of the records produced in this Court in response to the order of this Court which are not records of The New York Times or photostats of the records of the New York Times? We, as counsel for the plaintiff, have assumed that the documents that came in in response to the subpoena are such records or photostats of the records. I don't know whether Mr. Beddow means to indicate that some of them are not but I believe that this would be the time to find out.

Mr. Embry: We are not called upon to testify, if it please the Court and the fact that we have been required to produce them does not make them admissible.



The Court: Well, why not do this. The Clerk of the Circuit Court is present in the Court Room. Come around, Mr. Mathews. Now, you are under oath as an officer of the Court and it will not be necessary to swear you in. Now, Mr. Mathews, this big box here in the Court Room—where did that come from? How did you get it?

Mr. Mathews: It came from—Mr. Beddow's firm brought it down. They brought it down here.

The Court: This big box you are indicating here is the same box that was brought into your office. Is that right?

Mr. Mathews: That's right, Your Honor.

Mr. Embry: Your Honor, may I ask Mr. Mathews [fol. 204] whether he knows—

Mr. Nachman: I have already stated that all of these are in here and if you want to—

The Court: Well, let me make this general ruling for what it is worth. I take it that the fact that these things are produced here in Court is at least prima facie evidence that they are part of the records of the defendant in this case.

Mr. Embry: That may be true, Your Honor, but it proves nothing as to the admissibility—

The Court: Well, yes. I understand that you question the admissibility. I understand that. Go ahead.

Mr. Nachman: Well, Your Honor, I would like to show Your Honor a document identified by the Court Reporter as Plaintiff's Exhibit No. 92 for identification, which counsel for the Plaintiff obtained from the box identified by Mr. Mathews, the Circuit Clerk, which we now show Your Honor—

Mr. Embry: Are you testifying, Mr. Nachman? We object to his statement, Your Honor—

Mr. Nachman: I will be glad to testify if you want me to, that I obtained all these documents from the box there.

The Court: This alleged expense statement looks like it is dated February 4th, 1960.

(Court examines Plaintiff's Exhibit No. 92 for identification.)

The Court: I think it is admissible.

Mr. Embry: We object on the same grounds previously stated, Your Honor, and would like the Record to note our exception.

Mr. Nachman: We offer this in evidence.

(One expense statement of The New York Times for Claude Sitton, dated February 4, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 92.)

[fol. 205] Mr. Beddow: We don't want to seem arbitrary, Your Honor, but we don't understand how that tends to prove that The Times was doing business in this State.

The Court: Well, that's going to be a question of law and all of these things put together might or might not build what they are trying to build.

Mr. Beddow: Of course, I understand that when Your Honor rules that testimony is admissible that you are not deciding the case as of now but I just can't—

The Court: No, of course not, but they are trying to build a certain kind of house and this material here might help to build it.

Mr. Beddow: Well, we think it is mighty poor material, Your Honor.

Mr. Nachman: We offer into evidence as our next exhibit, this document identified as Plaintiff's Exhibit No. 93 for identification.

The Court: It looks like this one is dated January 28th, 1960. It is marked Paid, and now, let me read it.

(Court examines Plaintiff's Exhibit No. 93 for identification.)

The Court: I think it is admissible. You may have an exception.

Mr. Embry: We object on the same grounds previously assigned and we note an exception, if the Court please.

(One expense statement, The New York Times, for Claude Sitton, Southern News, dated January 28, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 93.)

[fol. 206] Mr. Nachman: We next offer into evidence a document identified as Plaintiff's Exhibit No. 94 for identification from The New York Times, being an expense statement for Mr. Claude Sitton, which was one of the documents obtained by counsel from the box identified by Mr. John Mathews, the Clerk of the Circuit Court.

The Court: This one looks like it says, Paid for the week ending January 6, 1959.

(Court examines Plaintiff's Exhibit No. 94.)

The Court: I think it is admissible insofar as it relates to Tuskegee, Alabama.

Mr. Embry: We have the same objections previously outlined, Your Honor.

The Court: Yes.

Mr. Embry: And same exception.

(One expense statement, The New York Times, for Claude Sitton, Southern News, dated January 6, 1959, offered and received in evidence and identified as Plaintiff's Exhibit No. 94.)

Mr. Nachman: If the Court please, we next offer this instrument identified as Plaintiff's Exhibit 95 for identification, being a New York Times expense statement for Claude Sitton, dated December 23, 1958. This instrument was also obtained from the box identified by the Circuit Clerk, Mr. Mathews.

(Court examined Plaintiff's Exhibit No. 95.)

The Court: I will let it in insofar as it relates to Montgomery, Tuskegee and Birmingham and you may have an exception.

Mr. Embry: Same objection; same exception.

[fol. 207] (One expense statement, The New York Times, for Claude Sitton, Southern News, dated December 23, 1958, offered and received in evidence and identified as Plaintiff's Exhibit No. 95.)

Mr. Nachman: We next offer into evidence this instrument identified as Plaintiff's Exhibit No. 96 for identification, being a New York Times expense statement for Claude

F. Sitton, dated July, 1958, and obtained from the box previously identified by Mr. John Mathews, the Circuit Clerk.

(Court examined Plaintiff's Exhibit No. 96 for identification.)

The Court: I will let it in insofar as it pertains to Huntsville, Alabama.

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

(One expense statement, The New York Times, for Claude F. Sitton, Southern News, dated July, 1958, offered and received in evidence and identified as Plaintiff's Exhibit No. 96.)

Mr. Nachman: If the Court please, we offer in evidence this instrument identified as Plaintiff's Exhibit No. 97 for identification, being a New York Times expense statement for Claude F. Sitton, Southern News, dated June 12, 1958, obtained by counsel from the box previously identified by Mr. John Matthews, Circuit Clerk.

(Court examines Plaintiff's Exhibit No. 97 for identification.)

[fol. 208] The Court: I will let it in as to Birmingham, Alabama.

(Expense statement, The New York Times, for Claude F. Sitton, Southern News, dated June 12, 1958, offered and received in evidence and identified as Plaintiff's Exhibit No. 97.)

Mr. Nachman: We next offer into evidence Plaintiff's Exhibit No. 98 for identification, being The New York Times expense statement of Claude F. Sitton, dated 1958, which we obtained from the box previously identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 98 for identification.)

The Court: I will let it in as to the Huntsville, Alabama trips.

(Expense statement, The New York Times, for Claude F. Sitton, Southern News, dated 1958, offered and received in evidence and identified as Plaintiff's Exhibit No. 98.)

Cross examination. (Continued)

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

Q. Mr. Faber, are you familiar with John N. Popham? Do you know who he is?

A. Yes, sir.

Q. In 1957 and 1956, what position, if any, did he hold with The New York Times?

Mr. Embry: We object to that question, if the Court please. It calls for a period of time which is incompetent, [fol. 209] irrelevant and immaterial.

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

Mr. Embry: We except.

The Witness: He was the Southern correspondent for The New York Times.

Mr. Nachman: With such identification as to who John N. Popham was, we offer in evidence next Plaintiff's Exhibit No. 99 for identification, being a New York Times expense statement for John N. Popham, dated 1957 and obtained from the box identified by Mr. Mathews, the Circuit Clerk.

(Court examined Plaintiff's Exhibit No. 99, for identification.)

The Court: I will let it in as to September 19th, the dates pertaining to Huntsville.

(Expense statement, The New York Times, for John N. Popham, Southern News, dated 1957, offered and received in evidence and identified as Plaintiff's Exhibit No. 99.)

Mr. Nachman: We offer into evidence as our next exhibit Plaintiff's Exhibit No. 100 for identification, being a New York Times expense account for John N. Popham, dated 1957, which counsel obtained from the box identified by Mr. John Mathews.

Mr. Embry: We object to that on the grounds that it calls for information pertaining to a period of time not relevant to the inquiry before the Court.

(Court examines Plaintiff's Exhibit No. 100 for identification.)

The Court: I will let it in insofar as it pertains to Florence, Alabama.

[fol. 210] Mr. Embry: We except, if the Court please. Your Honor, I assume we still have the same objections as we stated about the Sitton documents.

The Court: Yes.

(Expense statement, The New York Times for John N. Popham, Southern News, dated 1957, offered and received in evidence and identified as Plaintiff's Exhibit No. 100.)

Mr. Nachman: We offer into evidence as Plaintiff's Exhibit No. 101 for identification, the New York Times expense statement for John N. Popham, dated April 11, 1957, which was obtained by counsel from the box identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 101 for identification.)

The Court: Well, I will let it in as to Gadsden and Tuskegee, Alabama. I make the same ruling and you have the same exception.

(Expense statement, The New York Times, for John N. Popham, Southern News, dated April 7, 1957, offered and received in evidence and identified as Plaintiff's Exhibit No. 101.)

Mr. Nachman: We offer into evidence as Plaintiff's Exhibit No. 102 for identification, The New York Times expense statement for John N. Popham, dated March 3rd, 1957, which was obtained by counsel from the box previously identified by Mr. Mathews.

[fol. 211] (Court examines Plaintiff's Exhibit No. 102 for identification.)

The Court: I will let it in as to the trip to Birmingham, Alabama.

Mr. Embry: Same exception.

(Expense statement, The New York Times for John N. Popham, Southern News, dated March 3, 1957, offered and received in evidence and identified as Plaintiff's Exhibit No. 102.)

Mr. Nachman: We offer into evidence as Plaintiff's Exhibit No. 103 for identification the New York Times expense statement for John N. Popham, dated May 16, 1956, which was obtained from the box previously identified by Mr. Mathews.

Mr. Embry: We wish to state an additional ground for objection, Your Honor, with respect to the period of time being too remote to be relevant and it is immaterial on the inquiry before the Court.

(Court examines Plaintiff's Exhibit No. 103 for identification.)

The Court: I will let it in as to Birmingham and Montgomery, Alabama.

Mr. Embry: We except.

(Expense statement, The New York Times for John N. Popham, Southern News, dated May 16, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 103.)

[fol. 212] Cross examination. (Continued)

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

Q. Mr. Faber, do you know Wayne Phillips?

A. Yes, sir.

Q. During the period of February 7th to February 11th, 1956 and February 12th and February 18th, 1956 and February 19th to February 25th, 1956 and February 26th to March 3rd, 1956 and March 4th, through March 10th, 1956 and March 4th, through March 10th, 1956 and March 11th through March 17th, 1956 and March 18th through March 24th, 1956, what, if any, was the relationship between Wayne Phillips and The New York Times Company, the defendant in this case?

A. Wayne Phillips was the reporter for the City staff of The New York Times.

Q. Was he a regular employee of The Times?

A. Yes, sir.

Mr. Nachman: All right, sir. With that identification of Mr. Phillips we offer into evidence as Plaintiff's Exhibit No. 104 for identification the New York Times expense statement for Wayne Phillips, dated February 11th, 1956, which counsel obtained from the box identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 104 for identification.)

Mr. Embry: We object to it on the same grounds previously assigned, Your Honor.

The Court: I will let it in as to Tuskegee, Birmingham and Montgomery. Let me correct that. I will let it in as to Tuscaloosa, Birmingham and Montgomery.

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

(Expense statement, The New York Times for Wayne Phillips, dated February 11th, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 104.)

[fol. 213] Mr. Nachman: If the Court please, we offer into evidence as Plaintiff's Exhibit No. 105 for identification the New York Times expense statement for Wayne Phillips for the week ending February 18th, 1956 obtained by counsel from the box identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 105 for identification.)

The Court: I will let it in as to the only trip on here, the Tuscaloosa trip.

Mr. Embry: We except.

(Expense statement, The New York Times for Wayne Phillips, dated February 18th, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 105.)

Mr. Nachman: We offer into evidence as Plaintiff's Exhibit No. 106 for identification The New York Times expense statement for Wayne Phillips for week ending February 25th, 1956, which was obtained by counsel from the box identified by Mr. Mathews.



(Court examines Plaintiff's Exhibit No. 106 for identification.)

The Court: I think it is admissible as to Tuscaloosa, Birmingham and Montgomery.

Mr. Embry: We except, Your Honor.

[fol. 214] (Expense statement, The New York Times for Wayne Phillips, dated February 25, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 106.)

Mr. Nachman: We offer into evidence as Plaintiff's Exhibit No. 107 for identification, the New York Times expense statement for Wayne Phillips for the week ending March 3rd, 1956, which was obtained by counsel from the box identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 107 for identification.)

The Court: I think it is good as to Montgomery and Birmingham.

Mr. Embry: We except.

(Expense statement, The New York Times for Wayne Phillips, dated March 3, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 107.)

Mr. Nachman: We offer into evidence as Plaintiff's Exhibit No. 108 for identification, The New York Times expense statement for Wayne Phillips for the week ending March 10th, 1956, which was obtained by counsel from the box identified by Mr. Mathews.

(The Court examines Plaintiff's Exhibit No. 108 for identification.)

The Court: I will let it in as to all Alabama towns.

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

[fol. 215] (Expense statement, The New York Times for Wayne Phillips, dated March 10, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 108.)

Mr. Nachman: We offer into evidence Plaintiff's Exhibit No. 109 for identification, being the New York Times

expense statement for Wayne Phillips for the week ending March 17th, 1956, obtained by counsel from the box identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 109 for identification.)

The Court: I will let it in as to Birmingham, Tuscaloosa, Montgomery and Selma.

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

(Expense statement, The New York Times for Wayne Phillips, dated March 17, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 109.)

Mr. Nachman: We offer into evidence as Plaintiff's Exhibit No. 110 for identification, The New York Times expense statement for Wayne Phillips for the week ending March 24th, 1956, obtained by counsel from the box identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 110 for identification.)

The Court: I will let it in as to Montgomery.

Mr. Embry: Same exception.

[fol. 216] (Expense statement, The New York Times for Wayne Phillips, dated March 24, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 110.)

Cross examination. (Continued)

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

Q. Mr. Faber, do you know a Frank M. Monger?

A. No, sir.

Q. Do you know a Thomas M. Hurley?

A. No, sir.

Q. Do you know a George Barrett?

A. Yes, sir.

Q. During the years 1956 and 1957 was Mr. George Barrett employed by The New York Times Company, the defendant in this case?

A. Yes, sir.

Q. He was a regular employee?

A. Yes, sir.

Q. What were his duties?

A. He was a reporter—

Mr. Embry: We object to the question because of the period of time being inquired about being 1956 and 1957, Your Honor.

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

Mr. Embry: We except.

Mr. Nachman: With that identification of Mr. George Barrett by this witness, we offer into evidence as Plaintiff's Exhibit No. 111 for identification The New York Times expense statement for George Barrett for the period of September 16th through October 8th, 1957 and this document was obtained from the box previously identified by Mr. Mathews.

[(fol. 217] (Court examines Plaintiff's Exhibit No. 111 for identification.)

The Court: I think it would be admissible as to Huntsville, Alabama.

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

(Expense statement, The New York Times for George Barrett, dated September 16,-October 8, offered and received in evidence and identified as Plaintiff's Exhibit No. 111.)

Mr. Nachman: We offer into evidence Plaintiff's Exhibit No. 112 for identification, being a New York Times expense statement of George Barrett, dated March 7th, 1957, which was obtained from the box by counsel which was previously identified by Mr. John Mathews.

(Court examines Plaintiff's Exhibit No. 112 for identification.)

The Court: I will let it in as to Montgomery.

Mr. Embry: We except.

(Expense statement, The New York Times for George Barrett, dated March 7, 1957, offered and received in evidence and identified as Plaintiff's Exhibit No. 112.)

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

Q. Mr. Faber, do you have anything to do with the okaying of items or approving of items on these sheets?

[fol. 218] A. No, sir.

Mr. Nachman: We offer into evidence this instrument identified as Plaintiff's Exhibit No. 113 for identification, being expense statement of The New York Times for George Barrett, dated December 20th, December 24th, 1956, which was obtained by counsel from the box previously identified by Mr. Mathews.

Mr. Embry: We have the same objection, with the additional grounds that it is too remote as to the period of time and not probative to the issues presented to Your Honor on the Motion to Quash.

(Court examines Plaintiff's Exhibit No. 113 for identification.)

The Court: I will let it in as it pertains to Montgomery.

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

(Expense statement, The New York Times for George Barrett, dated December 20th through December 24th, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 113.)

Mr. Nachman: We offer into evidence as Plaintiff's Exhibit No. 114 for identification, The New York Times expense statement from George Barrett, dated December 10th, 1956, obtained by counsel from the box previously identified by Mr. John Mathews.

(Court examines Plaintiff's Exhibit No. 114 for identification.)

The Court: I will let it in as to Montgomery.

Mr. Embry: We except.

[fol. 219] (Expense statement, The New York Times for George Barrett, dated December 10, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 114.)

## Cross examination. (Continued)

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

Q. Mr. Faber, do you know a Peter Frederick Kihss?

A. Yes, sir.

Q. During the period January 19th through February 4th, 1956, was Mr. Kihss a regular employee of The New York Times Company, the defendant in this case?

A. Yes, sir.

Mr. Nachman: With that identification of Mr. Kihss, Your Honor, we offer into evidence as Plaintiff's Exhibit No. 115 for identification the New York Times expense statement for Peter Frederick Kihss, dated March 2nd, 1956, which was obtained by counsel from the box identified previously by Mr. Mathews.

Mr. Embry: We object to that on the same grounds previously assigned but assign the additional ground that the year is too remote and it is incompetent, irrelevant and immaterial.

(Court examines Plaintiff's Exhibit No. 115 for identification.)

The Court: I will let it in as to Mobile, Montgomery, Birmingham, Selma and Tuskegee.

Mr. Embry: We except.

(Expense statement, The New York Times for Peter Frederick Kihss, dated March 2, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 115.)

[fol. 220] Cross examination. (Continued)

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

Q. Mr. Faber, do you know a Clarence Dean?

A. Yes, sir.

Q. During the period from December 26th, 1956 through January 3rd, 1957, was Mr. Dean a regular employee of The New York Times?

A. Yes, sir.

Q. In what capacity?

A. A reporter for The Times.

Mr. Nachman: With that identification of Mr. Dean, Your Honor, we offer into evidence a document identified as Plaintiff's Exhibit No. 116 for identification, a New York Times expense statement for Clarence Dean for the week ending January 10th, 1957. This document was obtained from the box identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 116 for identification.)

The Court: I think it is admissible as to Birmingham and Montgomery.

Mr. Embry: We except.

(Expense statement, The New York Times for Clarence Dean, dated January 10, 1957, offered and received in evidence and identified as Plaintiff's Exhibit No. 116.)

Cross examination. (Continued)

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

Q. Mr. Faber, do you know a man by name of H. E. Salisbury?

[fol. 221] A. Yes, sir.

Q. Is that the same Harrison Salisbury about whom you testified about in this proceeding earlier today?

A. Did I testify something about him?

Q. Wasn't there some questions about whether or not Mr. Salisbury had been in Birmingham and assigned to the—

A. Yes. He had been. That's right.

Q. That's the same man, is it not?

A. Yes, sir.

Q. Was Mr. Salisbury a regular employee of The New York Times Company, the defendant in this case, during the month of April of this year, 1960?

A. Yes, sir.

Mr. Nachman: With that identification of Mr. Salisbury, if the Court please, I offer this document in evidence which

has been identified as Plaintiff's Exhibit No. 117 for identification, being a New York Times expense statement for H. E. Salisbury for the week ending April 13th, 1960, and this document was obtained from the box already identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 117 for identification.)

The Court: I will let it in as to Montgomery.

Mr. Nachman: I also believe, Your Honor, that it shows Andalusia—

The Court: Andalusia. That's right.

Mr. Nachman: And Birmingham, Your Honor.

The Court: Birmingham too. All right.

Mr. Embry: We except.

(Expense statement, The New York Times for H. E. Salisbury, dated April 13, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 117.)

[fol. 222] Cross examination. (Continued)

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

Q. Mr. Faber, referring to the exhibits, the expense statements which have just been introduced into evidence, would all of those gentlemen, namely, Claude Sitton, John Popham, Wayne Phillips, George Barrett, Peter Kihss, Clarence Dean and H. E. Salisbury, come into Alabama during the period shown thereon under assignment to gather news and to submit stories to The New York Times?

A. Yes, sir.

Q. I take it that you have nothing to do with the advertising end of The New York Times. Is that correct, sir?

A. No, sir. I do not.

The Court: What is your circulation? It is about ten million all over the nation?

The Witness: About seven hundred fifty thousand.

The Court: I mean all over the United States.

The Witness: Oh, one million three hundred thousand on Sundays or something like that.

Mr. Nachman: Your Honor, we have now taken from the box which Mr. Mathews identified, staff stories as they appeared in The New York Times and once again, we make an offer to introduce these in bulk for later identification by the Court Reporter in order to save time but if counsel prefers an item by item submission then we will, of course, abide by opposing counsel's wishes in that regard.

Mr. Embry: Your Honor, no news story could possibly be admitted into evidence—if he claims they were written by the man—if this man testifies that he wrote a news story, it may or may not be of some evidential value, but the news stories or the contents of the news stories certainly couldn't have any relevancy to the issues now before this Court.

The Court: Well, news stories relating to conditions [fol. 223] around here in Montgomery and places like that I think would be admissible.

Mr. Embry: We except, Your Honor.

Mr. Nachman: Is it agreeable, Mr. Embry, that we can go ahead and introduce these in bulk or do you want us to do it one by one?

Mr. Embry: You may have to do it one by one because I don't know what is in there as I haven't looked at it.

The Court: Well, the Court will take a recess for ten minutes so that counsel can get together and look through those documents and see what may be agreed upon. Court is recessed for ten minutes.

(Ten minute recess.)

Mr. Embry: Your Honor, we have examined the copies of the photostats of the group of exhibits which Mr. Nachman has announced his intention of offering into evidence and we would like to make our position known to the Court in respect to them in general before we go into them article by article. Those purport to be and are in fact photostat copies of back pages out of the newspaper with particular times and dates, beginning back in 1956 and through July, 1960.

The Court: When was the suit filed? In April?

Mr. Embry: In April. Yes, Your Honor, yes. Now, Your Honor, those were produced in response to an order of the Court which asks that all news stories relating to



Alabama be produced. That was the substance of the Motion to produce. Now, many of the stories themselves don't even purport to have been written in Alabama. None of them show where they were written. Some of them contain date lines and there may be some testimony from this witness indicating what that infers from the fact that the date line or slug, as Mr. Nachman called it, appears on it, but if the theory upon which the Plaintiff is offering these into evidence or is about to offer them into evidence [fol. 224] either one or all of these sheets of newspaper which contained stories which in any wise relates to Alabama—if his theory in offering those is to offer evidence which would seek to perhaps have some probative value on the question of whether an employee of the defendant, The New York Times Company, was in Alabama—if he is doing anything or carrying on any activities which might shed some light on whether the corporation is doing business in Alabama—then, if that is their theory, then, of course it is merely accumulative of the testimony because Mr. Faber has already testified about staff assignments in relation to—and it is also accumulative of the documentary evidence which Your Honor has admitted in reference to these expense accounts and we, of course, again say with respect to Your Honor that it again goes back to a period of time prior to the first day of January, 1960 and it is not relevant on that ground. We also contend, Your Honor, that it goes far beyond the proper scope of the proper cross examination of this witness because he has testified in connection with his duties in reference to staff assignments, and certainly the contents of the news stories, many of which show on their face that they were from the wire services of the Associated Press and the United Press—the contents, of course, would have no relevancy with respect to the activity of the employees or agents of The New York Times Corporation in Alabama during the entire period or even during the period that we contend is relevant to the inquiry before the Court. For those reasons, if it please the Court, we will request that we be permitted to proceed by the process of the plaintiff offering those documents individually if they see fit to do so and as they are offered we would like the privilege of offering our objections at the time be-

cause they are not all the same and it would be improper for us to object to them in bulk, and we want our objections to appear to each one individually in the Record.

Mr. Nachman: Is there any necessity for me to reply to that statement, Your Honor?

The Court: Well, are there any objections to offering them one by one?

[fol. 225] Mr. Nachman: No, Your Honor, but I believe that there are eighty-nine of these items. I believe that Mr. Embry is incorrect in stating that they contain any wire-service stories. I believe that all of the documents which we now propose to offer into evidence are written under the by-line of specific authors, most of whom have been identified already as regular staff correspondents of The New York Times. Almost all of them bear Alabama date-lines and all of them relate to events in Alabama, among other events, but we will be happy to proceed to offer them into evidence one by one if that's the way they want to do it.

Mr. Loeb: Your Honor, on the general subject of their relevancy, let me say that I have looked at them also and let me point out to the Court for example that one of them is a piece by Mr. Claude Sitton written in Los Angeles during the Democratic Convention in Los Angeles. Now, how that can be any evidence whatsoever as to the Times doing business in the State of Alabama, leaves me really slightly confused. In addition to that, Your Honor, I don't see for the life of me how the fact that The New York Times carries news items originating in Alabama makes The New York Times doing business in the State of Alabama any more than we are doing business in the Belgian Congo today because we have a correspondent out there reporting the details of what is going on in that disturbed country, or in Cuba, or in Russia.

Mr. Nachman: Your Honor, with all respect to Mr. Loeb I must say that apparently they did not very carefully examine the documents which we now propose to offer into evidence. The Los Angeles story just referred to is not among them. What they examined apparently was a list which we prepared of the headings which we gave them for their convenience. The Los Angeles story is right here and

I propose to offer that into evidence at another time and it is not even included among the documents which I propose to introduce into evidence at this time.

The Court: Well, go ahead and introduce them one by one and we will save time in the long run.

[fol. 226] Mr. MacLeod: The list you gave us, Mr. Baker told us, was the list you proposed to—

Mr. Nachman: Well, what I had—

Mr. MacLeod: Was there any other thing misleading about it—

Mr. Nachman: There was nothing misleading at all, Mr. MacLeod—

Mr. Baker: I thought we were going to address our remarks to the Court, Your Honor.

The Court: Yes. That would be best. Address all remarks to the Court and let the Court rule on them.

Mr. Beddow: We want to see each one of them because we are serious about this business and we are going to insist on handling it according to Hoyle.

Mr. Nachman: Well, you will have an opportunity to examine each one of them, Mr. Beddow, and I haven't attempted to keep you from doing so. I am not going to start now—

Mr. Beddow: Well, I am just talking about the procedure we should adopt. I am not complaining about what you have done in the past.

The Court: Proceed, gentlemen.

Mr. Nachman: If the Court please, we offer into evidence as Plaintiff's Exhibit No. 118, page 22 of the Tuesday, February 28th issue of The New York Times which contains the story "Business Suffers by Racial Dispute. Montgomery merchants who deal with Negroes and whites are hard hit." It is by Wayne Phillips, "Special to The New York Times" Montgomery, Alabama, February 27, 1956.

Mr. Embry: We object to that, Your Honor. It hasn't been identified—

Mr. Nachman: Well, I haven't finished. This was obtained from the box previously identified by Mr. John Mathews, the Clerk of the Circuit Court. In order to keep [fol. 227] from making that statement every single time I offer a document I will say to the Court now that every

one of these documents I now propose to offer into evidence was obtained from that same box identified by Mr. Mathews.

The Court: Let me see the article.

(Court examines Plaintiff's Exhibit No. 118 for identification.)

Mr. Embry: We object to that, Your Honor, on the grounds that it is accumulative of the documentary evidence and of those exhibits of those last numbers which included the expense accounts of Wayne Phillips. We object on the further ground that it relates to a time, to-wit, Tuesday, February 28th, 1956 and bearing the story referred to bearing the dateline of February 27th, which period of time is too remote as offering any evidence which will shed any light on the question of The New York Times doing business or not doing business in the State of Alabama at the time service of process was attempted to be had in April, 1960. The article itself contains news stories bearing the by-line of Wayne Phillips and contains no evidence legal or pertinent or material to the question of whether The New York Times is subject to the jurisdiction of the Court or whether it was doing business in The State of Alabama at or near the time that service was attempted to have been obtained upon the Times in April of 1960. We object further on the grounds that the article itself and the exhibit is incompetent, irrelevant and immaterial and has no probative value by which it would prove or disprove the issues before the Court on the Motion to Quash or the question of the jurisdiction of this Court over The New York Times Company, a foreign corporation, at the time in question which is the time of the service of process upon it or attempted service of process in April, 1960.

The Court: I think it is admissible and you may have an exception to the Court's ruling.

Mr. Embry: We wish to object on the further ground, Your Honor, that it unduly encumbers the record without being material—

The Court: I will let it in.

[fol. 228] Mr. Embry: We except.

(Newspaper Article, The New York Times, Tuesday, February 28, 1956, at Page 22, entitled, "Business Suffers by Racial Dispute" by Wayne Phillips, datelined, Montgomery, Alabama, February 28, offered and received in evidence and identified as Plaintiff's Exhibit No. 118.)

Cross examination. (Continued)

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

Q. Now, Mr. Faber, I show you Plaintiff's Exhibit No. 18 and I call your attention to a news story by Wayne Phillips in the extreme left hand column of that page. Have you looked at it?

A. Yes, sir.

Q. What does the dateline, Montgomery, Alabama, February 27th mean?

A. It means that there was some news event occurring in Montgomery, Alabama on February 27th and that Mr. Phillips was in Montgomery on that day.

Q. Covering that news event.

A. Covering that news event, yes.

Q. And he sent his coverage in to The New York Times in the form of that news story, didn't he?

A. He sent this story to The New York Times, certainly.

Q. And it indicates that he was covering the event in Montgomery, Alabama, does it not?

A. Yes, sir.

Q. On that day.

A. Yes, sir.

Mr. Embry: Now, Your Honor, we move that it be excluded because of the answer of the witness demonstrates the correctness of my objection that it is merely accumulative of the other evidence that has been introduced here and was introduced for the same purpose of showing that he was here on that day.

The Court: I overrule the motion and give you an exception.

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

Mr. Nachman: If the Court please, we offer into evidence as Plaintiff's Exhibit No. 119, page 17 of the Monday, February 27th, 1956 issue of The New York Times, which

contains a story by Wayne Phillips, Special to the New York Times, under dateline of Montgomery, Alabama, February 26th, entitled, "Negro Pastors Press Bus Boycott by Preaching Passive Resistance. Integration is Great Issue of Our Age, Leader of Montgomery Fight Asserts—Sees Victory as One of Democracy."

Mr. Embry: Your Honor, we would like to object to the introduction of this exhibit as identified by Mr. Nachman. If Your Honor will permit us to do so, we would like to have the Court Reporter just as though I had spoken the words, put my previous objections assigned into this objection to this exhibit and each of the succeeding exhibits—

The Court: Well, there would be no objection to that, would there?

Mr. Nachman: No, Your Honor. We have already stipulated that they may assign any objection now, later or any other time that they can think of. We will be happy to agree to that.

Mr. Baker: We will stipulate that if he is going to live up to it but it doesn't do any good to stipulate it and have him—

Mr. Embry: Well, I may have other grounds and I will assign them as they occur to me, Mr. Baker.

Mr. Nachman: Any objections you wish to assign now, you may do so or assign at any other time, Mr. Embry.

Mr. Embry: Now, Your Honor, we want it understood that if we assign any additional grounds that they are in addition to the grounds that we have already previously assigned.

The Court: Yes. That is understood.

Mr. Nachman: We offer this then in evidence as Plain-[fol. 230] tiff's Exhibit No. 119.

Mr. Embry: I assume, Your Honor, that our exception will go with the assignment of grounds of objection—

The Court: Well, yes. You have an exception.

(Newspaper article from The New York Times, Monday, February 27, 1956 at page 17, entitled, "Negro Pastors Press Bus Boycott by Preaching Passive Resistance", by Wayne Phillips, datelined, Montgomery, Alabama, February 26, offered and received in evidence and identified as Plaintiff's Exhibit No. 119.)

## Cross examination. (Continued)

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

Q. Mr. Faber, referring to Plaintiff's Exhibit No. 119, I call your attention to the column that I referred to a moment ago and ask you if that indicates the same thing you have just testified to about Plaintiff's Exhibit No. 118, namely, that the byline of Wayne Phillips, Special to the New York Times, with the Montgomery, Alabama dateline indicates that that was a news story that Mr. Phillips wrote while he was here or relating to events he covered while he was here?

A. That indicated that he was here and that he covered the events in Montgomery, Alabama on that day.

Mr. Nachman: If the Court please, the next exhibit contains three pages but it is all pertaining to one article and we would like it identified as one article assigned one number for identification. It is a four page exhibit rather than three pages.

## Cross examination. (Continued)

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

Q. Now, Mr. Faber, I call your attention to this group of four sheets of documents identified as Plaintiff's Exhibit No. 120 for identification and I will ask you whether [fol. 231] or not this is a story that appeared in The New York Times magazine or supplement appearing in the issue of February 26, 1956?

A. Yes, sir.

Q. Does it indicate that it was written by Wayne Phillips with a Tuscaloosa, Alabama dateline?

A. Yes, sir.

Q. Would that indicate that Mr. Phillips wrote this story from Tuscaloosa?

A. Not necessarily.

Q. Would it indicate that he wrote the story based on news gathering that he engaged in while in Tuscaloosa, Alabama?

A. Yes, sir.

Q. Now, Mr. Faber, you will notice certain photographs on these pages. Is there anything to indicate how those photographs reached The New York Times and who took them?

A. No.

Q. Do you happen to know how they did in connection with this story?

A. No, I do not.

Mr. Nachman: If the Court please, we would like to introduce these four sheets into evidence as our next exhibit. This is exhibit No. 120.

(Court examines Plaintiff's Exhibit No. 120 for identification.)

The Court: Well, I will let it in subject to all legal objections.

Mr. Embry: Your Honor, we want to add the ground that the photographs—there is nothing made to appear that the correspondent had anything to do with the photographs. There is nothing to indicate that the correspondent caused them to be made.

The Court: Same ruling.

Mr. Embry: We except.

[fol. 232] (Newspaper Magazine article, The New York Times Magazine, dated February 26, 1956, entitled "Tuscaloosa: A Tense Drama Unfolds" and photographs contained therein, by Wayne Phillips, datelined Tuscaloosa, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 120.)

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

Q. In terms of that objection, Mr. Faber, would you read the captions under the photographs and after reading them would you state whether they concern event portrayed in this article?

A. The first one says, "Storm Center—Campus of the University of Alabama is about one and one-half miles from the center of Tuscaloosa. The Union (above) is a students' center." The second caption says, "Tuscaloosa Town—This is a downtown scene in the Alabama City of



56,000 that has become the focal point of the bitter fight over integration. Once it had a good record on race relations, partly because of the influence of the University of Alabama, but with the attempt of a Negro student to enter the University, violence, fear, hatred have taken over." The third picture is captioned as follows: "Tuscaloosa Gown—University students leave the special convocation where President Oliver C. Carmichael pleaded for order after the outbreaks that threatened Negro student Autherine J. Lucy and forced her suspension from the University. Some students agreed. But others, who had joined the mob, defiantly vowed to continue the fight against integration." The next caption says, "Rally point—a monument to the Indian Chief for whom the town was named marks the Tuscaloosa County Court House. It was here that the White Citizens' Council was formed, of both University students and townspeople, to defend Southern segregation." The next picture says, "Normalcy—despite formal segregation, in schools and elsewhere, Tuscaloosa has long [fol. 233] seen Negro and white residents working side by side in peace. This is a television repair crew. But the town's quiet revolution in race relations has now come to a stand still." The next picture says, "Other Campus—across town from the University is Stillman College, for Negroes where white Alabama faculty members have furthered tolerance by teaching part-time. This is John S. Pancake, Assistant Professor of History at Alabama, with two Stillman students." The next picture says, "Separate but Equal—that classic doctrine, now rejected by the Supreme Court's school decision, accurately describes Tuscaloosa's secondary school system. This is the newly opened Druid High School, built at a cost of nearly two million dollars for 1,342 Negro students."

Mr. Loeb: Your Honor, on those pictures that have been introduced into evidence, there is no proof whatsoever that they were taken by members of The New York Times.

Mr. Nachman: Well, they were published by The New York Times in connection with this story.

Mr. Loeb: Well, that may be, but that doesn't prove that The New York Times took the pictures. They may have

bought them from The Montgomery Advertiser for that matter.

Mr. Nachman: Nobody is claiming that The New York Times took the pictures.

Mr. Loeb: How does the fact that The New York Times in New York published pictures along with a story, which was obviously written by The Times, how does the fact that The Times published those pictures prove that they were doing business here by using pictures—

Mr. Nachman: Well, they have been identified as being in the same article accompanying the news stories—

The Court: Well, I will let them in for whatever evidential value they may have and you may, of course, have an exception.

Mr. Embry: We except, Your Honor.

Cross examination. (Continued)

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

Q. Mr. Faber, I call your attention to a document identified as Plaintiff's Exhibit No. 121 for identification which is page 50 of the February 26th, 1956 edition of the New York Times and I call your attention to an article entitled, "Parents disown Miss Lucy's Fight and they say they taught their children to stay their distance from white folks," the following dispatch was written for the Associated Press by Arthur Capell in the Selma, Alabama Times Journal and it is under the dateline of Selma, Alabama, February 25th.

Mr. Embry: Your Honor, that calls for a special objection. That article doesn't even purport to have been written by a New York Times reporter.

The Court: Let me see the article.

Mr. Nachman: Well, I want to ask a few questions about it. It hasn't been admitted into evidence yet. It has just been marked for identification.

The Court: This says it was written by the Associated Press. There is no testimony here that Capell is a New York Times man, is there?

Mr. Embry: No, sir.

Mr. Nachman: I was going to ask some identifying questions of Mr. Faber when the objection was made.

The Court: Is this Capell one of your reporters?

The Witness: No, sir.

The Court: Well, I have my doubts about this one here. Let me exclude it and give you an exception to the Court's ruling.

Cross examination. (Continued)

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

Q. Now, Mr. Faber, I show you another document which has been identified as Plaintiff's Exhibit No. 121 on page 1 of The New York Times, Saturday, February 25th, 1956 and I call your attention to a news story on the extreme left hand column and it is entitled "Folsom Proposes Bi-Racial Group to Fight Tension," with a byline by Wayne Phillips, Special to The New York Times, with a dateline of Montgomery, Alabama, February 24th. Your testimony, I take [fol. 235] it, would be the same as it has been with regard to Mr. Phillips identification with Alabama in connection with that story and as to the date line and byline as you have indicated prior hereto. Is that correct, sir?

A. That's correct. Yes, sir.

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

Mr. Embry: What was your answer?

The Witness: The same as before, identification of Phillips.

Mr. Nachman: Your Honor, inadvertently I left out the second page of this story which is on page 10 of the same issue of The New York Times and it is to be marked and identified as the same exhibit, Plaintiff's Exhibit No. 121.

The Court: All right. Let it in with the same objections and same exceptions.

(Newspaper article, The New York Times, Saturday, February 25, 1956, entitled "Folsom Proposes Bi-Racial Group to Fight Tension," by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, February 24, offered and received in evidence and identified as Plaintiff's Exhibit No. 121.)

Cross examination. (Continued)

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

Q. I show you, Mr. Faber, two pages, page 1 and page 8 of the February 24th, 1956 issue of The New York Times and I call your attention to the story in the lower right hand corner entitled, "Negroes Pledge to Keep Boycott," by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, February 23rd. Is your testimony once again the same as regard to what those entries show?

A. Yes, sir.

[fol. 236] Mr. Nachman: We offer this in evidence to be identified as our next exhibit, if the Court please.

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

Mr. Embry: We except.

(Newspaper article, The New York Times, Friday, February 24, 1956 entitled, "Negroes Pledge to Keep Boycott," by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, February 23, 1956 offered and received in evidence and identified as Plaintiff's Exhibit No. 122.)

Cross examination. (Continued)

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

Q. Mr. Faber, I show you another document which has been identified as Plaintiff's Exhibit No. 123 for identification which is page 23 of The New York Times newspaper, Thursday, February 23rd, 1956 and I call your attention to a story in the extreme left hand column and it is entitled "Dean is Critical of Miss Lucy's Bid," by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, February 21st. Is your testimony the same as previously stated as to the testimony given with regard to what those entries indicate?

A. Yes, sir.

Mr. Nachman: We offer this in evidence as our next exhibit, Your Honor.

The Court: I will let it in subject to all legal objections.

Mr. Embry: We except.

[fol. 237] (Newspaper article, The New York Times, Thursday, February 23, 1956, entitled, "Dean is Critical of Miss Lucy's Bid", by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, February 21, offered and received in evidence and identified as Plaintiff's Exhibit No. 123.)

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

Q. Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 124 which is a story in The New York Times, page 38, Saturday, February 18, 1956 and it is entitled, "Tuscaloosa Gets a White Council," by Wayne Phillips, Special to the New York Times, Tuscaloosa, Alabama. Is your testimony the same in regard to those entries?

A. Yes, sir.

Mr. Nachman: We offer this in evidence as Plaintiff's Exhibit No. 124.

(Newspaper article, The New York Times, Saturday, February 18, 1956 entitled "Tuscaloosa Gets a White Council," by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, February 17, offered and received in evidence and identified as Plaintiff's Exhibit No. 124.)

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

Q. Now, Mr. Faber, we offer in evidence as our next exhibit, No. 125, two pages consisting of pages 1 and 46 of the February 17th, 1956 edition of The New York Times and I call your attention to the story in the second column from the left and it is entitled, "Alabama U Head Decries [fol. 238] Mob Rule," by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, February 16th. There is a continuation of that story on page 46 in column 2. Once again, do indications from the byline and dateline—your testimony is the same in that regard?

A. Yes, sir.

Mr. Nachman: We offer this in evidence to be identified as Plaintiff's Exhibit No. 125, Your Honor.

The Court: All right. I will let it in subject to objection and exception.

Mr. Embry: We except.

(Newspaper article, The New York Times, Friday, February 17, 1956 entitled, "Alabama U Head Decries Mob Rule," by Wayne Phillips, Special to The New York Times, Tuscaloosa, Alabama, February 16, offered and received in evidence and identified as Plaintiff's Exhibit No. 125.)

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

Q. Mr. Faber, I show you a single document identified as Plaintiff's Exhibit No. 126 for identification which is page 21 of the February 16th, 1956 issue of The New York Times and I call your attention to a story entitled, "Student Beaten, Two Negroes Jailed," by Wayne Phillips, Special to The New York Times, Tuscaloosa, Alabama, February 15th. Your testimony is the same in regard to those entries?

A. Yes, sir.

Mr. Nachman: We offer this in evidence to be identified as Plaintiff's Exhibit No. 126.

The Court: Same ruling.

(Newspaper article, The New York Times, Thursday, February 16, 1956, entitled, "Student Beaten, Two Negroes Jailed," by Wayne Phillips, Special to The New York Times, Tuscaloosa, Alabama, datelined February 15, offered and received in evidence and identified as Plaintiff's Exhibit No. 126.)

Mr. Nachman: As Exhibit No. 127, we offer into evidence two pages, being page 1 and page 17 of The New York Times issue of Tuesday, February 14th, 1956 entitled, "Alabama U to Make High Court Appeal," by Wayne Phillips, Special to The New York Times, Birmingham, Alabama, datelined February 13th. The story is continued on page 17. Again, Mr. Faber, is your testimony the same in regard to the indications of the byline and dateline?

The Witness: Yes, sir.

Mr. Nachman: We offer this in evidence as our next exhibit, if the Court please.

The Court: Same ruling.

(Newspaper article, The New York Times, Tuesday, February 14, 1956 entitled, "Alabama U to Make High Court Appeal," by Wayne Phillips, Special to The New York Times, datelined Birmingham, Alabama, February 13, offered and received in evidence and identified as Plaintiff's Exhibit No. 127.)

Mr. Nachman: Now, we offer into evidence as Plaintiff's Exhibit No. 128, page 8-E of the issue of The New York Times, Sunday, February 12th, 1956 and I call your attention, Mr. Faber, to the caption, "Miss Lucy's Education: Segregation Test Case," by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, February 11. Is your testimony the same in regard to those entries?

The Witness: Yes, sir.

[fol. 240] Mr. Nachman: We offer this in evidence as Plaintiff's Exhibit No. 128.

The Court: Same ruling.

(Newspaper article, The New York Times, Sunday, February 12, 1956, entitled, "Miss Lucy's Education: Segregation Test Case," by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, February 11, offered and received in evidence and identified as Plaintiff's Exhibit No. 128.)

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

Q. Mr. Faber, this next story, Plaintiff's Exhibit No. 129 for identification is page No. E-9 and I call your attention to an article entitled, "Organized Resistance to Racial Laws Program," by John Popham, Special to the New York Times, datelined Chattanooga, Tennessee, December 1st. I ask you to look at that and see if there are any indications in that article to indicate that the story arose out of any news gathering activities by Mr. Popham in the State of Alabama among other States—

Mr. Embry: We object to that, Your Honor. We assign the previous objections made, Your Honor, and on the further ground that on its face the document doesn't purport to relate to any activities of The New York Times' employees or anyone else acting for it that might shed any light on activity in Alabama and we object to the question to the witness asking him to interpret the meaning of the context of the words in the article because that is a matter for the Court to determine—

The Court: I don't think he could interpret the meaning of the words in the article but he could tell what a byline or a dateline meant—

Mr. Embry: The question he asked, Your Honor, was did [fol. 241] anything in there indicate to him that the story resulted from any news gathering activities of Mr. Popham in Alabama when he has already identified the dateline as originating in Chattanooga, Tennessee.

Mr. Nachman: Your Honor, this article on its face shows that there is a discussion of activities and events in the State of Alabama among other States mentioned in here. Mr. Faber has already been identified as the person who has certain supervisory activities in regard to these staff correspondents. My question in terms of identifying this document was whether after looking at this document he was able to tell whether any of the activities described in there arose out of any news gathering activities which Mr. Popham engaged in while in the State of Alabama.

Mr. Embry: We further object on the grounds that the document speaks for itself and that would be an invasion of the province of the Court, if the Court please.

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

Mr. Embry: We except.

Mr. Nachman: Your Honor, have you ruled with regard to the answer of the question? I haven't offered it into evidence yet.

The Court: You can answer the question.

Mr. Nachman: Go ahead.

The Witness: No. I can't tell from reading this if that's what's in it.

Mr. Nachman: All right. We will withdraw that document.



## Cross examination. (Continued)

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

Q. I show you now, Mr. Faber, a document identified as Plaintiff's Exhibit No. 129 for identification which is page E-3 of The New York Times Sunday edition, March 11th, 1956 and I call your attention to the story entitled, "Tuscaloosa Calm Now, But Tension Runs Deep," by Wayne Phillips, Special to The New York Times, datelined, Tuscaloosa, Alabama, March 10th. Is your testimony the same in regard to the indication of those entries concerning Mr. [fol. 242] Phillips' activities in the State of Alabama?

A. Yes, sir.

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

The Court: Same ruling.

(Newspaper article, The New York Times, Sunday, March 11, 1956, page E-3, entitled, "Tuscaloosa Calm Now, But Tension Runs Deep," by Wayne Phillips, Special to The New York Times, Tuscaloosa, Alabama, dated March 10, offered and received in evidence and identified as Plaintiff's Exhibit No. 129.)

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

Q. Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 130 for identification, being page 14 of the Saturday, March 10, 1956 issue of The New York Times and I call your attention to a story entitled, "Miss Lucy Seeks Fall Admission" by Wayne Phillips, Special to The New York Times, Birmingham, Alabama, datelined March 9th. Is your testimony the same in regard to the indication of those entries?

A. Yes, sir.

Q. Now, I also call your attention to the story on the extreme right hand column and it is entitled, "Alabamian urges Folsom's Ouster," Special to The New York Times, Birmingham, Alabama, March 9th. Now, in that second story there is no byline, that is correct, is it not?

A. Yes, sir.

Q. What is the indication there Special to The New York Times? What is that phrase supposed to mean?

A. That means that something came out of Birmingham for The New York Times.

Q. Can we deduce from your answer then, that it did not come from one of the wire services?

[fol. 243] A. Yes, sir. That's right.

Q. It came either from a stringer or from a staff correspondent?

A. That's right.

Mr. Nachman: We offer this into evidence to be identified as Plaintiff's Exhibit No. 130, if the Court please.

The Court: I will let it in. Same ruling.

Mr. Embry: We except.

(Two news articles, The New York Times, Saturday, March 10, 1956, at page 14 entitled, "Miss Lucy Seeks Fall Admission" by Wayne Phillips, Special to The New York Times, Birmingham, Alabama, March 9; and entitled, "Alabamian Urges Folsom's Ouster," Special to The New York Times, Birmingham, Alabama, March 9, offered and received in evidence and identified as Plaintiff's Exhibit No. 130.)

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

Q. Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 131 for identification being page 25 of The New York Times, Wednesday, March 7th, 1956 issue of The New York Times and I call your attention to the article on the left hand column entitled, "Student Exhorts Alabama Rally," by Wayne Phillips, Special to The New York Times, datelined Birmingham, Alabama, March 6th. Is your testimony the same in regard to those entries?

A. Yes, sir.

Mr. Nachman: We offer this in evidence as our next exhibit, if the Court please.

The Court: I will let it in. Same ruling.

Mr. Embry: We except.

[fol. 244] (Newspaper article, The New York Times, Wednesday, March 7, 1956 at page 26, entitled, "Student

Exhorts Alabama Rally," by Wayne Phillips, Special to The New York Times, datelined Birmingham, Alabama, March 6, offered and received in evidence and identified as Plaintiff's Exhibit No. 131.)

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

Q. Mr. Faber, I call your attention to Plaintiff's Exhibit No. 132 for identification to an article in The New York Times under date of Tuesday, March 6th, 1956 at page 24 in the left hand column entitled, "White Councils Split in Alabama," by Wayne Phillips, Special to the New York Times, datelined Birmingham, Alabama. Is your testimony the same in regard to this?

A. Yes, sir.

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

The Court: I will let it in. Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Tuesday, March 6, 1956 at page 24 entitled, "White Councils Split in Alabama," by Wayne Phillips, Special to The New York Times, datelined Birmingham, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 132.)

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

Q. I show you a document identified as Plaintiff's Exhibit No. 133 for identification on page 6-B of The New York [fol. 245] Times issue of Sunday, March 4th, 1956 and I call your attention to the story on the left hand side entitled, "Montgomery is Stage for a Tense Drama," by Wayne Phillips, Special to the New York Times, datelined, Montgomery, Alabama, March 3rd. Is your testimony again the same in regard to the indications of those bylines and datelines?

A. Yes, sir.

Mr. Nachman: We offer this in evidence as Plaintiff's Exhibit No. 133.

The Court: Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Sunday, March 4, 1956 at page 6-B entitled, "Montgomery is Stage for a Tense Drama," by Wayne Phillips, Special to the New York Times, datelined, Montgomery, Alabama, March 3, offered and received in evidence and identified as Plaintiff's Exhibit No. 133.)

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

Q. Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 134 for identification consisting of pages 1 and 52 of The New York Times Sunday edition dated March 4th, 1956 and I call your attention to an article entitled, "Alabama to Heed Courts on Taking Negro Students," by Wayne Phillips, Special to the New York Times, datelined Tuscaloosa, Alabama, March 3rd. Are the indications the same again in regard to Mr. Phillips' activities?

A. Yes, sir.

Mr. Nachman: We offer these two documents into evidence to be identified as Plaintiff's Exhibit No. 134, Your Honor.

The Court: Same ruling.

Mr. Embry: We except.

[fol. 246] (Newspaper article, The New York Times, Sunday, March 4, 1956 at page 1 and page 52 entitled, "Alabama to Heed Courts on Taking Negro Students," by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, March 3, offered and received in evidence and identified as Plaintiff's Exhibit No. 134.)

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

Q. Mr. Faber, I show you a document now identified as Plaintiff's Exhibit No. 135 for identification being page 1 of the Friday, March 2nd, 1956 issue of The New York Times and I call your attention to a story entitled, "University Ousts Miss Lucy because of her Charges," by Wayne Phillips, Special to The New York Times, Birmingham,

Alabama, March 1st. Is your testimony the same in regard to the entries as indicated in this story?

A. Yes, sir.

Mr. Nachman: If the Court please, we offer this into evidence to be identified as Plaintiff's Exhibit No. 135.

The Court: I will let it in. Same ruling.

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

(Newspaper article, The New York Times, New York, Friday, March 2, 1956 entitled, "University Ousts Miss Lucy Because of her Charges," by Wayne Phillips, Special to The New York Times, datelined Birmingham, Alabama, March 1, offered and received in evidence and identified as Plaintiff's Exhibit No. 135.)

[fol. 247] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I call your attention to an ad which was introduced this morning entitled, "What the South is Doing about Desegregation." This ad contained several pictures of the correspondents. Do you recall that exhibit from this morning's testimony?

A. Yes, sir.

Q. Now, I show you pages S-1 through S-8 of the Tuesday, March 13th, 1956 issue of The New York Times and ask you whether those pages are the report referred to in the ad which has previously been offered into evidence that I just asked you about?

Mr. Embry: Your Honor, we would like to object. The only thing pertaining to Alabama would appear to be on pages S-6 and continuing on S-7 of the same story of the exhibit that he is now referring to which is Plaintiff's Exhibit No. 136 for identification and it has no dateline indicating where anybody went, if any place, to write such an article and so we add to our previous grounds of objection that it would not be evidence of whether anything was done in Alabama by The New York Times Company at the time it purports to show on its face that the article was prepared. I believe that's dated March 13th, 1956.

Mr. Nachman: Your Honor, we have no desire to introduce into evidence the pages which pertain to States other

than Alabama and we will therefore limit our offer to pages S-6 and S-7.

The Court: Well, so limited, I think it would be admissible.

Mr. Embry: I added some grounds of objection, Your Honor, and I believe that I pointed out there is no date-line or byline on it.

Mr. MacLeod: Wait just a minute.

Mr. Embry: May I ask the witness a question.

Mr. Nachman: Go ahead.

Mr. Embry: Do you know where that article was written?

The Witness: Yes.

[fol. 248] Mr. Embry: Where was it written?

The Witness: It was written in New York City.

Mr. Embry: We renew our objections, if the Court please.

The Court: Overruled and give you an exception.

Mr. Nachman: Your Honor, may I ask a few questions that will tie that in with the ad which we have previously offered into evidence?

The Court: Yes. There was testimony from this witness earlier—something was said about seventeen Southern States.

Mr. Nachman: That's right.

The Court: I believe he said that that included the State of Alabama.

Mr. Nachman: All right, Your Honor. That's what I wanted to bring out and I will not ask any more questions along that line. We offer these two pages into evidence identified as Plaintiff's Exhibit No. 136 being S-6 and S-7 of The New York Times dated Tuesday, March 13th, 1956.

(Newspaper article, The New York Times, Tuesday, March 13th, 1956 being pages S-6 and S-7 entitled, "States Resisting," by Peter Kihss, offered and received in evidence and identified as Plaintiff's Exhibit No. 136.)

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

Q. Now, Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 137 marked for identification which

is either page 16 or 26 of the Tuesday, March 13th, 1956 issue of The New York Times and I call your attention to a story on the left hand column entitled, "Alabama Expells Student in Riots," by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, March 12th. Is your testimony the same as it has been in the [fol. 249] previous questions concerning the dateline and byline and Wayne Phillips?

A. Yes, sir.

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

The Court: I will let it in. Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Tuesday, March 13, 1956, page 16 entitled, "Alabama Expells Student in Riots," by Wayne Phillips, Special to The New York Times, Tuscaloosa, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 137.)

Mr. Embry: Now, Your Honor, we object to this document Mr. Nachman is getting ready to introduce into evidence which is marked as Plaintiff's Exhibit No. 138, for identification. All this purports to be is page E-9 from the issue of March 18th, 1956 from The New York Times Sunday edition which is entitled, "Report on the South: A Summary of the New York Times Survey." There is nothing in there indicating a dateline or indicating any activity in the State of Alabama. It is just a series of writings about the whole South. There is no reference to Alabama and no dateline and it doesn't shed any light on the activities of The Times people in Alabama and we offer to show by this witness that that was written in New York City.

Mr. Nachman: Your Honor, our theory of admissibility on this is that the article begins, I believe, in italicized words with reference to a survey, part of which is in evidence as Plaintiff's Exhibit No. 136 and a reference is made to the ad I have previously referred to and it is quite obvious, Your Honor, that that purports to be based on the result of the news gathering activities which appear in these

other exhibits, namely, 136 and the ad I have previously [fol. 250] referred to and that, therefore, the contents of the stories are based so far as they relate to Alabama to news gathering activities which took place here—

Mr. Embry: How far afield can we get, Your Honor? You might pick a book off a bookshelf in China which purportedly relates what one person thinks or tells about an idea they may have or something that occurs in Bangkok or Siam. Does that have any probative value indicating what that person may or may not have done? Is it any evidence at all that anybody went into Alabama and that that resulted from their going in to Alabama and, if so, who it was and when it happened and what happened? It is getting so far afield, Judge, that we are getting out of this world and into orbit.

The Court: Well, I will take it in connection with that advertisement and everything and the maps of Alabama there and I think it is admissible. I will let it in and give you an exception.

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

Mr. Nachman: We offer this in evidence.

(Newspaper article, The New York Times, Sunday, March 18th, 1956, page E-9 entitled, "Report on the South: A Summary of The New York Times Survey," offered and received in evidence and identified as Plaintiff's Exhibit No. 138.)

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

Q. Mr. Faber, I show you now Plaintiff's Exhibit No. 139 for identification consisting of two pages from The New York Times, Thursday, March 1st, 1956 entitled, "U. S. Judge Orders Alabama Co-Ed to be Reinstated," by Wayne Phillips, Special to The New York Times, Birmingham, Alabama, February 29th. Again, I ask you the same question regarding Mr. Phillips' activities and about the byline and dateline.

A. Yes, sir.

[fol. 251] Mr. Nachman: We offer this into evidence as Plaintiff's Exhibit No. 139, Your Honor.



The Court: I will let it in. Same ruling.

Mr. Embry: We except, Your Honor.

(Newspaper article, The New York Times, Thursday, March 1, 1956, page 1 and page 28 of article captioned, "U. S. Judge Orders Alabama Co-Ed to be Reinstated," by Wayne Phillips, Special to the New York Times, Birmingham, Alabama dateline, February 29, offered and received in evidence and identified as Plaintiff's Exhibit No. 139.)

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

Q. Mr. Faber, I now show you Plaintiff's Exhibit No. 140 for identification consisting of two pages, page 1 and page 23 of The New York Times dated Wednesday, February 29, 1956 and I call your attention to an article in the lower right hand column there entitled, "Folsom to Call Special Session," by Wayne Phillips, Special to the New York Times, datelined Montgomery, Alabama, February 28th. The story is continued on page 23. Again, does the dateline and byline indicate the same as to Mr. Phillips' activities?

A. Yes, sir.

Mr. Nachman: We offer this in evidence as our next exhibit, if the Court please.

The Court: Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Wednesday, February 29, 1956, page 1 and page 23 entitled, "Folsom to Call Special Session," by Wayne Phillips, Special to the New York Times, Montgomery, Alabama, February 28, offered and received in evidence and identified as Plaintiff's Exhibit No. 140.)

[fol. 252] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I now show you a news article consisting of two pages identified as Plaintiff's Exhibit No. 141 of pages 1 and 38 of the February 11th, 1956 issue of The New York Times and I call your attention to the story

in the center of the pages entitled, "Ten Thousand in Alabama Hail Segregation," by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, February 10th. Again, the same question, do those entries indicate the same thing in regard to Mr. Phillips?

A. Yes, sir.

Mr. Nachman: We offer this in evidence as our next exhibit, if the Court please.

The Court: Same ruling.

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

(Newspaper article, The New York Times, Saturday, February 11, 1956, page 1 and page 38 entitled, "Ten Thousand in Alabama Hail Segregation," by Wayne Phillips, Special to The New York Times, Montgomery, Alabama, February 10, offered and received in evidence and identified as Plaintiff's Exhibit No. 141.)

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

Q. Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 142 for identification which is page 45 of the Sunday, April 29th, 1956 issue of The New York Times and I call your attention to a story entitled, "Students Weigh Solution of Bias," by John Popham, Special to The New York Times, Talladega, Alabama, April 28th. Do the insertions here and the references to Mr. Popham [fol. 253] and the dateline and the caption, Special to The New York Times—does that carry the same connotation as the similar references to Mr. Phillips in the previous exhibits?

A. Yes, sir. That's correct.

Mr. Nachman: We offer this in evidence.

The Court: I will let it in. Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Sunday, April 29, 1956, page 45 entitled, "Students Weigh Solution of Bias," by John N. Popham, Special to The New York Times, datelined Talladega, Alabama, April 28, offered and received in evidence and identified as Plaintiff's Exhibit No. 142.)

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

Q. I show you a document entitled Plaintiff's Exhibit No. 143 for identification, Mr. Faber, being page 15 of The New York Times, dated Friday, April 27th, 1956 and I call your attention to the article entitled, "Negroes to Keep Boycotting Busses," by John N. Popham, Special to The New York Times, datelined, Montgomery, Alabama, April 26th. Again, I ask you the same question regarding the indications from those entries of the byline and dateline.

A. The same.

Q. Sir?

A. My answer that it is the same.

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

The Court: I will let it in. Same ruling.

Mr. Embry: We except.

[fol. 254] (Newspaper article, The New York Times, Friday, April 27, 1956, page 15 entitled, "Negroes to Keep Boycotting Busses," by John N. Popham, Special to The New York Times, datelined Montgomery, Alabama, April 26, offered and received in evidence and identified as Plaintiff's Exhibit No. 143.)

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

Q. Now, Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 144 for identification which is page 27 of the April 26th, 1956 issue of The New York Times and I call your attention to the story on the left hand side of the document entitled, "Bus Boycott Firm in Alabama City," by John N. Popham, Special to The New York Times, datelined Montgomery, Alabama, April 25th. I ask you the same question regarding the connotation of the entries on that story as they relate to Mr. Popham's activities in Alabama?

A. My answer is the same.

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

The Court: I will let it in.

Mr. Embry: We except.

(Newspaper article, The New York Times, Thursday, April 26, 1956, page 27 entitled, "Bus Boycott Firm in Alabama City," by John N. Popham, Special to The New York Times, datelined Montgomery, Alabama, April 25, offered and received in evidence and identified as Plaintiff's Exhibit No. 144.)

[fol. 255] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 145, being page 15 of The New York Times edition, Saturday, March 24, 1956, with a story entitled, "Conviction Spurs Negroes' Boycott," by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, March 23rd. Again, I ask you the same question regarding Wayne Phillips and the dateline and byline.

A. Same answer.

Mr. Nachman: We offer this in evidence as Plaintiff's Exhibit No. 145, Your Honor.

The Court: Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Saturday, March 24, 1956, page 15, entitled, "Conviction Spurs Negroes' Boycott," by Wayne Phillips, Special to the New York Times, datelined Montgomery, Alabama, March 23, offered and received in evidence and identified as Plaintiff's Exhibit No. 145.)

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

Q. Mr. Faber, I show you two documents identified as Plaintiff's Exhibit No. 146 which are pages 1 and 28 of the Friday, March 23rd, 1956 issue of The New York Times and it is entitled, "Negro Minister Convicted of Directing Bus Boycott," by Wayne Phillips, Special to the New York Times, datelined Montgomery, Alabama, March 22nd. I ask you the same question once again in regard to entries

on the page there and regarding the dateline and the byline and Wayne Phillips.

A. Same answer, sir.

Mr. Nachman: We offer this in evidence as Plaintiff's Exhibit No. 146, Your Honor.

[fol. 256] The Court: Same ruling.

Mr. Embry: Same exception.

(Newspaper article, The New York Times, Friday, March 23, 1956, page 1 and page 28 entitled, "Negro Minister Arrested of Directing Bus Boycott," by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, March 22, offered and received in evidence and identified as Plaintiff's Exhibit No. 146.)

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

Q. Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 147 which is page 6 of The New York Times, dated Monday, December 24th, 1956, entitled, "Shot Hits Home of Bus Bias Foe," by George Barrett, Special to The New York Times, datelined Montgomery, Alabama, December 23rd. I ask you the same question in regard to Mr. Barrett's activities pertaining to the dateline and the byline on that story.

A. Same answer.

Q. The same answer as you gave in regard to Mr. Phillips?

A. Yes, sir.

Mr. Nachman: We offer this in evidence as Plaintiff's Exhibit No. 147.

The Court: I will let it in. Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Monday, December 24, 1956, page 6, entitled, "Shot Hits Home of Bus Bias Foe," by George Barrett, Special to the New York Times, datelined Montgomery, Alabama, December 23, offered and received in evidence and identified as Plaintiff's Exhibit No. 147.)

[fol. 257] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I now show you a document identified as Plaintiff's Exhibit No. 148 being the Sunday, December 23, 1956 issue of The New York Times at page 14 and I call your attention to the story on the left hand side of the document entitled, "White Dissidents Stir Bus Clashes," by George Barrett, Special to The New York Times, datelined Montgomery, Alabama, December 22nd. Again I ask you the same question regarding the byline and the date-line in regard to George Barrett's activities in the State of Alabama.

A. Same answer.

Mr. Nachman: We offer this in evidence as Plaintiff's Exhibit No. 148.

The Court: Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Sunday, December 23, 1956, page 14, entitled, "White Dissidents Stir Bus Clashes," by George Barrett, Special to The New York Times, datelined Montgomery, Alabama, December 22, offered and received in evidence and identified as Plaintiff's Exhibit No. 148.)

Mr. Embry: Are you through with 1956, Mr. Nachman?

Mr. Nachman: I think we are substantially through with it. There may be a few more—

Mr. Embry: If I may interrupt—

Mr. Nachman: Go ahead.

Mr. Embry: Apparently, Your Honor, a lot of these are not subject to any special objections other than the omnibus [fol. 258] objection that I made and it may be that we can save time if they have these things laid out where we can go through these and we can probably take those out that we have any special objections to and then without Your Honor having to sit here on the bench going through them one by one we can number those that we propose to let in as exhibits and in the morning, the first thing, we can take all of those that we have no special objections to and we can call off these numbers and Mr. Faber can already have examined them and he can ask him the same

question he has been asking in reference to each one and they can go on in subject to our omnibus objection—

Mr. Nachman: I quite agree with that suggestion.

Mr. Embry: Then, Your Honor, we can state our special or additional grounds as to the others.

The Court: Well, I think that during the evening recess perhaps counsel might write out all his objections and grounds thereto and that might save you from stating them over and over again.

Mr. Embry: Well, of course, Your Honor, we have a long series of objections in the Record when he initially started which I understand under our agreement are being applied to each of these admitted exhibits—

The Court: How many more exhibits do you have, Mr. Nachman?

Mr. Nachman: On these staff stories, Your Honor, there are roughly forty-five to fifty more. I am just guessing now. We also have a series of specials, that is, stories that do not carry any bylines but special stories identified by Mr. Faber. I don't have my list here but there are a good number of those and I would say around one hundred or more.

Mr. Embry: What are those?

Mr. Nachman: The special stories issued by The New York Times which do not carry any byline or name. We also have—this will probably not come out in the cross examination of Mr. Faber, but it will come out during the course of these proceedings—we have a series of advertisements in The New York Times which we have also [fol. 259] catalogued and I think we could treat those in the same manner if we could get together with counsel and go over all of these proposed exhibits, I think as was suggested earlier that we can agree to have these introduced into evidence in bulk and sift out those that maybe subject to some special objection or those that differ in any way from the mass of the documents. In our preparation of the case we have attempted to classify them as accurately as we were able to. I know that at this time we are not beyond the staff stories now but I mention this for the information of the Court that we do have

other documents and if we can reach an agreement on this we will most certainly save the time of all concerned.

Mr. Embry: Well, we will look into that and see if the others can be handled the same way.

Mr. Nachman: Well, we are for any process that will speed it up. We don't want to burden anybody.

Mr. Embry: Well, you have about half of them in now, don't you?

Mr. Baker: Not quite.

Mr. Beddow: Well, aren't all of those along the same lines as those you have already introduced? Of course, you know that we raised the point that whatever testimony you had in connection with somebody writing a story that was written under a byline or written under a name or a special item of The New York Times—we argued that it was accumulative and it seems to me that it is still accumulative.

Mr. Nachman: Each one of these stories relates to different news gathering activities by staff correspondents and at a different time. There has been a great deal of it in Alabama.

Mr. Baker: I would say this, Your Honor. We furnish them with a list of them and we can let them go over them tonight and we can meet them up here at 9:30 o'clock in the morning and see what we can work out.

Mr. Embry: I will concur in that suggestion, Mr. Baker.

(Off the Record discussion between counsel.)

[fol. 260] The Court: Well, we will recess until morning—

Mr. Nachman: Your Honor, we have just a few more if we could get these in.

The Court: Go ahead.

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

Q. Mr. Faber: I show you a document identified as Plaintiff's Exhibit No. 149 for identification consisting of two pages being pages 1 and 11 of the December 22nd, 1956 issue of The New York Times and I call your attention to a story entitled, "But Integration in Alabama Calm,"



by George Barrett, Special to The New York Times, datelined Montgomery, Alabama, December 21. Again I ask you the same question in regard to the dateline and byline.

A. Same answer.

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

The Court: Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Saturday, December 22, 1956, page 1 and page 11, entitled "Bus Integration in Alabama Calm," by George Barrett, Special to The New York Times, Montgomery, Alabama, December 21, offered and received in evidence and identified as Plaintiff's Exhibit No. 149.)

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

Q. Mr. Faber, I show you two documents identified as Plaintiff's Exhibit No. 150 for identification which appear in the New York Times Magazine dated December 16th, 1956, being an article entitled, "Montgomery: Testing Ground," by George Barrett, datelined Montgomery, Alabama. Does that indicate that Mr. Barrett was in Alabama [fol. 261] and that the news story in the magazine resulted from his activities in Alabama?

A. Yes, sir.

Q. From the news that he gathered at that time.

A. Yes, sir.

Mr. MacLeod: Would that indicate when he was in Alabama?

The Witness: No, sir.

Mr. Nachman: We offer this in evidence, Your Honor, as our next exhibit.

(Newspaper article, The New York Times, Sunday, December 16, 1956, entitled, "Montgomery: Testing Ground," by George Barrett, datelined Montgomery, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 150.)

Mr. Beddow: What does that relate to, Mr. Nachman?

Mr. Nachman: This was an article entitled "Montgomery: Testing Ground," by George Barrett in The New York Times magazine. That is as far as we can go tonight, Your Honor.

The Court: Very well. Court is recessed until ten o'clock tomorrow morning.

(Court recessed Monday, July 25, 1960 until Tuesday, July 26, 1960 at 10:00 o'clock P. M.)

Mr. Nachman: Your Honor, I believe we have made some progress in the handling of these documents over night and I think we have substantially expedited the matter. We have two rolls of the so-called staff stories which are stories written by the staff correspondents of The New York Times about which we had the lengthy examination yesterday. We have agreed with counsel that they will go in subject to the general objections that they made yesterday with regard to the many exhibits which covered these stories and subject to the same testimony of Mr. Faber [fol. 262] regarding the meaning of the dateline and byline that appears on each one of those and we can put them in now and the Court Reporter may identify them. We have already numbered them, Your Honor.

Mr. Embry: We have also agreed, Your Honor, that should a transcript be required that the stipulation covers the actual writing in by each question the objections that were originally made and that the answers be written in in the words of Mr. Faber rather than just saying, same answer. According to the Court Reporter, the last exhibit last night was numbered 150 and we started numbering these consecutively but somewhere we made an error and we began with No. 154, and we will let the Court Reporter straighten them out, through No. 173.

Mr. Nachman: We offer them in evidence then through 173.

Mr. Embry: Subject to our original objections and exceptions as previously indicated.

The Court: All right.

(Plaintiff's Exhibit No. 151, No. 152 and No. 153 void: due to error in marking by counsel.)

(Newspaper articles of The New York Times offered and received in evidence in bulk by the foregoing stipulation and identified as Plaintiff's Exhibits No. 154 to 163 and 164 to 173, inclusive.)

Mr. Nachman: Now, Your Honor, we have some more to introduce individually rather than in bulk.

The Court: Go ahead.

Cross examination. (Continued)

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

Q. Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 174 for identification and I call your attention to the story entitled, "School Fight Opens in Deep South," by John N. Popham, Special to The New York Times, datelined Chattanooga, Tennessee, January 18th.

The Court: What year?

Mr. Nachman: 1958, Your Honor. Our theory of admissibility is that that story represents the result of news gathering by Mr. Popham who was, if I recall Mr. Faber's testimony correctly, the Southern correspondent for The New York Times at that time and it contains the result of his news gathering activities in Alabama as well as in other States covered by this article.

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

Q. Am I correct, Mr. Faber, that there are references to Alabama in this news story?

A. I see the word, "Alabama" in one paragraph. I see a reference to suits that have been filed in Birmingham and Atlanta plus a reference to integration in Montgomery.

Q. Am I also correct in stating that Mr. Popham was the Southern correspondent for The New York Times as of January 19th, 1958?

A. Yes, sir.

Q. Was he so engaged during the period of time preceding that date?

A. Yes, sir.

Q. Was Alabama included within the area that he covered, namely, the Southern area of the Southern States?

A. Yes, sir. The Southern States.

Mr. Nachman: With that predicate, Your Honor, we offer this into evidence.

Mr. Embry: If the Court please, as additional grounds of objection, we state that it couldn't be relevant or material because the only thing shown by the document is that there is a mention of the State of Alabama by word reference.

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

Mr. Embry: We except.

[fol. 264] (Newspaper article, The New York Times, Sunday, January 19, 1958, page E-9 entitled, "School Fight Opens in Deep South," by John N. Popham, Special to The New York Times, datelined Chattanooga, Tennessee, January 18, offered and received in evidence and identified as Plaintiff's Exhibit No. 174.)

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

Q. Now, Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 175 which is a photostat of The New York Times edition of Sunday, January 24, 1960 and I call your attention to a story entitled "U. S. Negro Gains Held Scant in '59," by Claude Sitton, Special to The New York Times, datelined Atlanta, Georgia, January 23rd. Now, I ask you whether as of the date of this article and for a period of time preceding it which you may limit as you desire, whether Mr. Sitton was Southern correspondent for The New York Times?

A. Yes, he was.

Q. And again, was Alabama within the area that he covered?

A. Yes, sir.

Q. I will ask you whether that story refers to events or circumstances in Alabama?

A. It refers to Tuskegee Institute.

Q. Is that in Alabama?

A. It says here at Tuskegee, Alabama.

Mr. Nachman: Our theory again, Your Honor, is the same in that this story resulted from the news gathering activities of Mr. Sitton in Alabama.

Mr. Embry: We object, Your Honor. That paper does not reflect any activity of and shed no light on whether there was any activity on the part of any employee, agent or servant of The New York Times Company in the State of Alabama.

[fol. 265] The Court: I will let it in. Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Sunday, January 24, 1960 at page 57 entitled "U. S. Negro Gains Held Scant in '59," by Claude Sitton, Special to The New York Times, datelined Atlanta, January 23, offered and received in evidence and identified as Plaintiff's Exhibit No. 175.)

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

Q. Now, Mr. Faber, I show you an article from The New York Times of Tuesday, January 20th, 1959 at page 30 entitled "Patterson Backs Separate Schools," Montgomery, Alabama, January 19th and on the right hand side of that story appears a picture which is captioned as follows: "Sworn In: Governor John Patterson of Alabama, Who took office yesterday, watches inaugural parade in Montgomery. With him is his grandmother, Mrs. R. D. Patterson. Associated Press Wire Photo." Now, would you explain to the Court what arrangements the Times made, if you know, for the obtaining and printing of that photograph?

A. I have no connection at all with the obtaining or printing of pictures.

Q. Do you happen to know how The Times would obtain such a picture as that?

A. Well, we receive pictures from the Associated Press and now the United Press by wire photo machine and by delivery to us at our office.

Q. Would you state to the Court what arrangements The Times has, if any, with the Associated Press for news stories?

A. Yes. We receive news stories on an A P ticker machine which is located within our office.

Q. Do they come from Associated Press reporters in Alabama?

A. Well, they come basically from the New York relay [fol. 266] point of the Associated Press and I assume it comes into them there somehow.

Q. Does The Times have any regular procedure for studying Associated Press news reports which come in about events in Alabama in order to determine whether any of those reports are newsworthy and should be published in The New York Times?

A. Yes—

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

The Court: Well, it would have to be limited to the Times.

Mr. Nachman: Well, I thought I had so limited it.

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

Q. As I understand your testimony, Mr. Faber, you do receive through the Associated Press wire service Associated Press stories that come in from Alabama, do you not?

A. Yes, sir.

Q. Then, the question I asked was whether or not The New York Times has any regular procedure for selecting from among the stories that come in about Alabama those Associated Press stories that it will publish as being newsworthy.

A. Well, we get A.P. stories from all over the country and when I see them they come across my desk and I make a selection of those that I think are newsworthy and throw away the ones that I don't think are newsworthy.

Mr. Nachman: Your Honor, we offer this into evidence on the theory that it obviously relates to an important news event in Alabama and is news coverage in Alabama by the Associated Press which The Times has taken and published.

Mr. Embry: We object on the further grounds, Your Honor, that it shed no light on the activities on the part of The New York Times or by its agents, servants or em-

ployees in the State of Alabama, and on its face shows that it has been purchased from an organization which this testimony disclosed previously that The New York Times Company buys that by contract and does not gather it through [fol. 267] its own activities.

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

Q. Mr. Faber, what arrangements does The New York Times have with the Associated Press, if you know, sir?

A. My only knowledge is that the wire is copied that comes across my desk.

Q. Do you know anything about the financial arrangement that The New York Times has with The Associated Press?

A. No, sir.

Mr. Loeb: Mr. Nachman, I may be able to throw some light on this if I may be permitted to make a statement.

Mr. Nachman: Go ahead, sir.

Mr. Loeb: The New York Times is a member of the Associated Press which is a newspaper all over the country—newspapers all over the country are members of the Associated Press and as members of the Associated Press, they receive all the wire reports from the Associated Press and have the right to use the Associated Press to supply them with pictures that the Associated Press acquires or takes or purchases or however they get them. Those wire reports come in on a regular machine and are sorted out along with all the other copy that comes in not only from the Associated Press but from the United Press and their own correspondents but The New York Times would have absolutely nothing to do with any gathering of any news reports or news items that come in to its New York office across the Associated Press wire from the Associated Press office in New York.

Mr. Nachman: May I ask you a question in connection with that, Mr. Loeb?

Mr. Loeb: Yes. Go ahead.

Mr. Nachman: I am correct, sir, am I not, in stating that The New York Times makes a certain payment for its membership in the Associated Press?

Mr. Loeb: Yes. Every member in the Associated Press does. It depends on the circulation. I think that the amount [fol. 268] of dues that a member in the Associated Press pays to the Associated Press is in proportion to the circulation of the member newspaper.

Mr. Nachman: I assume that the advantage of membership in this organization is that The New York Times and other member newspapers can take advantage of the news gathering activities of the Associated Press.

Mr. Loeb: Sure.

Mr. Nachman: Your Honor, we think that certainly under the recent United States Supreme Court decision of this year in March, *Scripto* against Carson, wherein the Supreme Court said that the fact that business was done through independent contractors was irrelevant and that it was nevertheless doing business. Here, we have the situation where The New York Times is actually a member of a news gathering organization and for the stated purpose of being able to take advantage of the news gathering activities of this organization and we think that the stories should be admissible and we offer it into evidence on that basis.

Mr. Embry: Your Honor, we renew our objections on the additional and special grounds just stated to the Court in that it shows on its face that it was not the result of any activity on the part of either an agent, servant or employee of The New York Times Company, a corporation, and as a matter of fact, it shows on its face quite to the contrary. It shows that it is the result of something furnished to the New York Times by another organization which the testimony has shown to be independent of an unconnected with The New York Times Company. It certainly wouldn't shed any light on what, if anything, was done about the period that it purports to cover which was January 20th, 1959 in Alabama with respect to any activity or not on the part of this defendant in Alabama at that period of time.

The Court: Well, I think it has some circumstantial evidence and I will let it in and give you an exception.

Mr. Embry: We except.

Mr. Baker: Your Honor, is Mr. Loeb's statement a part of the Record? We would like the statement that he made



[fol. 269] to be a part of the Record concerning the relationship between The New York Times and the Associated Press and the United Press.

Mr. Loeb: Well, I assume it was a part of the Record. I wasn't talking off the Record.

Mr. Baker: Well, I just wanted to make certain of that.

Mr. Loeb: I just can't resist, Your Honor, getting up and making one more statement. The admission of this last exhibit just about reaches the ultimate in stretching the concept of doing business. It is beyond anything I have ever heard in my life.

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

(Newspaper article, The New York Times, Tuesday, January 20, 1959 at page 30 entitled, "Patterson Backs Separate Schools," datelined Montgomery, Alabama, January 19, offered and received in evidence and identified as Plaintiff's Exhibit No. 176.)

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

Q. Next, Mr. Faber, I show you Plaintiff's Exhibit No. 177 for identification consisting of two pages, pages 1 and 40 of the March 22nd, 1959 issue of The New York Times and it is entitled, "Dixiecrat Move Gains Adherents," by Claude Sitton, Special to The New York Times, datelined Atlanta, March 21st. I ask you once again, Mr. Faber, whether Mr. Sitton was the Southern correspondent of The New York Times on that date and whether he had been for a period of time before that?

Mr. Embry: Now, we object to that question, Your Honor, on the grounds that although it has been shown he was the Southern correspondent this document sheds no light on whether—this document sheds no light on anything he may have done in Alabama or what this corporation may or may not have done in Alabama.

[fol. 270] Mr. Nachman: Well, if it is conceded that Mr. Sitton was, then I will withdraw that part of the question. Our theory of admissibility, Your Honor, is that again as in the earlier exhibits that this is the result of Mr. Sitton's news gathering activities in Alabama.

The Court: Let me read it.

Mr. Nachman: Here it is, Your Honor.

The Court: I think there is some question as to the admissibility of this. Let me exclude it.

(Newspaper article, The New York Times, Sunday, March 22nd, 1959, page 1 and page 40, entitled, "Dixiecrat Move Gains Adherents," by Claude Sitton, Special to The New York Times, datelined Atlanta, March 21st, offered in evidence as Plaintiff's Exhibit No. 177, but disallowed and excluded by the Court.)

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

Q. Now, Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 178 for identification which is page 30 of the July 7th, 1959 issue of The New York Times showing the title, "Birmingham Resists Church Integration," by John Wicklein and there is no dateline. I will ask you what the absence of a dateline on this story means? What does that mean, if anything?

A. Well, it means that Mr. Wicklein wrote this piece in New York City.

Q. Do you happen to know whether Mr. Wicklein came into Birmingham in order to gather material for that story?

A. Yes, I do.

Q. You know that he did?

A. Yes, he did.

Q. There are photographs in here of Bishop Bachman G. Hodge and Mrs. M. E. Tilly and Rev. Fred L. Shuttlesworth. Is that right?

A. Yes, sir.

[fol. 271] Q. Now, the Rev. Fred L. Shuttlesworth's photograph has an Associated Press caption and the other two have no caption. Do you happen to know where the two without captions were obtained?

A. No, I don't.

Mr. Nachman: If the Court please, we offer this in evidence on the statement of the witness that he knows that Mr. Wicklein came in to Birmingham to obtain this story.

Mr. Embry: Your Honor, we object on the further ground that that's not the best evidence of any activity as to what Mr. Wicklein may or may not have done and when he did it. It doesn't shed any light on his activities in the State of Alabama for and on behalf of The New York Times Company so as to be of any evidential value as to whether they did business or not at about the time of attempted service and summons of process on this defendant in April of 1960 or at the time of the issue of that newspaper.

The Court: I think this exhibit in connection with Mr. Faber's testimony is admissible. You may have an exception.

Mr. Embry: We except.

(Newspaper article, The New York Times, Tuesday, July 7, 1958 at page 30 entitled, "Birmingham Resists Church Integration," by John Wicklein, offered and received in evidence and identified as Plaintiff's Exhibit No. 178.)

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

Q. I show you now, Mr. Faber, two documents identified as Plaintiff's Exhibit No. 179 for identification at pages 1 and 44 of the November 29th, 1959 issue of the Sunday New York Times and I call your attention to the story entitled "Racial Curbs Eased by Southern Hotels," by Claude Sitton, Special to The New York Times, datelined Atlanta, November 28th.

A. Yes, sir. I see it.

[fol. 272] Mr. Nachman: Mr. Embry, if there is no question but that Mr. Sitton was the Southern correspondent at that time, then I will not go into that again.

Mr. Embry: From a period of November 9, 1958 to the present—

Mr. Nachman: To November 29th, 1959. Again, Your Honor, we offer this in evidence on the same theory as the stories by the other correspondents.

Mr. Embry: We add the specific objection, Your Honor, that the dateline shows it is Atlanta and it shows according to the testimony that the article was prepared in Atlanta and it sheds no light on the activities of that indi-

vidual as can be determined from the context of the article and sheds no light on the activities of that individual in Alabama either at the time of service of summons and process in April of 1960 or at the time of the issue of the paper in November of 1959.

Mr. Nachman: I call Your Honor's attention to the second column of the second page in this news story which talks about reasons cited by hotel and convention executives in Atlanta and Birmingham.

Mr. Embry: We object on the further ground that it appears to be an article dealing with the whole South, Your Honor, and not just with Alabama.

The Court: Let me see the article. I will exclude that one.

(Newspaper article, The New York Times, Sunday, November 29, 1959, pages 1 and 44 entitled, "Racial Curbs Eased by Southern Hotels," by Claude Sitton, Special to The New York Times, Atlanta, November 28, offered in evidence as Plaintiff's Exhibit No. 179 disallowed and excluded by the Court.)

[fol. 273] Mr. Embry: Now, Your Honor, we have Exhibit No. 180 here to which we assign the same additional special objections.

Mr. Nachman: Plaintiff's Exhibit No. 180, Your Honor, is a story by Claude Sitton, Special to The New York Times, datelined Atlanta, of the March 6th, 1960 issue of the Sunday New York Times at page E-3 describing "The Mood of the South—and the Status now of Civil Rights." In this article, Your Honor will find discussions of demonstrations in Montgomery and references to statements issued by clergymen and educators, lawyers, doctors and business men and a quotation from Ralph Abernathy.

The Court: That's one of our local clergymen?

Mr. Nachman: One of our local clergymen. Yes, sir.

The Court: Where is the reference to Abernathy?

Mr. Nachman: Right there, Your Honor.

The Court: I think this might indicate some news gathering here in the State and I will let that one in.

Mr. Embry: We except, Your Honor.

Mr. Nachman: Our next exhibit, Your Honor—

The Court: Let me see that last exhibit once again. No. 180. I doubt that this one is connected sufficiently with Alabama. Let me backtrack and exclude that one. Plaintiff's Exhibit No. 180 is excluded.

(Newspaper article, The New York Times, Sunday, March 6, 1960, at page E-3 entitled, "The Mood of the South—And the Status Now of Civil Rights," by Claude Sitton, Special to The New York Times, Atlanta, March 5, offered in evidence as Plaintiff's Exhibit No. 180 disallowed and excluded by the Court.)

Mr. Nachman: If the Court please, in line with the Court's ruling we will withdraw Plaintiff's Exhibit No. 181 [fol. 274] marked for identification which had pictures taken on the same day. We will withdraw that one.

(Plaintiff's Exhibit No. 181 for identification withdrawn by counsel for the Plaintiff.)

Mr. Nachman: Plaintiff's Exhibit No. 182 for identification is page E-5 of The New York Sunday Times of September 8th, 1957 entitled "Integration: Actions by States," by John N. Popham, Special to The New York Times, datelined Little Rock, Arkansas, September 7th. Is there any question, Mr. Embry, about Mr. Popham's relationship with The Times as the Southern correspondent?

Mr. Embry: Whatever the testimony was about him.

Mr. Nachman: He was the Southern correspondent at that time, Mr. Faber?

The Witness: Yes, sir.

Mr. Nachman: This story too, Your Honor, contains a discussion about the integration question in the States and mentions in the article Alabama and was the result of the news gathering activities—

The Court: In this article?

Mr. Nachman: Yes, sir.

The Court: Where does this article show that he was in Alabama to gather all this information?

Mr. Embry: It doesn't show it, Your Honor.

Mr. Nachman: Your Honor, we submit that Mr. Popham covered the States in his territory and according to the testimony Alabama is included therein and that when he

writes about a situation in Alabama it shows that he must have some basis for the fact that he had written about Alabama—

The Court: Well, he could have gotten this information from some place else without coming into the State. Let me exclude this and give you an exception.

[fol. 275] (Newspaper article, The New York Times, Sunday, September 8, 1957, page E-5 entitled, "Integration: Actions by States," by John N. Popham, Special to The New York Times, Little Rock, Arkansas, September 7, offered as Plaintiff's Exhibit No. 182 for identification and excluded by the Court.)

Mr. Nachman: Exhibit No. 183 for identification is again a story by John N. Popham—

Mr. Loeb: That is datelined in Chattanooga, Tennessee.

The Court: What is that number?

Mr. Nachman: Plaintiff's Exhibit No. 183, Your Honor.

The Court: Let me see it. This appears to be more of an historical document than anything else. Let me exclude it and give you an exception.

(Newspaper article, The New York Times, dated December 1, 1957, entitled "The Southern Negro: Change and Paradox," by John N. Popham, Chattanooga, offered in evidence as Plaintiff's Exhibit No. 183 and disallowed and excluded by the Court.)

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

Q. Now, Mr. Faber, I show you Plaintiff's Exhibit No. 184 for identification from The New York Times Magazine of December 29th, 1957 entitled, "Report on Montgomery a Year After," by Abel Plenn, Montgomery, Alabama. Will you state who Abel Plenn is?

A. I have no idea.

Mr. Embry: May I ask him a question?

The Court: Go ahead.

[fol. 276] Mr. Embry: Was Mr. Plenn an employee of The New York Times Company or was he on the date of the issuance of this paper?

The Witness: No, sir.

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

Q. Do you know whether or not The New York Times paid Mr. Plenn for this story?

A. I don't know.

Q. Do you know anything about the circumstances of the publication of that article?

A. No, I don't.

Q. You have nothing to do with the publications that appear in The New York Times Magazine?

A. That's correct.

Q. Do you know who on The New York Times staff does have that knowledge?

A. Yes, sir.

Q. Who?

A. Mr. Webster Martell is in charge of the Sunday Magazine among other things.

Q. He would be the gentleman who would know about any arrangements made with Mr. Plenn for the publication of this story?

A. He or someone in his department, certainly.

Mr. Nachman: If the Court please, we withdraw Plaintiff's Exhibit No. 184 for identification.

(Newspaper article, New York Times, dated December 29, 1957 entitled, "Report on Montgomery a Year After," by Abel Plenn, Montgomery, Alabama, withdrawn by counsel for the Plaintiff.)

[fol. 277] Cross examination. (Continued)

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

Q. You probably testified about this yesterday, Mr. Faber, but so that we can get started in context would you state again to the Court what the designation "Special to The New York Times" without a byline but with a dateline from a city within Alabama would indicate?

A. A Special would mean that it was not a wire story and that some effort was made by The New York Times to obtain the information in that story.

Q. Am I correct in stating that the Special story would

come either from a stringer or from a staff correspondent even though the staff correspondent's name does not appear there?

A. Well, there would be another possibility too.

Q. What would that be, sir?

A. That would be that someone in New York had made a telephone call to gain information in another city and they had therefore used it.

Q. But if it obtained the dateline, if I am using the correct word, of a city in Alabama, it would indicate that the news gathering activities that went into this story had occurred there, would it not?

A. Not necessarily.

Q. Would you explain yourself, sir?

A. Well, in certain incidents, we receive letters or press releases from a city containing information and we verify that by phone from New York.

Q. Well, let me put it this way. This is the designation that you give to stories that are sent in by stringers which you publish.

A. Yes, sir.

Q. And it is the designation that you give stories that are sent in by staff correspondents that you publish although you don't publish their names.

A. Yes, sir.

Q. And it does not include any wire service stories.

A. No, sir. It does not.

[fol. 278] Mr. Nachman: Your Honor, with that general predicate, we have again with counsel for the other side culled out six rolls of Special stories which will go in under their general objection which counsel has made and then they may have some other special objections they may want to make.

Mr. Embry: Well, if it please the Court, our general objection is already in the Record in respect to the same type of document—

The Court: Yes.

Mr. Embry: We want to add to that general objection an objection on the grounds that it is not shown by the testimony elicited from the witness that the appearance of



the slug or byline "Special to The New York Times" indicates or sheds any light or has any purpose or any probative value or force or effect as to whether the corporation or its employees, agents or servants was carrying on activity in connection with news gathering either at the time of the service of process on the defendant in this cause on April, 1960 or at the time of the dateline of any such articles or news stories that appeared in the paper. It is not shown by those items of evidence sought to be introduced by counsel by these documents which I assume counsel for the plaintiff will number nor that any activities of the corporation were carried on in connection with the gathering of the news contained in that series of articles and in support of that ground of objection, Your Honor, I would like to ask Mr. Faber one question.

The Court: Go ahead.

Mr. Embry: Are there a number of other occasions, Mr. Faber, when the caption "Special to the New York Times" appears on the byline or dateline of an article or news item in The New York Times newspaper when you have received that article or news item from a source not connected with in anywise with respect to employment or contract or purchase but where an item is sent to you gratuitously either from an individual, a corporation or a press agent—do you also have items of that kind which contain "Special to The New York Times"?

[fol. 279] Mr. Baker: We object to the leading, if the Court please.

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

The Witness: Yes, sir.

Mr. Embry: Those are the additional general grounds, Your Honor, under the general objection heretofore made to the whole line of documents.

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

Q. In the newspaper parlance, Mr. Faber, what is the purpose of putting a dateline on a Special story? What is that dateline designed to show?

The Court: Now, does the dateline include the city or is it just the date?

Mr. Nachman: By the dateline, I mean the city and the date, Your Honor.

The Court: All right. Go ahead.

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

Q. What is that designed to show, Mr. Faber?

A. That something happened in that city on that date.

Q. Is it designed to show anything in connection with the news gathering?

A. Well, which term are you using now?

Q. The dateline.

A. The dateline?

Q. Yes.

A. No.

Q. For example, Montgomery, Alabama, July 26th, with a Special to The New York Times. What would the words, Montgomery, Alabama, July 26th indicate?

A. That would indicate that something newsworthy happened in that city on that date.

Q. And it gives no indication of the fact that there was any news gathering activities that went into that story that [fol. 280] took place there in that city?

A. The dateline?

Q. Yes.

A. No.

Q. And the "Special?" That doesn't indicate that either?

A. The "Special" indicates the Times made some special effort to get news from that city on that date.

Q. All right, sir. That's what I am getting at.

Mr. Nachman: With that predicate, Your Honor, we offer these in evidence.

Mr. Embry: If the Court please, now that he has offered them into evidence, I wish to say that it does not indicate by what means they were made, whether they were made by an employee of The Times or whether by purchase by some other person operating as an independent contractor or buying them in some other way. Was there any indication along that line, Mr. Faber?

The Witness: No, sir.

Mr. Embry: All right. We renew our objections, Your Honor. Let me ask you this, Mr. Faber. It didn't indicate whether it might be the result of an inquiry from your office by telephone from New York to the person that sent the item of news in—it doesn't indicate that it was done by any one of those means, does it?

The Witness: That's correct.

The Court: How do you connect these "Specials" up with news gathering activities in Alabama, Mr. Nachman?

Mr. Nachman: Your Honor, in terms of what Mr. Faber just said that they indicate a special effort by The New York Times to get news that occurred in these places in Alabama and that they include stories sent in by staff correspondents and by string correspondents situated in those places.

The Court: Well, I will let them in subject to all legal objections.

Mr. Embry: We except.

[fol. 281] (Six Rolls of newspaper articles, The New York Times, offered and received in evidence and identified as Special No. 1, Plaintiff's Exhibits 185 through and including 197; Special No. 2, Plaintiff's Exhibits 198 through and including 200; Special No. 3, Plaintiff's Exhibits 201 through and including 214; Special No. 4, Plaintiff's Exhibits 215 through and including 220; Special No. 5, Plaintiff's Exhibits 221 through and including 228; Special No. 6, Plaintiff's Exhibits 229 through and including 232.)

Mr. Embry: May I ask the witness one more question, Your Honor, on Voir Dire in connection with these same objections?

The Court: Yes. Go ahead.

Mr. Embry: Mr. Faber, is it true or not that if a Special story is sent in by a staff correspondent, one of your employees, that his name would appear on that story?

The Witness: Not all the time. No, sir.

Mr. Nachman: Your Honor, we now have some additional "Specials" to which counsel may want to add some additional objections. We have one "Special" here relating to weddings—

The Court: Relating to what?

Mr. Nachman: Relating to prospective weddings to take place in Alabama, Your Honor.

Mr. Embry: When this last group of exhibits was handed to the Court Reporter, is he going to know what they are and number them consecutively?

Mr. Nachman: I assume so. Each one is marked Special 1 through Special 6 and the Court Reporter can identify them when he can get to it.

The Court: All right. Go ahead.

Mr. Nachman: Now, Your Honor, these items that I am offering into evidence are captioned the same as the others, [fol. 282] "Special to The New York Times" with a city in Alabama and the date but they relate to weddings.

The Court: Weddings?

Mr. Nachman: Yes, sir. Weddings. They are announcements of weddings or announcements of engagements and I believe that counsel has additional objections or questions that they want to ask about those.

Mr. Embry: Your Honor, we have some very, very special objections about those. We want to ask Mr. Faber some questions on Voir Dire about these.

The Court: Go ahead.

By Mr. T. Eric Embry:

Q. Mr. Faber, you have previously seen these prospective exhibits in the Jury Room that Mr. Nachman is about to offer into evidence, these items from the Society Section of The New York Times newspaper covering a period of dates embraced within the years 1956, 1957, 1958, 1959 and 1960. Is that right, sir?

A. Yes, sir.

Q. With reference to each of those which pertain to wedding announcements or announcements of engagements or announcements of intention of various parties to marry, can you tell His Honor by what means those are gathered, if I may use that term, by what means are those news items of society and social interest gathered or placed in the hands of the New York Times for publication by The New York Times?

A. The wording and the marriage announcements nor-

mally come into The Times by mail from the parties concerned.

The Court: The fathers and mothers of the brides and grooms?

The Witness: That's right, Your Honor. From the fathers and mothers of the prospective brides and grooms and usually with a letter requesting publication.

[fol. 283] By Mr. T. Eric Embry: (Continuing)

Q. State to the Court whether or not you solicit by any means whether by employee or independent contractor or any other means as a result of your own initiative or whether you solicit social items or social news from the State of Alabama or did you within the period of the years that I specified from 1956 through 1960?

A. No. We did not.

The Court: Let me see some of those wedding exhibits.

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

Q. Mr. Faber, do you on occasion pay string correspondents for this kind of wedding announcement that is sent in as a Special to The New York Times?

A. If we had asked for it, I suppose we would have paid for it.

Q. Well, suppose he sent one in without your asking for it and you published it. Would you pay him for it then?

A. From a stringer?

Q. Yes.

A. Yes, we would.

Q. Does that happen on occasion with wedding announcements? Has that happened with that category of stories that I have been referring to?

A. Well, it never happened in the State of Alabama.

Mr. Embry: Your Honor, we renew our objections with particular reference to—

The Court: All of these refer to nuptials?

Mr. Embry: That's right, Your Honor. They shed no light on the issues involved in this case—

Mr. Nachman: Well, we withdraw that if the Court please.

(Plaintiff's Exhibits 233, 234, 235 and 236 pertaining to wedding announcements and engagements withdrawn by counsel for the Plaintiff.)

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

Q. Now, Mr. Faber, I show you two documents identified [fol. 284] as Plaintiff's Exhibit No. 233 and Plaintiff's Exhibit No. 234 as the other exhibits so numbered have been withdrawn and this one purports to be a New York Times magazine story of April 3rd, 1960 with an Atlanta dateline entitled "A Southern View of the South," by Harold Flemming. Do you have any knowledge as to who Mr. Flemming is?

A. No, sir.

Q. Do you have any knowledge of any arrangements which were made by The New York Times for the publication of that story?

A. No, sir.

Mr. Nachman: We will withdraw this, if the Court please.

(Plaintiff's Exhibit No. 233 for identification entitled "A Southern View of the South" dated April, 1960, Magazine Section of The New York Times, by Harold Flemming, withdrawn by counsel for the Plaintiff.)

Mr. Nachman: I withdraw Plaintiff's Exhibit No. 234 for identification.

(Plaintiff's Exhibit No. 234 for identification withdrawn by counsel for the Plaintiff.)

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

Q. Mr. Faber, I now show you a document identified as Plaintiff's Exhibit No. 235 for identification from The New York Times, Sunday, April 10th, 1960, from the New York Times Magazine Section, entitled "Gardens along the Gulf Depict Another Era," Mobile, Alabama, and it contains

no date and no byline. Would you explain to the Court what the absence of the byline and dateline means and what that story indicates, if anything, in regard to news gathering activity in Alabama?

A. Well, without the date we have no idea as to when it was written and I cannot tell from the article itself whether it was written in Mobile and I see two initials "M. F." on the bottom of it but I cannot tell whether it was written in Alabama or anywhere else.

Q. Do you know what arrangements, if any, are made [fol. 285] with reference to stories like that by The Times?

A. No, sir.

Q. Do you know whether any payment was made for this article?

A. No, I do not.

Q. It does appear in an edition of The New York Times though?

A. Yes, sir.

Mr. Nachman: Your Honor, this article is entirely related to gardens in Mobile. The article consists of five columns with photographs and certainly the contents of the are article are entirely devoted to circumstances and places located in Alabama. We offer it in evidence on that basis.

The Court: What is your theory about this?

Mr. Nachman: Well, it is published as news by the newspaper and it obviously relates to Alabama and it shows on its face that it necessitated the gathering of news by someone about Alabama and that it was published in The New York Times.

Mr. Embry: May I call Your Honor's attention to our previous objections to this sort of thing. I would like to draw an analogy if I may. That type of article and under the testimony of the witness of this specific exhibit, No. 235, to draw an inference or to suppose that that had any evidential value about news gathering activities in the State of Alabama by this defendant corporation would be akin to drawing the inference that I had been in Manila in the Philippine Islands. On this week if an article by me appeared in a periodical this week which may have well been drawn from my recollection and from my obser-

vation and readings of other periodicals or perhaps even drawn purely on my imagination. There is absolutely nothing in that article and there is no evidence before Your Honor to even present a scintilla which would entitle any person or the Court to draw the inference from the contents or from the format of it or the fact that it appeared in the newspaper that it has any evidential value as to whether this corporate defendant did anything in connection with it in Alabama. There is just a complete absence of evidence in that sort of thing, Your Honor. I could write a book today, and many people do as a matter [fol. 286] of fact, and cast it in the present tense and purport to give opinions and ideas about we will say a political situation in Indo-China but it may have been drawn from the reading of newspapers or articles or a treatise or essays by other authors and then collected together and presented as—

The Court: I believe that Mr. Sabatini, a great Spanish novelist, wrote a book called "The Carolinian" and it was so perfect that everybody thought he lived in North Carolina but he never had been over here. Mr. Henry wrote a great book called "With Lee in Virginia," and he had never been out of London.

Mr. Embry: That's the very sort of thing I am talking about, Your Honor. I have a book in my possession right now which is a transcript of the trial of the proceedings of the defense of the first mate of the privateer Savannah which was captured in 1861 and of which the founder of this law firm of which Mr. Loeb is a member, Mr. Lord—defended that first mate—

The Court: Mr. Loeb was not a member of the crew that—

Mr. Embry: Not at that time, Your Honor. However, the founder of his firm defended that mate, you see. Now, to draw the inference from that that Mr. Loeb or Mr. Lord had something to do with the outfitting of the privateer or the launching of the vessel or the putting of it on the high seas as a privateer, would be just as absurd as to draw the inference from this article that The New York Times Company was doing business in the State of Alabama. It



just cannot be done, Your Honor, according to human logic and reason.

The Court: It shocks your ideas of the rules of evidence, does it?

Mr. Embry: It most certainly does, Your Honor.

Mr. Nachman: Well, Your Honor, we can go far afield now and talk about the Philippines and privateers on the high seas and so forth—

The Court: Well, he was just using those references as an illustration. Go ahead.

[fol. 287] Mr. Nachman: This article, in its entirety, deals with the gardens in Mobile and it describes the events in detail and a picture was taken of it and maybe Mr. Embry can take a picture of the Philippines from Montgomery, Alabama. I don't know. However, this article contains a picture of Mobile—

The Court: Well, you can buy a picture postcard down there—

Mr. Nachman: Yes, Your Honor, but we say that—

The Court: Well, I don't think it comes within the scintilla rule. Let me exclude it.

(Plaintiff's Exhibit No. 235 offered in evidence but disallowed and excluded by the Court.)

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

Q. Now, Mr. Faber, the next exhibit I show you is identified as Plaintiff's Exhibit No. 236 for identification and appears on page 76 of the Sunday, January 6th, 1957 New York Times and I call your attention to an article entitled "University Integration Scene," datelined Tuscaloosa, Alabama, January 5th. There is no indication of "Special to The New York Times." Would you explain the circumstances of that insofar as you may know the circumstances?

A. Well, from looking at the exhibit there is no line "Special to The New York Times" nor is there any indication that it is an A.P. or a U.P. story. I cannot tell from the article whether we omitted the "Special" or the A.P. or U.P.

Q. But you do know that something was omitted.

A. Apparently so. Yes, sir.

Q. And you testify that this was either a Special or a U.P. or A.P. story.

A. Or a wire service story.

Q. I understand that it could have been a wire story.

A. Yes, sir.

Q. But it could have been a "Special".

[fol. 288] A. It could have been. Yes, sir.

Mr. Nachman: We offer this in evidence on the same theory as we offered the other Specials, if the Court please.

The Court: Well, "could have been" is quite a vague term, isn't it.

Mr. Nachman: Well, Mr. Faber indicated that there should have been something else there.

The Court: Well, let me exclude this.

(Plaintiff's Exhibit No. 236 offered in evidence and disallowed and excluded from the Record by the Court.)

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

Q. Mr. Faber, I show you Plaintiff's Exhibit No. 237 for identification from The New York Times, Friday, January 11th, 1957 at page 37 and I call your attention to the article entitled, "Other Banks", Birmingham, Alabama, Special to The New York Times, January 10th. I will ask you if that story is in any different category than the "Specials" about which you testified earlier?

A. No, sir.

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

Mr. Embry: Mr. Faber, do financial specials ever emanate otherwise than from stringers and/or staff correspondents?

The Witness: Yes, sir.

Mr. Embry: From what other sources would you get special financial items of news?

The Witness: Well, we would get them from the houses in New York or mostly from their publicity representatives.

Mr. Embry: Who are not in Alabama.

The Witness: Not in Alabama. That's right.

Mr. Embry: Would that tell you whether this came from that particular source—that particular one or are you able to determine or not where it came from?

[fol. 289] The Witness: This one, I think I can determine came from Birmingham.

Mr. Nachman: We offer it, Your Honor.

The Court: I will let that one in then.

Mr. Embry: We except.

(Newspaper article, The New York Times, Friday, January 11, 1957 at page 37 entitled “Other Banks” Birmingham, Alabama, Special to the New York Times, Birmingham, Alabama, dated January 10, offered and received in evidence and identified as Plaintiff’s Exhibit No. 237.)

Mr. Nachman: The next exhibit that we propose to offer, Your Honor, is again one without any wire service attribution or without any special designation and I assume that Your Honor will rule the same and we will withdraw No. 238.

(Plaintiff’s Exhibit No. 238 for identification withdrawn by counsel for the Plaintiff.)

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

Q. Mr. Faber, I am now showing you Plaintiff’s Exhibit No. 239 for identification which is page 43 of The New York Times, Thursday, January 12th, 1956 issue and I call your attention to the article entitled, “Mobile, Alabama,” Special to The New York Times, Mobile, Alabama, January 11th. This story relates to a Board of Directors meeting of The American National Bank and Trust Company of Mobile. Again, I ask you whether that Special is in any different category from the other Specials about which you have testified previously?

A. No, sir.

By Mr. T. Eric Embry: (Continuing)

Q. Mr. Faber, do you have a phrase you use in the news-  
[fol. 290] paper world called a “round-up”?

A. Yes, sir.

Q. What is a round-up?

A. Well, that's where we gather information from many sources and put it together in one story.

Q. Is the type of thing you are looking at in this exhibit which is generally headed, "Many Banks Elect Officers at Meetings," a series of short news items contained on most of that page? Is that what you term as a round-up?

A. It is one type of a round-up.

Q. One type of round-up.

A. Yes, sir.

Q. May I ask you if it is true or whether or not often times as to these type round-ups you are looking at in that exhibit, items of news are sent direct to you from the institution or direct to you from a bank?

A. Yes, sir.

Q. As a news item.

A. Sometimes. Yes, sir.

Q. It would still, would it not, I will ask you whether this is true—it would still have a line on it "Special to the New York Times."

A. Not in this particular case.

Q. It would not?

A. No, sir. There are some here that have no Special on them from out of town banks.

Q. Well, does that differentiate between the ones that do have that line on them and those that do not?

A. Yes, sir. There is a difference.

Q. What is your differentiation on that point?

A. Well, these presumably came from the press agent of the banks directly into New York and these others came from the cities in question.

Q. From stringers?

A. From stringers in this case.

Q. Was that procured in any other fashion from a [fol. 291] stringer than any other item that you have testified to about as having been procured from a stringer by either request from you and payment for the item or offered to you and accepted by you in New York and in payment for the item?

A. The same circumstances.

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