Q. Now, I show you Plaintiff's Exhibit No. 347 and ask you whether or not your name appears on that ad?

A. Yes, it does.

Q. Did you sign that ad?

A. No, I didn't.

Q. Did you publish the ad?

A. No, I did not.

Q. Did you cause the ad to be published?

A. No, I did not.

Q. Did you authorize any persons to use your name on that ad?

A. I authorized no person to use my name on this ad.

Q. Did you authorize any person to use your name in the furtherance of the work of the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South"?

A. I authorized no person to use my name on any committee to defend Martin Luther King.

Q. Are you a member of that committee?

A. I am not.

Q. Did you have any knowledge prior to the time this ad was published that this ad would appear in The New York Times?

A. I had no knowledge of it.

Q. Did you have any prior knowledge that your name would be affixed to that ad?

[fol. 1929] A. I had no idea of it.

Q. Did you request or pay The Times or any other organization or person to have that ad published in your behalf in The New York Times?

A. No, I did not.

Q. Where was the first time you saw that ad?

A. The ad?

Q. Yes.

A. You mean in the paper or a copy of it?

Q. A copy of it.

A. I saw a copy of the ad sometime in May. I don't remember the date.

Q. Where were you when you saw it?

A. I was in Montgomery.

Q. Here in Montgomery?

A. Yes.

Q. Now, prior to that time, had you received a letter requesting that you retract that ad from Commissioner Sullivan?

A. Yes, I did receive a letter from Commissioner Sullivan.

Q. Did you reply to that?

A. No. As I recall, the letter didn't ask for a reply. It asked me to publish a retraction of equal size or something like that to an ad that appeared in The New York Times and I had no knowledge of any ad and so I could make no retraction.

Q. Was it at that time—was that the first time that you knew that your name was in any way being associated with this ad when you received the letter from Commissioner Sullivan?

A. It was the first time I knew that there was an ad or that my name was associated with the ad and that was when I got the letter.

Q. I believe you received that letter on or about April 11th. Is that about when you received it?

A. I think so.

Q. Is it your testimony that even though this ad came out on the 29th of March that you didn't know anything about it and about your name being affixed to it until you received Commissioner Sullivan's letter about two weeks later?

[fol. 1930] A. That is correct.

Q. Now, prior to the date of the publication of the ad in question, did any representative of The New York Times contact you to ascertain whether or not you had given your consent for the use of your name?

A. No. No representative of The New York Times contacted me.

Q. Now, I think you testified that you didn't authorize anyone to—that you didn't reply to Commissioner Sullivan's letter—did you take any affirmative action to try to find out how your name got on the ad?

A. Well, the first thing I did when I got the letter was to try to find the paper in which the ad was to appear and I was unable to do so. What was your question now?

Q. My question was whether you took any affirmative action to try to determine how your name got on the ad after you got the letter from Commissioner Sullivan?

A. As I recall, I tried to find a copy of the paper and before I could find a copy of the paper the suit was filed and then I sought advice of counsel.

Q. All right. That's all.

Cross examination.

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

Q. You never wrote to The New York Times and asked them to publish a letter stating that you had nothing to do with this ad?

A. No, I had no request from The Times at all—

Q. That was not my question. Did you ever write to the New York Times and ask The New York Times to print in its letters to the editor column a letter from you saying that you had nothing to do with this ad?

A. No. I never wrote to The Times.

Q. You never did anything like that.

A. No.

Q. And you never wrote to Mr. Sullivan.

A. No. Mr. Sullivan didn't ask for a reply. He simply asked me to retract the ad.

Q. You never denied to him in response to that letter that [fol. 1931] you had published this ad.

A. No, but I told you—

Q. I understand that, but that was on a deposition.

A. Yes.

Q. This past summer.

A. Yes.

Q. But you didn't communicate with Commissioner Sullivan in any way by letter or otherwise telling him that you had nothing to do with it.

A. Well, I got the letter from Mr. Sullivan just a few days after the suit was filed and so I sought out a lawyer to try to find out what I could do and the next thing I knew I was already coming here for a deposition and I told you

I had nothing to do with this ad and no responsibility at all for it.

Q. You came up here for a deposition June 25th, didn't you? I show you this deposition.

A. I believe that's about the date. Yes. I think that's approximately the date, yes.

Q. So that was more than two months after you received this letter from Mr. Sullivan, wasn't it?

A. Yes, it was after the suit was filed.

Q. All right. That's all.

Mr. Embry: No questions.

JOHN MURRAY, having been duly sworn, was called as a witness for the defendants and testified as follows:

Direct examination.

By Lawyer Gray:

Q. State your name to the Court and jury.

A. John Murray.

Q. Where do you live?

A. At 780 West End Avenue, New York City.

[fol. 1932] Q. What is your occupation, sir?

A. I am a writer.

Q. Are you familiar with the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South"?

A. Yes, I am.

Q. Were you on March 29th of this year in any way associated with that committee or connected with that committee?

A. Yes, I was.

Q. In what way were you connected with that committee?

A. As a volunteer. As an individual volunteer so as to help in any way within my capacity that they could use me in my profession as a writer.

Q. Did the committee call upon you to do any work for it?

A. Yes.

Q. What did they call upon you to do?

A. They called upon me to help draft an ad for The New York Times together with two other writers and they asked us to form a committee to draft this ad—a committee of writers.

Q. Who composed that committee along with yourself?

A. That committee was composed of William Branch, a writer, and John Killens, another writer, and myself.

Q. Will you tell us whether or not you were furnished with any source materials to prepare this?

A. Yes. We were given a memorandum containing the substance of the material that was wanted for the ad to go into the ad.

Q. Who gave you that memorandum?

A. That memorandum was given to us by Bayard Rustin, the coordinator or Executive Director of the committee.

Q. You say at that time that Bayard Rustin served as supervisor—

A. I think he served as Executive Director. He was the man in charge of the committee on the staff.

Q. Now, after the ad had been drawn, were you familiar with the names that appeared on the ad?

A. (No answer from the witness.)

[fol. 1933] Q. I don't mean whether you were familiar with the persons personally but did you know what names went on the ad that you were there doing the drafting of?

A. Yes, I was familiar with the names because the names were part of what was to go into the ad and that list of names constituted all the people who subscribed to the sense of the ad.

Q. Now, will you tell the Court and jury and if possible in chronological order as best you can recall the events leading up to this ad being placed in The New York Times.

A. Well, after we were given this rather lengthy memorandum by Mr. Rustin in which a number of matters were underscored that he felt should be definitely in the ad and incorporated into it, we got together and gave it some kind of appealing form—what we thought would be an appealing form for the ad. Then, after that, I was asked

by Mr. Rustin to get together with the people at the Union Advertising Company so far as lay-out was concerned. I did that and they got up a lay-out of the ad. Then, I think, it went to The New York Times—

Q. Let me interrupt you for a minute. At this time will you tell the Court and jury—I would like you to refer to Plaintiff's Exhibit No. 347 and tell the Court and jury when this originally went to the ad whether or not it contained all of the names as now appear on the ad?

A. No. It didn't contain this body of names. The ad was actually a little different in the lower one-third section. It was the same as this down to here.

Q. Now, point out to—are you saying—I would like you to hold it up so that the jury can see it.

Mr. Baker: What stage of the ad are we at now?

Lawyer Gray: This is the initial stage of the ad.

Mr. Baker: When it reached The Times?

Lawyer Gray: Yes.

Mr. Nachman: These names weren't on the bottom of it?

Lawyer Gray: That's what he's testifying.

The Witness: That's right. The first draft of the ad—the ad was substantially the same down to here. Then this [fol. 1934] list of officers which are now listed underneath the title of the ad were up here and this part here—

Mr. Embry: When you say here, I wish you would indicate what you mean.

The Witness: All right, sir. These names that are now listed here below the title or the address of the committee, Chairman, A. Philip Randolph, and so forth, were arranged differently. These were all laid out up here where you now have the listing of the ministers. Furthermore, the name of the committee to defend Martin Luther King and so forth was much larger and that took up the bottom most part of the ad.

By Lawyer Gray: (Continuing)

Q. Now, in the ad originally, did the ad contain this material? "We in the South who are Struggling Daily for Dignity and Freedom Warmly Endorse this Appeal"? Then, did it go ahead and name any number of ministers

from the South including Rev. Abernathy, Rev. Shuttlesworth, Rev. Seay and Rev. Lowery? Now, did those names appear on the ad as it went to The New York Times originally?

A. No, sir. They did not.

Q. They did not.

A. They did not.

Q. Now, did those names appear on the list of names that was taken to The New York Times and attached to the letter that was sent by A. Philip Randolph saying that those persons had given their consent?

A. No. Those names did not appear in that list.

Q. Now, will you tell the Court and the jury whether or not in the letter that A. Philip Randolph sent to The New York Times—did it purport to say that those ministers, including the four named defendants, had given their consent for their names to appear on that ad?

Mr. Embry: We object to that, Your Honor. The letter speaks for itself.

The Court: Yes. Do you have the letter?

Lawyer Gray: Yes, sir. The letter is here in evidence. [fol. 1935] The Court: All right. Read the letter and see what it says. Now, where is the list?

Lawyer Gray: That's the question, Your Honor. I asked the same question about the list.

The Court: Does the witness know where the list is?

The Witness: May I see this?

Lawyer Gray: Yes. Here it is.

The Witness: Mr. Rustin gave me the original copy of this letter plus the list of names that was to appear under the material of the ad. That list of these names here below the caption "Your Help is Urgently Needed" and above "We in the south" and so forth. This list here—

By Lawyer Gray: (Continuing)

Q. Now, in that list of names does the names of the defendants, Abernathy, Shuttlesworth, Seay and Lowery appear?

A. No, sir. They do not. They do not appear on that list.

Q. Their names did not appear in the list that A. Philip Randolph said had consented to the use of their names in the furtherance of the work of the committee.

A. That is correct.

Q. All right. Go ahead.

A. After this first proof was ready, it came back and I think each of the writers got a copy and various other people on the committee and Mr. Rustin, after the corrections were made, Mr. Rustin called me up and said that he would like me to come up—the other two writers could not come as they were involved in something else and he asked me could I possibly come up to consult with him because he was not satisfied with the ad as it was and since the ad had to be okayed the following morning in order to make a certain issue that he was shooting for and he asked if I would not get with him that night or that evening and I came up to the office and he laid out the ad and set it out on the table there and said that he was not satisfied with the ad and said that the ad didn't have the kind of appeal that he felt it should have.

[fol. 1936] I did not know exactly what he meant or what he was driving at and he couldn't express it clearly himself but I was more or less guided by what he said because he had experience along these lines and he felt that the ad should have a greater appeal if it was to get the kind of response of funds that the committee needed. Various ideas were exchanged and finally about—after about an hour of discussion he said that he suddenly got the idea that he thinks will do it. He then opened a drawer and pulled out a list of names that was the list of the individual ministers whose churches were affiliated with the Southern Christian Leadership Conference and he then said we can list these names—he said we can list these ministers and place it that we from the south support this appeal. Then—

Q. Did he, or did you, get their consent before their names were placed on it?

Mr. Nachman: We object to that. He is testifying about what someone else did, Your Honor.

The Court: Well, if he has personal knowledge—

Lawyer Gray: Yes, Your Honor. Personal knowledge. He was with them and he knows—

The Witness: Well, at that particular time I was present. As a matter of fact, a question or something like that came up because I said to Mr. Rustin after he made this suggestion, I said, if you want the ad to get to The Times tomorrow, how are we going to contact all of these people in all of these cities and he said we don't have to because by virtue of the fact that they all belong to the S.E.L.C. and since the S.C.L.C. supports the work of the committee that he felt there would be no problem at all and that you didn't even have to consult them.

Mr. Nachman: What is S.C.L.C.? I don't know whether we object to the question or not.

Mr. Embry: I don't know what it means either—

Lawyer Gray: I will ask him. What do you mean when you say S.C.L.C.?

The Witness: Well, my understanding is the S.C.L.C. is [fol. 1937] a southern organization. The Southern Christian Leadership Conference, to which these ministers here listed belong.

By Lawyer Gray: (Continuing)

Q. And Mr. Rustin said that he assumed that it was all right to use their names.

A. Yes. Automatically he assumed that they would approve of it and it wasn't necessary to talk to them.

Q. But no one got their authority to affix their names.

A. Not to my knowledge. What happened immediately after that was that he had a young lady who was there at the typewriter to type out a list and put this sentence in and incorporated it and tacked it on to the ad and sent it back to the agency and he called the man at home, in fact, because the office was closed and said that the ad would be over the first thing in the morning and that he would like to have this incorporated in it and the rest of it was all right and that's the point it was gotten in and gotten over to The Times.

Q. So, then, it was Mr. Rustin who decided on his own to just place their names on that ad.

A. Yes, sir.

Q. And he decided to do that on the spur of the moment.

A. That's right.

Q. Was that the night before he went back to The Times for final publication?

A. I don't know whether it went back to The Times the next morning. I think it first went back to the agency because they had to re-draft the thing for a second proof.

Q. Now, did it come back to you before it went on to The New York Times from the agency?

A. I think so. I think it did.

Q. When you say agency, you are referring to the Union Advertising Agency?

A. That's right.

Q. All right. That's all.

[fol. 1938] Cross examination.

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

Q. Do you remember having a conversation with Mr. Aronson of The New York Times when this ad was brought in?

A. Yes, sir.

Q. Do you remember anything being said about sending some authorization along later, that is, authorization for the use of the names on this ad?

A. No, I don't think so. I believe that I had the authorization with me. I brought this letter.

Q. You brought the Randolph letter at the same time you brought the draft of the ad. Is that correct?

A. No. I went to The New York Times—it was the agency that was drafting the lay-out of the ad. That's right. I remember now what happened.

Q. The advertising agency—

A. That's right. I remember what happened now. When I first went to The Times—the first time I went there, I did not go in the capacity of a writer. I did it actually as a favor for Mr. Rustin who could not go himself because he was busy and he asked me to drop in and place the ad and to give them the order for the ad.

Q. At The New York Times.
A. At The New York Times.
Q. And the person you talked to there was Mr. Aronson.
A. Yes, Mr. Aronson.
Q. Now, when you took that ad in there, did you also take the letter from A. Philip Randolph?
A. Yes, but I didn't have the ad with me at that time.
Q. What did you take with you?
A. I just placed the order for the ad.
Q. I see. You didn't have the ad with you.
A. That's right.
Q. You placed the order for the ad.
A. I placed the order for the ad, yes. I did that so they [fol. 1939] would reserve space for the ad.
Q. Do you remember approximately what date that was? Do you remember in terms of when the ad came out? Was it a week before the ad came out or ten days before the ad came out or just how long was it?
A. I would say it was within two weeks before.
Q. Within two weeks before?
A. Yes, but I can't be sure.
Q. Did you have any written material at all that you presented to Mr. Aronson or did you just tell him that the ad is coming and I want to arrange to place it?
A. To be honest with you, I don't remember because I am confused about the sequence of events such as having the physical thing in my hand and as to whether the agency had it or I had it or whether they were working on the ad or whether I actually had it with me—I don't know. I do remember that I went to place the ad though.
Q. Do you remember ever having delivered a written ad to The New York Times?
A. I don't know. I am not sure whether I took it over there or whether the Union Advertising Agency did.
Q. Would this be a correct statement? On or about March 25th, 1960 one John Murray brought to The New York Times plant at 229 West 43rd Street in the City of New York the original copy from which the advertisement referred to in this question was formed?

Mr. Embry: Your Honor, we object to that. That doesn't ask the witness what happened. It is telling—

Mr. Nachman: Did that happen?

Mr. Embry: We renew our objection.

Mr. Nachman: Did that ever happen? Did you ever take on or about March 25th, 1960—did you ever take to The New York Times plant in New York City at 229 West 43rd Street the original copy of the advertisement that you have before you there, Plaintiff's Exhibit No. 347?

The Witness: I may have. I may have had a copy of the ad with me which was also given to the Union Adver- [fol. 1940] tising Agency simultaneously for lay-out. I can't be certain. I might have had the ad with me.

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

Q. You just aren't sure whether you had it with you or whether you didn't. Is that right?

A. That's right.

Q. Now, have you ever been to Montgomery, Alabama before?

A. No, sir.

Q. As I understand it, you and two other men wrote this ad.

A. That's right.

Q. And you wrote it from source material.

A. That's right.

Q. What was that source material that you wrote it from?

A. That source material was a memorandum that was given to us by Mr. Rustin.

Q. Was it documented in any way?

A. No, it was not.

Q. Did it refer to any specific sources such as newspaper articles or anything like that?

A. No. No, it didn't. I believe it was a memorandum that he dictated.

Q. To his secretary?

A. To someone. Perhaps a secretary. He dictated it in which he felt should be the general direction of the ad

and that it should contain certain specific things that he outlined within that ad.

Q. Where did he get his information?

A. I don't know. I assumed he got it from newspapers. There were a lot of stories printed in almost all of the papers morning and afternoon and I assume whatever was in that he got from some source—

Q. Did he refer to any newspaper articles in this memorandum?

A. No.

Q. Did he cite any?

A. No, he didn't.

Q. What does Rustin do? What is his profession?

[fol. 1941] A. Well, Mr. Rustin, I understand, is a professional organizer—a professional staff person with organizations. He has been with various organizations in the capacity of an Executive Director and coordinator and so forth.

Q. I see. A professional fund raiser.

A. I don't know whether it's a professional fund raiser or not but I guess it is something along those lines.

Q. What does he organize? You say he is an organizer. What does he organize?

A. Well, by an organizer, I mean someone who carries on the executive function in organizational work of some kind. Whether it is a committee like this—I just recall another organization that I know he has been affiliated with and that is the War Resisters League.

Q. The what?

A. The War Resisters League. That is a league for pacifism—no war, and so forth.

Q. I see. He has organized an appeal for that group too.

A. Yes. He works along those lines.

Q. Do you know of any other groups he has organized for?

A. No, I don't.

Q. Now, did you satisfy yourself that the facts that you were going to put into this ad were correct or that the purported facts which were going into the ad were correct?

A. Well, no, sir—

Lawyer Gray: We object to that. He simply said that he used the source material that was furnished to him.

The Court: I believe the question is admissible. I will let it in and give you an exception.

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

Q. You may answer the question.

A. I took it for granted that these facts were as stated. I felt no reason, or any need to check on them. I just assumed automatically that everything in that ad was as stated.

[fol. 1942] Q. I see. Even though now sources were cited, you didn't bother to check it yourself.

A. No. As a matter of fact, when Mr. Rustin on some other occasions gave out memorandum material to be written—a letter or something to be drafted—it was not his practice to cite source material or to be questioned about it because the people just took it for granted that he was in a better position to know of the facts as a professional person at the source, so to speak, and it was not questioned.

Q. Has he been to Montgomery?

A. I don't know.

Q. Now, when he first gave you this memorandum and I call your attention to paragraph No. 3 on the left hand column of this ad identified as Plaintiff's Exhibit No. 347 which reads "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission." Did you read that?

A. Yes, I read that.

Q. Was that the way that paragraph was when you first got it with the memorandum or did you give it that added touch for appeal?

A. Well, it would be a little difficult at this time to recall the exact wording in the memorandum but the sense of what was in the memorandum was certainly the same as what is in here. We may have phrased it a little differently here and there.

Q. I see. Your purpose was to rev it up a little bit to get money, I take it.

A. Well, our purpose was to get money and to make the ad as—to project it in the most appealing form from the material we were getting.

Q. Whether it was accurate or not really didn't make much difference, did it?

A. Well, that did not enter the—it did not enter into consideration at all except we took it for granted that it was [fol. 1943] accurate—we took it for granted that it was accurate—they were accurate—and if they hadn't been—I mean we would have stopped to question it—I mean we would have stopped to question it. We had every reason to believe it.

Q. Do you write for a lot of publications?

A. Yes.

Q. What other writing have you done besides this?

A. Well, I had a rather wide range of writing. I have been a scenarist in Hollywood for several studios—a playwright and a composer and lyricist for a number of Broadway shows and I have also done different types of writing such as industrial films and done writing and films for the Army, intelligence films, which is a different type of writing altogether.

Q. Have you ever done any writing such as this before for organizations—run ads to get money?

A. No, I haven't.

Q. This is the first one of this type you have ever done?

A. That's right.

Q. Now, I understand from your testimony that March 29th was the target date so to speak to get this ad into the paper. Is that correct?

A. Well, I don't know whether that particular date was the target date or not but I think what would have happened if that particular date had been missed—they might

have had to wait four or five days in order to get desirable space. In other words they were shooting for that date in order to get the ad in.

Q. In other words, they wanted it in just as soon as possible.

A. That's right.

Q. And that was the earliest date you could get it in.

A. That's right.

Q. All right. That's all.

Mr. Embry: No questions.

DEFENDANTS REST

Lawyer Gray: The defense rests, if the Court please.

The Court: There is no further testimony?

Lawyer Gray: Your Honor, we would like to re-file our Motions to Exclude—

[fol. 1944] The Court: Well, just so we have a complete understanding that all the testimony is closed. Gentlemen of the jury, there are some very important legal questions being raised here that I would like to think over and turn over in my mind because this case means a great deal to all of the parties and everybody concerned and I am not one of these people who shoot the law from the hip —I don't believe in that sort of thing. I will let you gentlemen go until three o'clock because I must have some time to study these things over. While you are on the outside don't talk about this case or discuss it with anybody. Don't have anything to do with me or the Clerk or the lawyers or anybody and don't discuss the case. We will recess until three-thirty.

(At this point, Court was recessed and reconvened at 3:30 and the following occurred outside the presence of the jury.)

COURT'S OVERRULING OF MOTIONS OF DEFENDANTS, ABERNATHY, SHUTTLESWORTH, SEAY AND LOWERY TO EXCLUDE ALL OF THE PLAINTIFF'S EVIDENCE

The Court: Note this for the Record, Mr. Reporter. Now comes each of the following defendants, Ralph D.

Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery and files herein their Motion to Exclude all of the Plaintiff's Testimony and argues same to the Court and the Court is of the opinion that none of said Motions are well taken and it is, therefore, ordered that the Motions of Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery to exclude the Plaintiff's evidence be and the same are hereby denied. Now, at the conclusion of all the testimony in the trial, and all of the parties having rested their cases, the said defendants, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery, each separately re-files his Motion to Exclude all of the evidence of the Plaintiff and same being argued to the Court and now being understood by the Court, it is considered, ordered and adjudged by the Court that each of said Motions hereby are overruled and denied and each defendant has an exception to the Court's ruling.

[fol. 1945] (Court reconvened Thursday, November 3, 1960.)

(The following occurred in Chambers outside the presence of the jury.)

Mr. Embry: Your Honor, there is one statement that I would like to make to the Court in connection with the request of The New York Times for the general charge and a request for the general charge as to each count, and I would like to call Your Honor's attention to a variance in the pleadings and proof in this case as to each count in connection with that request for the general charge. Each count claims punitive damages against all of these defendants and all the defendants are joined as parties to each count and there being no evidence from which the jury could find that the other defendants—the individual defendants—were guilty of malice or which under the law amounts to malice, which would entitle that to be submitted to the jury as to those other defendants under a claim of punitive damages and our request is based on the proposition that where some of the defendants—they are all cast in the same mold—seeking damages on the same theory of law and where they claim punitive damages and there is no

evidence from which the jury would be authorized to find a verdict against any one defendant, then you cannot submit it to the jury for their consideration against all of the defendants.

Lawyer Crawford: There is no conflict in the evidence as we see it, Your Honor, as applies to these individual defendants. The testimony has shown that the individual defendants knew nothing and had no knowledge of the advertisement and no knowledge of the writing or the publication until they received a letter demanding retraction. The testimony further showed that they did not consent and did not authorize it. Now, with reference to the letter from Randolph, the witness, John Murray, who wrote the ad, testified that the only reason why those individual names were on that was that when this ad was brought back from the Union Advertising Agency that Bayard Rustin, who [fol. 1946] was one of the professional organizers, said that we need something more appealing and he came up with the idea and said, I've got it, and he pulled out a list of names and he said put these names on it, and if you recall, Your Honor, that is the letter Mr. Randolph wrote which went to The New York Times and to the Union Advertising Agency and did not have the names of the individual defendants thereon. The individual defendants knew nothing of the ad and had no time to give their consent as Mr. Murray stated in his testimony that he did it on the spur of the moment and he said, I am sure it will be all right. We respectfully request the Court to give us the affirmative charge. We have the testimony of the individual defendants unequivocally denying knowing anything about the publication of this ad until after the letter of retraction and after it became a matter of public knowledge and in a local newspaper and hearsay that they were being sued.

The Court: I will overrule the Motions and you may have an exception.

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

Lawyer Gray: We except, Your Honor.

Lawyer Crawford: We except, Your Honor.

[fol. 1947]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

AT LAW

Case No. 27416

L. B. SULLIVAN, Plaintiff,

vs.

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

ORAL CHARGE AND EXCEPTIONS THERETO

The Court: Gentlemen of the Jury, before getting down to the immediate points of law here as the Judge of the Court I would like to join with the attorneys in this case in thanking you for the attention, care and interest which you have shown in listening to the testimony in this case and for your patience in listening to the arguments of counsel. It is always a pleasure to try a case with a jury that is interested and has patience and I wish to thank you for that. Now, one other thing I would like to say although I think it is hardly necessary—one of the defendants in this case is a corporate defendant and some of the others belong to various races and in your deliberation in arriving at your verdict, all of these defendants whether they be corporate or individuals or whether they belong to this race or that doesn't have a thing on earth to do with this case but let the evidence and the law be the two pole stars that will guide you and try to do justice in fairness to all of these parties here. They have no place on earth to go to settle this dispute except to come before a Court of our country and lay the matter before a jury of twelve men in whose selection each party has had the right to participate and out of all the jurors we had here at this term of Court, some fifty jurors, the parties here have selected you because they have confidence in your honesty, your integrity,

your judgment and your common sense. Please remember, [fol. 1948] gentlemen of the jury, that all of the parties that stand here stand before you on equal footing and are all equal at the Bar of Justice.

Now, let us see if I can tell you briefly what this case is about. There are two counts in the Bill of Complaint and I will not try to read them to you at length. The plaintiff in the case is L. B. Sullivan, an individual. The five defendants in the case are The New York Times Company, a corporation, and the following individuals: Ralph B. Abernathy; Fred L. Shuttlesworth; S. S. Seay, Sr. and J. E. Lowery. Now, it is the contention of the plaintiff, Mr. Sullivan, that on or about the 29th of March, I believe it is, in 1960, a certain publication was made in The New York Times on page 25 of the March 29th, 1960 issue in an advertisement entitled "Heed Their Rising Voices." You have seen the witnesses with this advertisement and you have seen them and heard them testify and you have seen the ad and, of course, you will have a photostatic copy on the back of this Complaint to take to the Jury Room with you. It is the contention of the plaintiff, Sullivan, that the statements made in this advertisement, and one of the statements is set out in Count 1 which you heard read and another statement is set out in Count 2, which I will not read again because you are familiar with them and you will have the Complaint with you and it is alleged that they contain false and defamatory matter against him and it is his contention that the extracts from this advertisement contained in these two Counts in the Complaint imputed improper conduct to him and it is his contention that this advertisement subjected him to public contempt, to ridicule, to shame and prejudice, and prejudiced Mr. Sullivan in his public office as Police Commissioner, in his profession, in his trade and in his business and all was done, he claims, with the intent to defame him. Now, in the first count of the Complaint which I will read to you he says this was false and defamatory and injured him in his profession. "In Montgomery, Alabama, after students sang, 'My Country, 'Tis of Thee' on the Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and [fol. 1949] tear-gas ringed the Alabama State College

Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission." "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses'. And now they have charged him with perjury—a felony under which they could imprison him for ten years." Then, the next part of the advertisement which is objected to is contained in paragraph number 2 which looks like practically the same thing here.

Now, we have a law in Alabama which says that when a public officer contends that a publication libels him concerning his official conduct that he cannot recover any vindictive or punitive damages unless, five days before he brings his law suit he has made written demand upon the defendant for a public retraction of the charge made and published, and that the defendant has failed or refused within five days to make a full and fair retraction of the published matter or the charge. Under the law, if a defendant fails to make a full and fair retraction, within five days after plaintiff's demand, then the plaintiff is not barred from the recovery of punitive damages if he would be otherwise entitled to claim them. Now, the plaintiff in this case is claiming damages in the sum of five hundred thousand dollars. Now, the defendants have come into Court, as is their right, and they have filed what we call the Plea of the General Issue and that is a general denial that they are guilty of the things charged. They are denying these things that are set out in the Complaint were published of and concerning Sullivan, the plaintiff, they deny that the matter published was defamatory of the plaintiff, Sullivan, and the defendant, The Times, also denies that the ad referred to Sullivan, the plaintiff, or charged him with something that is libelous and they deny that the ad itself charged the plaintiff with any misconduct. Now, there are four individual defendants and they are Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery, and they deny [fol. 1950] and plead the general issue too and they deny

before the jury that they signed the ad and they say they did not authorize the use of their names and they say they did not know the ad was being published and never did give their consent to the use of their names. So, when those pleas are filed, the Plea of the General Issue, the law steps in and says to the plaintiff, Sullivan, what? It says, very well, Mr. Plaintiff, if you would have a verdict at the hands of the jury awarding you damages and upon which the Court would be authorized to render a judgment at some later date or on the same day, then you must do this. You must reasonably satisfy the jury from the evidence that what you say in your whole Complaint or in Count 1 or in Count 2 is true. So that's the burden that rests on the plaintiff here today—not to satisfy you beyond all reasonable doubt as would be the case in a criminal case but simply to convince you to your reasonable satisfaction that what he says and what he claims in this Complaint is true. Now, as stated, the defendants say that the ad complained of does not name the plaintiff, Sullivan, by name and that the ad is not published of and concerning him. Now, the law does not always require the person suing for damages in a libel case to be named by name because sometimes the alleged libelous matter may be directed at a group or the class of people of which the plaintiff says he is a member, but in such a case where the libel is addressed to a class or a group the party suing, that is, the plaintiff, Sullivan, as a member of the group referred to must show by the evidence to your reasonable satisfaction that the words objected to were spoken of and concerning him. The reason for this being that while any one of a class or group may maintain an action because of alleged libelous words, he must show to the reasonable satisfaction of the jury that the words he complained of apply especially to him or are published of and concerning him. Now, when matter alleged to be libelous is published, you are not to read it critically but you read it as the average, reasonable and normal person of ordinary intelligence in the community, the place, the city of Montgomery would read this advertisement. Now, with reference to the publication I will say this. The publication of defamatory material in the legal [fol. 1951] sense is a communication, the passing on of this

material to any person or persons other than the person who is bringing the suit. If the communication is in written form it would be libel instead of a slander. If I said something to you orally or said something about you orally—we call that a slander but if I read it, print it, or put it in a cartoon, then we call that libel. Every person who has any part in such a publication, that is, a written communication, except a disseminator, is held to be strictly libel. Now, the general rule of law is that if a libel is directed at a group or a class of people it can form the basis of a law suit by an individual member of that group provided that he can show that although he is not called by name, while he is not mentioned by name, in that advertisement, yet a person in the place of publication, Montgomery, reading it, can readily identify the plaintiff as the person spoken of and concerned by the publication. So, at the very outset of your deliberations you come to this question. Were the words complained of in Counts 1 and 2 of this Complaint spoken of and concerning the plaintiff, Sullivan? That's the burden he has. He must show that to your reasonable satisfaction and if the evidence in this case does not reasonably satisfy you that the words published were spoken of or concerning Sullivan or that they related to him, why then of course he would not be entitled to any damages and you would not go any further. Now, the plea filed by the defendants in this case or what we call the general issue, raises the question of the truth of the things published. Now, we have a law in Alabama that in an action of this kind the truth of the words written or published, or the circumstances under which they were published, may be given in evidence under the plea of the general issue in mitigation of damages. Those are the words of the statute.

Now, the Court is of the opinion and so charges you, gentlemen of the jury, that the matter complained of in Plaintiff's Exhibit No. 347, that's the controversial ad which you will have before you, and parts of which are set out in the Counts here in the Complaint, belongs to that class of defamation called in law, libel per se. Now, defamatory words to be actionable per se are those which [fol. 1952] on their face and without the aid of any other

evidence or any other extrinsic proof are recognized by the law as being injurious. Writings libelous per se carry the presumption of falsity and of malice. Now, in the case of words actionable per se, that is, actionable by themselves, their injurious character is a fact of common notoriety, established by the general consent of men. The libel in a case of this kind is such that in the natural and proximate consequences it will necessarily cause injury and damage to the person concerned in his official, public or social relations. And the law in such a case implies legal injury from the bare fact of publication itself. We can say, as part of the law in this case, that a publication is libelous per se when they are such as to degrade the plaintiff in the estimation of his friends and the people of the place where he lives, as injure him in his public office, or impute misconduct to him in his office, or want or official integrity, or want of fidelity to a public trust or such as will subject the plaintiff to ridicule or public distrust. All those kind of charges are called, libelous per se.

Now, gentlemen of the jury, the publication under consideration by you is not what we call a privileged communication, but it is unprivileged. That is, the publication was not made in the performance of some duty, political, judicial, or the like. So in a case of the kind that we have here, where the Court charges you that this libelous matter is libelous per se, then falsity and malice are presumed. General damages need not be alleged or proved but are presumed and any allegation in the Complaint of specific damages is not necessary. Punitive damages are available to the plaintiff and the Plea of the General Issue merely puts on the plaintiff, Sullivan, the burden of reasonably satisfying you of the publication of the matter in the advertisement by the defendants and that this publication was of and concerning him and was aimed at him.

Now, it is the contention of the plaintiff here that although you may believe, as to the four individual defendants, that they did not sign this advertisement and did not authorize it, yet it is the contention of the plaintiff, Sullivan, that [fol. 1953] the four individuals the four individual defendants after knowing of the publication of the advertisement and after knowing of its content, ratified the use of their

names, that is, that they approved and sanctioned this advertisement. In other words, the plaintiff, Sullivan, insists that there was a ratification of the advertisement and the use of their names as signers of the advertisement by the four individual defendants and we here define ratification as the approval by a person of a prior act which did not bind him but which was professedly done on his account or in his behalf whereby the act, the use of his name, the publication, is given effect as if authorized by him in the very beginning. Ratification is really the same as a previous authorization and is a confirmation or approval of what has been done by another on his account. Now, it is for you twelve jurors to say from all the evidence whether the four defendants ratified the advertisement now before you, that is, ratified that advertisement as I have defined the word ratification to you.

Now, gentlemen of the jury, if you are reasonably satisfied from the evidence before you, considered in connection with the Rules of Law the Court has stated to you, and you and I both have a part in rendering whatever judgment may be made in this case. You twelve men are what we call the finders of fact, the triers of the facts and I want you to know that every disputed question of fact in this case is left to you and as the Judge presiding at the trial of this case I do not have any opinion whatsoever about the facts of this case, and if I did, it would be highly improper for me to express that opinion in this case. So I leave every one of the disputed facts in this case to you. So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the Rules of Law the Court has stated to you, you would come to consider the question of damages and, where as here, the Court has ruled the matter complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, is libelous per se then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown. Now, what do we mean by punitive damages? Well, gentlemen of the jury, that word, punitive, really defines itself. It is something like a [fol. 1954] definition of reasonable doubt. By punitive damages, we mean such damages as are given as a kind of

punishment to a defendant with a view of preventing similar wrongs in the future. Punitive damages are awarded on the theory that they will deter the defendant from making a like publication and will also deter all other persons similarly situated if they hear about it from making a like publication.

Now, gentlemen of the jury, if after a careful consideration of all the evidence in this case under the rules of law I have just laid down to you and these rules of law you will follow in your deliberations and they will guide you in arriving at whatever verdict you may come to. Now, in case you find for the plaintiff, and you understand that under our system here in America, all twelve of you must agree on the verdict, you will write this kind of verdict if you find for the plaintiff. We, the jury, find in favor of the plaintiff and assess his damages at so many dollars, not exceeding the amount claimed. It may be that you are reasonably satisfied from the evidence here that you ought to have a verdict against the corporate defendant, against The New York Times Company, but not against the four individual defendants. Then, if that is the case, you would render this kind of a verdict. We, the jury, find in favor of the plaintiff against the defendant, The New York Times Company, a corporation, and assess his damages at so many dollars. We further find in favor of the other defendants, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery. On the other hand, if the plaintiff in this case has not reasonably satisfied you from all of the evidence of the truth of the allegations contained in his complaint or of any one count thereof, then the defendant would be entitled to the verdict and you would write this kind of verdict. We, the jury, find for the defendant. You may let any one of your number act as foreman and I am going to let you take all three of these verdicts out with you and you may sign any one you find to be proper under the evidence and under the law, and as I stated, the verdict must be the concurrent action of all twelve of you men sitting on the jury.

The Court: Is the plaintiff satisfied? What says the plaintiff?

[fol. 1955] Mr. Nachman: Satisfied, Your Honor.

The Court: What says the defendants?

Mr. Embry: Will you give us a minute, Your Honor?

The Court: Yes. Now, gentlemen of the jury, a rule of law which is very good and which is applicable in this case that where any of the lawyers for any one of the parties in this case, either the plaintiff or the defendants, that if they have certain ideas of the law and they would like the Court to state their ideas to the jury in their very words and if the Judge thinks that what they suggest is good for, then he gives that to the jury and we call such things written instructions and if the Court thinks they are good, I write my name on here, given, Jones, Judge and then I read them to you and you can take them out and if I think they are bad then I put on here the word, Refused, and give them to the Clerk of the Court and you never see them. Now, at the request of the defendant, The New York Times Company, a corporation, I give you these charges in writing. They do not conflict with anything I have already stated to you. They are correct expositions of the law and are to be taken and considered with what I have already stated to you.

(At this point, the Court reads written charges of The New York Times Company, defendant.)

The Court: Now, gentlemen of the jury, at the request of the individual defendants in this case, I give you these charges in writing.

(At this point, the Court reads written charges of defendants.)

The Court: Now, would it be sufficient to state to the jury that these same identical charges are given in behalf of the other three defendants? Would you prefer the Court to read all of them?

Lawyer Gray: It is perfectly all right, Your Honor, to instruct the jury that each written charge applies to the others.

The Court: Now, gentlemen of the jury, these four writ-[fol. 1956] ten charges that I have just read to you and given you with reference to the defendant, J. E. Lowery,

I give you these same identical charges that I have just read with reference to the defendant, Fred L. Shuttlesworth, with reference to S. S. Seay, Sr. and with reference to Ralph D. Abernathy and you are to consider them the same as if I had gone through and read them with reference to all of them and these charges that I have just read to you at the request of the individual defendant, J. E. Lowery, relate to him and also to each of the other three individual defendants in the case. Now, gentlemen of the jury, you take this case and consider it as fairly and as impartially as you can and do your best under the law and evidence in this case to arrive at a true verdict. What says the plaintiff?

Mr. Nachman: Satisfied, Your Honor.

The Court: What says the defendants?

Mr. MacLeod: If the Court please, the defendant, The New York Times Company, a corporation, excepts to the statement contained in the Court's Oral Charge to the jury wherein the Court stated, "Now the Court is of the opinion and so charges you, gentlemen of the jury, that the matter complained of in Plaintiff's Exhibit No. 347, the advertisement, belongs to a class of defamation called in law, libel per se." The defendant, The New York Times Company, a corporation, further excepts, Your Honor, to the portion of the Court's Oral Charge to the jury wherein the Court stated as follows: "We can say, as part of the law in this case, that a publication is libelous per se when they are such as to degrade the plaintiff in the estimation of his friends and the people of the place where he lives, as injure him in his public office, or impute misconduct in office, want of official integrity, or fidelity to public trust, or such as will subject plaintiff to ridicule or public distrust."

Mr. Embry: Your Honor, we want the Record to note an objection to the interrogatories and the answers thereto being allowed to go into the Jury Room with the jurors as an exhibit.

The Court: All right. I overrule the objection. You may have an exception.

[fol. 1957] Mr. Embry: We except, Your Honor. We except to the oral portions of Your Honor's Charge wherein

Your Honor charged on libel per se. We object to that portion of Your Honor's Charge wherein Your Honor charged as follows: "So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the rules of law the Court has stated to you, you would come to consider the question of damages and, where as here, the Court has ruled the matter complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, is libelous per se then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown."

The Court: Overruled and you have an exception.

Lawyer Gray: Your Honor, we except to the Court's Charge dealing with ratification as well as the Court's Charge in connection with the alleged advertisement being libelous per se in behalf of each of the individual defendants.

The Court: Very well. Overruled. You may have an exception.

Lawyer Gray: We except, Your Honor.

[fol. 1957a]

GIVEN CHARGES REQUESTED BY THE DEFENDANT NEW YORK TIMES

The following written charges were requested by the defendant, The New York Times Company, a Corporation, and given by the Court in writing, viz:

"6. I charge you, gentlemen of the jury, that after reading the advertisement published in the newspaper of the defendant, The New York Times Company, a corporation, and recalling the testimony in this case that it is your duty to determine whether, in fact, that advertisement published in the defendant, The New York Times Company, a corporation's newspaper intended to and does identify the plaintiff, and I further charge you that the plaintiff in this case has the burden of reasonably satisfying you by a fair preponderance of the evidence that the advertisement does in fact identify him, and if you find from the evidence

that the plaintiff has failed to meet this burden, then I charge you that your verdict must be for the defendant, The New York Times Company, a corporation."

Given, Jones, Judge

"7. I charge you, gentlemen of the jury, that if you find from the evidence that the advertisement complained of by plaintiff relates to a person or persons other than the plaintiff and does not concern plaintiff, then I further charge you your verdict must be for the defendant, The New York Times Company, a corporation."

Given, Jones, Judge

"12. I charge you, gentlemen of the jury, that compensatory damages, if awarded at all, must be fixed at such a figure as the jury dispassionately and according to the evidence in this case finds to be commensurate with the injury actually sustained by the plaintiff."

Given, Jones, Judge

"13. I charge you, gentlemen of the jury, that the right, if any, to recover compensatory damages does not necessarily imply a right to recover substantial damages."

Given, Jones, Judge

"19. I charge you, gentlemen of the jury, that for the purpose of rebutting and repelling the idea of malice, the defendant, The New York Times Company, a corporation, has the right to prove and explain all the facts and cir-[fol.1957b] cumstances surrounding the publication of the advertisement complained of by plaintiff in his complaint."

Given, Jones, Judge

"20. I charge you, gentlemen of the jury, that unless the statements contained in the advertisement of March 29, 1960, published in the newspaper of the defendant, The New York Times Company, a corporation, were directed against the plaintiff, then this advertisement does not afford

plaintiff a basis for recovery in this case against the defendant, The New York Times Company, a corporation."

Given, Jones, Judge

"21. I charge you, gentlemen of the jury, if you believe from the evidence that the advertisement of March 29, 1960 was directed at others than the plaintiff and not at the plaintiff, then such advertisement cannot afford the plaintiff a basis of recovery in this case."

Given, Jones, Judge

"29. I charge you, gentlemen of the jury, that should you reach the point in your deliberation as to the assessment of punitive damages, if you have found that the advertisement published by the defendant New York Times Company and complained of by the plaintiff was of and concerning the plaintiff and was libelous, then you must consider in mitigation of such damages all the circumstances under which the advertisement was published which have been given in evidence."

Given, Jones, Judge

"30. I charge you, gentlemen of the jury, that in this case the defendant has entered a plea of the general issue; that is to say that the burden of proof in the first instance is on the plaintiff to show to your reasonable satisfaction by a preponderance of the evidence that the advertisement printed by the defendant New York Times Company was published by the defendant New York Times Company of and concerning the plaintiff. If you find from the evidence that the advertisement was not published of and concerning the plaintiff, then your verdict must be for the defendant New York Times Company."

Given, Jones, Judge

"31. I charge you, gentlemen of the jury, that should you reach the point in your deliberation as to the assessment of compensatory or actual damages, if you have found that [fol. 1957c] the advertisement published by the defendant New York Times Company and complained of by the

plaintiff was of and concerning the plaintiff and was libelous, then the burden is on the plaintiff to prove to your reasonable satisfaction by a preponderance of the evidence the items of actual or compensatory damage that he claims to have suffered, and you are further instructed that this amount may be nominal."

Given, Jones, Judge

"32. I charge you, gentlemen of the jury, that the burden is on the plaintiff to prove to your satisfaction by a fair preponderance of the evidence that the advertisement complained of by the plaintiff was published by the New York Times Company of and concerning him."

Given, Jones, Judge

"33. I charge you, gentlemen of the jury, that the burden is on the plaintiff to prove to your satisfaction by a fair preponderance of the evidence that the advertisement complained of by the plaintiff as published by the New York Times Company referred to some ascertained or ascertainable person and that person must be the plaintiff."

Given, Jones, Judge

"34. I charge you, gentlemen of the jury, that you must be reasonably satisfied from the evidence that the adverment complained of by the plaintiff was published by the New York Times Company with reference to and concerning the plaintiff."

Given, Jones, Judge

"37. I charge you, gentlemen of the jury, that before the plaintiff can recover in this case, he must reasonably satisfy you from the evidence that the advertisement published by the New York Times Company and complained of in his complaint definitely and specifically referred to and concerned him."

Given, Jones, Judge

"38. I charge you, gentlemen of the jury, that before the plaintiff can recover in this case, he must reasonably

satisfy you from the evidence that the advertisement published by the New York Times Company and complained of in his complaint with a reasonable degree of certainty referred to and concerned the plaintiff."

Given, Jones, Judge

"39. I charge you, gentlemen of the jury, that should [fol. 1957d] you reach the point in your deliberations as to the assessment of compensatory damages, then you cannot consider in such assessment of damages any repetitions of the advertisement complained of by the plaintiff unless you are reasonably satisfied from the evidence that such repetition was done at the instance of the defendant New York Times Company."

Given, Jones, Judge

"40. I charge you, gentlemen of the jury, that as a matter of law no cause of action for libel can be predicated upon a publication of the alleged libel which has been induced, procured or consented to by the plaintiff. Therefore if you believe from all the evidence, that the testimony of any witness was based upon his reading of the advertisement complained of here, only after having been shown a copy of same by the plaintiff or his attorneys, you must disregard that testimony entirely."

Given, Jones, Judge

"41. I charge you, gentlemen of the jury, that should you reach the point in your deliberations as to the assessment of punitive damages, then you cannot consider in such assessment of punitive damages any repetitions by others of the advertisement complained of by the plaintiff unless you are reasonably satisfied from the evidence that such repetition was done at the instance of the defendant New York Times Company."

Given, Jones, Judge

"42. I charge you, gentlemen of the jury, that should you reach the point in your deliberations as to the assessment of punitive damages, then you cannot consider in

such assessment of punitive damages any repetitions of the advertisement complained of by the plaintiff unless you are reasonably satisfied from the evidence that such repetition was done at the instance of the defendant New York Times Company, a corporation."

Given, Jones, Judge

"43. I charge you, gentlemen of the jury, that should you reach the point in your deliberations as to the assessment of compensatory damages, then you cannot consider in such assessment of damages any repetitions by others of the advertisement complained of by the plaintiff unless you are reasonably satisfied from the evidence that such repetition was done at the instance of the defendant New York York Times Company, a corporation."

Given, Jones, Judge

"44. I charge you, gentlemen of the jury, that if you [fol. 1957e] believe from all the evidence that the words contained in the advertisement complained of are so vague and uncertain that they could not have been intended to refer to any particular person then your verdict must be in favor of the defendant, The New York Times Company, a corporation."

Given, Jones, Judge

"45. I charge you, gentlemen of the jury, that in this case, the defendant New York Times Company has entered a plea of the general issue; that is to say that the defendant New York Times Company has denied that the advertisement complained of by the plaintiff in his complaint was published of and concerning him, and therefore the plaintiff must prove to your reasonable satisfaction and by a preponderance of all the evidence that the advertisement complained of by the plaintiff was published of and concerning him."

Given, Jones, Judge

"51. I charge you, gentlemen of the jury, that before the plaintiff is entitled to a verdict under count two of

the complaint, the burden is on the plaintiff to reasonably satisfy you from the evidence of the truth of every material allegation contained in count two of the complaint."

Given, Jones, Judge

"52. I charge you, gentlemen of the jury, that before the plaintiff is entitled to a verdict under count one of the complaint, the burden is on the plaintiff to reasonably satisfy you from the evidence of the truth of every material allegation contained in count one of the complaint."

Given, Jones, Judge

"53. I charge you, gentlemen of the jury, that you are not bound to accept the opinion of any witness who has testified in this case, but if any witness has testified to his opinion on any material issue in this case you may give his testimony such weight and credence as you see fit when taken in connection with all the facts and circumstances as shown by all the evidence in the case."

Given, Jones, Judge

"54. I charge you, gentlemen of the jury, that there has been evidence in the nature of opinion evidence introduced by the plaintiff on the issue of whether or not the statements in the advertisement complained of were written of and concerning the plaintiff and I further charge you that you are not bound to accept the opinion of any witness but you may give that evidence such weight and credence [fol. 1957f] as you see fit when taken in connection with all the facts and circumstances as shown by all the evidence in the case."

Given, Jones, Judge

"56. I charge you gentlemen of the jury, that L. B. Sullivan is the only plaintiff in this case and you may not return a verdict in favor of L. B. Sullivan unless you find from all the evidence that the statements contained in the advertisement complained of, referred to L. B. Sullivan."

Given, Jones, Judge

"57. I charge you, gentlemen of the jury, that mere negligence or carelessness is not evidence of actual malice or malice in fact, and does not justify an award of exemplary or punitive damages in an action for libel."

Given, Jones, Judge

"58. I charge you, gentlemen of the jury, that even though you should find from the evidence that the article in question is libelous and that it was published by the defendant, The New York Times Company, a corporation, with an intent to defame the plaintiff, you are instructed that it does not follow as a matter of law that plaintiff should be allowed anything by way of punitive or exemplary damages; for the granting of punitive or exemplary damages is, even though you find an intent to defame, within the discretion of the jury; and you are further instructed that even on the clearest proof of malice in fact, it is still your exclusive province to say whether or not punitive or exemplary damages shall be awarded; for plaintiff is entitled to punitive damages only when the jury shall, after having found that the article in question was published with an intent to defame the plaintiff, conclude in the exercise of its discretion that such damages ought to be allowed."

Given, Jones, Judge

"61. I charge you, gentlemen of the jury, that if you are reasonably satisfied from all the evidence that damages should be awarded to the plaintiff you may in fixing the amount of such damages consider the fact that only 35 copies of the defendant New York Times, a corporation's newspaper, are distributed daily in Montgomery County."

Given, Jones, Judge

[fol. 1957g]

GIVEN CHARGES REQUESTED BY THE DEFENDANT RALPH D. ABERNATHY

The following written charges were requested by the defendant, Ralph D. Abernathy, and given by the Court in writing, viz:

"7. I charge you, gentlemen of the jury, that if you do not find that Rev. Ralph D. Abernathy was responsible for the publication of the advertisement which appeared in the New York Times, dated, Tuesday, March 29, 1960, you must find a verdict in favor of him."

Given, Jones, Judge

"10. I charge you, gentlemen of the jury, that the burden is on the Plaintiff to prove that the words were published as averred in the complaint and that the Defendant, Ralph D. Abernathy, was responsible for the publication thereof, and if you find from the evidence that said defendant was not responsible for the publication of the matter as alleged in the Complaint, then you must return a verdict for the said Defendant."

Given, Jones, Judge

"15. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, Ralph D. Abernathy, did in fact publish the advertisement which appeared in the March 29, 1960 issue of the New York Times, and unless from the evidence you are convinced that said Defendant in fact published said advertisement, you must return a verdict for the said defendant."

Given, Jones, Judge

"21. I charge you, gentlemen of the jury, that the burden is on the Plaintiff to prove that the words were published as averred in the complaint and that the defendant, Ralph D. Abernathy, was responsible for the publication thereof, and unless on the evidence you are convinced that said defendant was responsible for the publication of the matter

as alleged in the complaint, then you must return a verdict for the said defendant."

Given, Jones, Judge

[fol. 1957h]

GIVEN CHARGES REQUESTED BY THE DEFENDANT J. E. LOWERY

The following written charges were requested by the defendant, J. E. Lowery, and given by the Court in writing, viz:

"7. I charge you, gentlemen of the jury, that if you do not find that Rev. J. E. Lowery was responsible for the publication of the advertisement which appeared in the New York Times, dated, Tuesday, March 29, 1960, you must find a verdict in favor of him."

Given, Jones, Judge

"10. I charge you, gentlemen of the jury, that the burden is on the Plaintiff to prove that the words were published as averred in the complaint and that the Defendant, J. E. Lowery, was responsible for the publication thereof, and if you find from the evidence that said Defendant was not responsible for the publication of the matter as alleged in the Complaint, then you must return a verdict for the said Defendant."

Given, Jones, Judge

"15. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonable satisfy you from the evidence in this case that the Defendant, J. E. Lowery, did in fact publish the advertisement which appeared in the March 29, 1960 issue of the New York Times, and unless from the evidence you are convinced that said Defendant in fact published said advertisement, you must return a verdict for the said Defendant."

Given, Jones, Judge

"21. I charge you, gentlemen of the jury, that the burden is on the Plaintiff to prove that the words were published as averred in the complaint and that the defendant, J. E.

Lowery, was responsible for the publication thereof, and unless on the evidence you are convinced that said defendant was responsible for the publication of the matter as alleged in the complaint, then you must return a verdict for the said defendant."

Given, Jones, Judge

[fol. 1957i]

GIVEN CHARGES REQUESTED BY THE DEFENDANT S. S. SEAY, SR.

The following written charges were requested by the defendant, S. S. Seay, Sr., and given by the Court in writing, viz:

"7. I charge you, gentlemen of the jury, that if you do not find that Rev. S. S. Seay, Sr. was responsible for the publication of the advertisement which appeared in the New York Times, dated, Tuesday, March 29, 1960, you must find a verdict in favor of him."

Given, Jones, Judge

"10. I charge you, gentlemen of the jury, that the burden is on the plaintiff to prove that the words were published as averred in the complaint and that the Defendant, S. S. Seay, Sr., was responsible for the publication thereof, and if you find from the evidence that said Defendant was not responsible for the publication of the matter as alleged in the Complaint, then you must return a verdict for the said Defendant."

Given, Jones, Judge

"15. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, S. S. Seay, Sr., did in fact publish the advertisement which appeared in the March 29, 1960 issue of the New York Times, and unless from the evidence you are convinced that said Defendant in fact published said advertisement, you must return a verdict for the said Defendant."

Given, Jones, Judge

"21. I charge you, gentlemen of the jury, that the burden is on the Plaintiff to prove that the words were published as averred in the complaint and that the defendant, S. S. Seay, Sr., was responsible for the publication thereof, and unless on the evidence you are convinced that said defendant was responsible for the publication of the matter as alleged in the complaint, then you must return a verdict for the said defendant."

Given, Jones, Judge

[fol. 1957j]

GIVEN CHARGES REQUESTED BY THE DEFENDANT FRED L. SHUTTLESWORTH

The following written charges were requested by the defendant, Fred L. Shuttlesworth, and given by the Court in writing, viz:

"7. I charge you, gentlemen of the jury, that if you do not find that Rev. Fred L. Shuttlesworth was responsible for the publication of the advertisement which appeared in the New York Times, dated Tuesday, March 29, 1960, you must find a verdict in favor of him."

Given, Jones, Judge

"10. I charge you, gentlemen of the jury, that the burden is on the Plaintiff to prove that the words were published as averred in the complaint and that the Defendant, Fred L. Shuttlesworth, was responsible for the publication thereof, and if you find from the evidence that said Defendant was not responsible for the publication of the matter as alleged in the Complaint, then you must return a verdict for the said Defendant."

Given, Jones, Judge

"15. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, Fred L. Shuttlesworth, did in fact publish the advertisement which appeared in the March 29, 1960 issue of the New York Times, and unless from the evidence you are convinced that

said Defendant in fact published said advertisement you must return a verdict for the said Defendant."

Given, Jones, Judge

"21. I charge you, gentlemen of the jury, that the burden is on the Plaintiff to prove that the words were published as averred in the complaint and that the defendant, Fred L. Shuttlesworth, was responsible for the publication thereof, and unless on the evidence you are convinced that said defendant was responsible for the publication of the matter as alleged in the complaint, then you must return a verdict for the said defendant."

Given, Jones, Judge

[fol. 1957k]

REFUSED CHARGES REQUESTED BY THE DEFENDANT NEW YORK TIMES

The following written charges were requested by the defendant, The New York Times Company, a Corporation, and refused by the Court in writing, viz:

"1. I charge you, gentlemen of the jury, that the advertisement complained of in plaintiff's complaint is not libelous per se, that is to say, the same is not libelous as a matter of law."

Refused, Jones, Judge

"2. I charge you, gentlemen of the jury, that the advertisement complained of in plaintiff's complaint is not libelous as a matter of law, and if, after reading that advertisement, you find that it was not degrading and would not tend to injure the plaintiff's reputation, then I further charge you that such advertisement is not in fact libelous and in that event your verdict must be for the defendant, The New York Times Company, a corporation."

Refused, Jones, Judge

"3. I charge you, gentlemen of the jury, that if you are reasonably satisfied from the evidence that the publication complained of by plaintiff in his complaint is false, then I

further charge you that not every false publication is libelous as a matter of law, and that to make such publication libelous you must further find from the evidence that by reading such publication and giving to the words contained therein their natural and ordinary meaning, that the same is degrading, and would tend to injure the plaintiff's reputation by imputing to him some incapacity or lack of due qualification to fill the public office held by plaintiff or by imputing to him some positive past misconduct which injuriously affects him in his public office or the holding of principles which are hostile to the maintenance of government."

Refused, Jones, Judge

"4. I charge you, gentlemen of the jury, that if you are reasonably satisfied from the evidence that the publication complained of by plaintiff in his complaint is false, then I further charge you that not every false publication is libelous as a matter of law, and that to make such publication libelous you must further find from the evidence that by reading such publication and giving to the words contained therein their natural and ordinary meaning, that the same is degrading and would tend to injure the plaintiff's reputa- [fol. 1957 l] tion by imputing gross negligence, dishonesty or other impropriety in the discharge of his official duties."

Refused, Jones, Judge

"5. I charge you, gentlemen of the jury, that in determining whether the advertisement complained of in plaintiff's complaint was libelous per se or libelous as a matter of law, you must find from the evidence that damage to plaintiff's reputation would follow as a natural and probable result of the publication of said advertisement, and in this connection it must be kept in mind that the damages claimed and with which you, the jury, are primarily concerned is injury to the reputation; and I further charge you that in the absence of such injury, even if you find from the evidence that the advertisement caused plaintiff notoriety and embarrassment, your verdict must be for the defendant, The New York Times Company, a corporation."

Refused, Jones, Judge

"8. I charge you, gentlemen of the jury, that there is no evidence in this case that plaintiff has sustained any substantial damage, and I further charge you that in the event you find the issues in favor of the plaintiff, your verdict should be for nominal damages only."

Refused, Jones, Judge

"9. I charge you, gentlemen of the jury, that if, in your consideration of this case under the evidence, you arrive at a consideration of whether or not the plaintiff is entitled to compensatory damages, then I further charge you that under the law your award for such compensatory damages should be such damages as you find from the evidence were directly and proximately caused to the plaintiff by the publication of the advertisement sued upon insofar as such advertisement related to the plaintiff."

Refused, Jones, Judge

"10. I charge you, gentlemen of the jury, if you find from the evidence that the advertisement complained of in plaintiff's complaint concerned the plaintiff, and if you further find from the evidence that such advertisement injured the plaintiff's feelings, but did not and could not injure his reputation, then I charge you that your verdict must be for the defendant, The New York Times Company, a corporation."

Refused, Jones, Judge

"11. I charge you, gentlemen of the jury, that before you are authorized to award substantial compensatory damages [fol. 1957m] to the plaintiff, you must find from the evidence in this case that the plaintiff suffered substantial injury as a result of the publication by the defendant, The New York Times Company, a corporation, of the advertisement complained of by plaintiff in his complaint."

Refused, Jones, Judge

"15. I charge you, gentlemen of the jury, if you find from all the evidence that the advertisement complained of by the plaintiff was libelous per se but that plaintiff has sus-

tained no actual injury, then I charge you that your verdict may be for nominal damages."

Refused, Jones, Judge

"16. I charge you, gentlemen of the jury, if you should find from all the evidence that the advertisement complained of by plaintiff was libelous per se but that plaintiff has sustained no actual injury in his office, profession, trade or business by reason of the publication of the advertisement complained of in plaintiff's complaint, then I further charge you that your verdict may be for nominal damages."

Refused, Jones, Judge

"18. I charge you, gentlemen of the jury, that punitive damages, as the name indicates, are designed to punish the defendant, the New York Times Company, a corporation, and the other defendants in this case, for the publication of the advertisement complained of, and I further charge you that such punitive damages may be awarded only in the event that you, the jury, are convinced by a fair preponderance of the evidence that the defendant, the New York Times Company, a corporation, in publishing the matter complained of was motivated by personal ill will, that is actual intent to do the plaintiff harm, or that the defendant, The New York Times Company, a corporation, was guilty of gross negligence and recklessness and not of just ordinary negligence or carelessness in publishing the matter complained of so as to indicate a wanton disregard of plaintiff's rights."

Refused, Jones, Judge

"22. I charge you, gentlemen of the jury, that if you believe the evidence in this case, you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation."

Refused, Jones, Judge

"23. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in [fol. 1957n] favor of the plaintiff and against the defendant,

The New York Times Company, a corporation, in this case under Count One of plaintiff's complaint."

Refused, Jones, Judge

"24. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation, in this case under Count One of plaintiff's complaint as last amended."

Refused, Jones, Judge

"25. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation, in this case under Count Two of plaintiff's complaint."

Refused, Jones, Judge

"26. I charge you, gentlemen of the jury, that if you believe the evidence in this case your verdict must be for the defendant, The New York Times Company, a corporation."

Refused, Jones, Judge

"27. I charge you, gentlemen of the jury, if you believe the evidence in this case your verdict must be for the defendant, The New York Times Company, a corporation, under Count One of the complaint."

Refused, Jones, Judge

"28. I charge you, gentlemen of the jury, if you believe the evidence in this case your verdict must be for the defendant, The New York Times Company, a corporation, under Count Two of the complaint."

Refused, Jones, Judge

"35. I charge you, gentlemen of the jury, that there is no evidence in this case from which it appears that the plaintiff was referred to in the advertisement published by defendant New York Times Company and therefore your

verdict must be for the defendant New York Times Company."

Refused, Jones, Judge

"36. I charge you, gentlemen of the jury, that the words complained of by the plaintiff in his complaint in the advertisement published by the defendant New York Times Company in its newspaper must be considered in connection with the facts and circumstances in reference to which the words were used; and I further charge you that these facts and circumstances may take from the words any import of reflection on the ability and integrity of the plaintiff in his [fol. 1957o] office, trade, business, or profession, in which case the words used in the advertisement complained of would not be libelous."

Refused, Jones, Judge

"46. I charge you, gentlemen of the jury, that if you believe the evidence you cannot return a verdict in favor of the plaintiff and against the defendant, the New York Times Company, a corporation, for compensatory damages."

Refused, Jones, Judge

"47. I charge you, gentlemen of the jury, that there has been no evidence introduced of any actual damage to the plaintiff."

Refused, Jones, Judge

"48. I charge you, gentlemen of the jury, that there has been no evidence introduced upon which a verdict for compensatory damages could be based."

Refused, Jones, Judge

"59. I charge you, gentlemen of the jury, that if you return a verdict for the plaintiff and assess damages against one or more of the defendants, you must specify in your verdict what part of the damages are compensatory and what part of the damages are punitive as to each defendant against whom a verdict is returned."

Refused, Jones, Judge

"60. I charge you, gentlemen of the jury, that if you believe from all the evidence in this case that the plaintiff is entitled to recover damages against one or more of the defendants in this case you may in your discretion, put your verdict as to such damages, if any, in the form of special findings; that is to say you may assess any punitive or compensatory damages separately, indicating in what amount each kind of damage is found and as to which defendant, if any, it is so found."

Refused, Jones, Judge

"63. I charge you, gentlemen of the jury, that if you find from all the evidence that the plaintiff is entitled to punitive damages from one or more of the defendants but not from one or more of the other defendants you must return a verdict in favor of all the defendants."

Refused, Jones, Judge

[fol. 1957p]

REFUSED CHARGES REQUESTED BY THE DEFENDANT RALPH D. ABERNATHY

The following written charges were requested by the defendant, Ralph D. Abernathy, and refused by the Court in writing, viz:

"1. I charge you gentlemen of the jury, to find a verdict in favor of the Defendant, Ralph D. Abernathy."

Refused, Jones, Judge

"2. I charge you, gentlemen of the jury, that if you find that the Defendant, Ralph D. Abernathy, did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"3. I charge you, gentlemen of the jury, that if you find that the Defendant, Ralph D. Abernathy, did not consent to the publication of the article in question which appeared

in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"4. I charge you, gentlemen of the jury, that if you find that the Defendant, Ralph D. Abernathy, did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"5. I charge you, gentlemen of the jury, that if you find that the Defendant, Ralph D. Abernathy, did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict for him."

Refused, Jones, Judge

"6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, Ralph D. Abernathy, did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defendant, Ralph [fol. 1957q] D. Abernathy was the author or the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a writing, and if the publication was made without the consent of the Defendant, Ralph D. Abernathy, the offense is not complete as to him and you must return a verdict in favor of him."

Refused, Jones, Judge

"11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, Ralph D. Abernathy, had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the said Defendant."

Refused, Jones, Judge

"12. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, Ralph D. Abernathy directly, or indirectly, or through some other person authorized to act for him, published or consented to the publication of the statements complained of which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said Defendant did directly or indirectly or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant, Ralph D. Abernathy."

Refused, Jones, Judge

"13. I charge you, gentlemen of the jury, that if you believe from the evidence that the Defendant Ralph D. Abernathy, did NOT authorize the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"14. Gentlemen of the jury, if you believe from the evidence that the Defendant, Ralph D. Abernathy, did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New [fol. 1957r] York Times on March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant Ralph D. Abernathy

did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant."

Refused, Jones, Judge

"17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized any one to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the Plaintiff wrote a letter to the Defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further believe from the evidence that the Defendant did not reply to the plaintiff's letter, I charge you as a matter of law that the Defendant's failure to reply to Plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the Defendant Ralph D. Abernathy."

Refused, Jones, Judge

"18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant Ralph D. Abernathy."

Refused, Jones, Judge

"19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant Ralph D. Abernathy consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant."

Refused, Jones, Judge

"20. I charge you gentlemen of the jury, that unless on the evidence you are convinced that the defendant Ralph

D. Abernathy had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated Tuesday, March 29, 1960, you must find for the defendant."

Refused, Jones, Judge

[fol. 1957s]

REFUSED CHARGES REQUESTED BY THE DEFENDANT REV. J. E. LOWERY

The following written charges were requested by the defendant, J. E. Lowery, and refused by the Court in writing, viz:

"1. I charge you gentlemen of the jury, to find a verdict in favor of the Defendant, Rev. J. E. Lowery."

Refused, Jones, Judge

"2. I charge you, gentlemen of the jury, that if you find that the Defendant, J. E. Lowery, did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"3. I charge you, gentlemen of the jury, that if you find that the Defendant, J. E. Lowery, did not consent to the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"4. I charge you, gentlemen of the jury, that if you find that the Defendant, J. E. Lowery, did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"5. I charge you, gentlemen of the jury, that if you find that the Defendant, J. E. Lowery, did not authorize anyone

to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, J. E. Lowery, did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

[fol. 1957t] "8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defendant, J. E. Lowery, was the author or the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a writing, and if the publication was made without the consent of the Defendant, J. E. Lowery, the offense is not complete as to him and you must return a verdict in favor of him."

Refused, Jones, Judge

"11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, J. E. Lowery, had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the said Defendant."

Refused, Jones, Judge

"12. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant J. E.

Lowery directly, or indirectly, or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant J. E. Lowery."

Refused, Jones, Judge

"13. I charge you, gentlemen of the jury, that if you believe from the evidence that the Defendant J. E. Lowery, did NOT authorize the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"14. Gentlemen of the jury, if you believe from the evidence that the Defendant, J. E. Lowery, did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

[fol. 1957u] "16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant J. E. Lowery did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant."

Refused, Jones, Judge

"17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized any one to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the Plaintiff wrote a letter to the Defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further

believe from the evidence that the Defendant did not reply to the Plaintiff's letter, I charge you as a matter of law that the Defendant's failure to reply to Plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the Defendant J. E. Lowery."

Refused, Jones, Judge

"18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant J. E. Lowery."

Refused, Jones, Judge

"19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant J. E. Lowery consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant."

Refused, Jones, Judge

"20. I charge you gentlemen of the jury, that unless on the evidence you are convinced that the defendant J. E. Lowery had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated Tuesday, March 29, 1960, you must find for the defendant."

Refused, Jones, Judge

[fol. 1957v]

REFUSED CHARGES REQUESTED BY THE DEFENDANT S. S. SEAY, SR.

The following written charges were requested by the defendant, S. S. Seay, Sr., and refused by the Court in writing, viz:

"1. I charge you, gentlemen of the jury, to find a verdict in favor of the Defendant, S. S. Seay, Sr."

Refused, Jones, Judge

"2. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"3. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not consent to the publication to the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"4. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"5. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, S. S. Seay, Sr., did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defendant, S. S. [fol. 1957w] Seay, Sr., was the author or the publisher of

the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a writing, and if the publication was made without the consent of the Defendant, S. S. Seay, Sr., the offense is not complete as to him and you must return a verdict in favor of him."

Refused, Jones, Judge

"11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, S. S. Seay, Sr., had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the said Defendant."

Refused, Jones, Judge

"12. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, S. S. Seay, Sr., directly, or indirectly, or through some other person authorized to act for him, published or consented to the publication of the statements complained of which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said Defendant did directly or indirectly or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant, S. S. Seay, Sr."

Refused, Jones, Judge

"13. I charge you, gentlemen of the jury, that if you believe from the evidence that the Defendant S. S. Seay, Sr., did NOT authorize the use of his name in connection with the publication of the advertisement which appeared

in the New York Times on March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"14. Gentlemen of the jury, if you believe from the evidence that the Defendant, S. S. Seay, Sr., did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

[fol. 1957x] "16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant S. S. Seay, Sr. did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant."

Refused, Jones, Judge

"17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized any one to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the Plaintiff wrote a letter to the Defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further believe from the evidence that the Defendant did not reply to the Plaintiff's letter, I charge you as a matter of law that the Defendant's failure to reply to Plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the Defendant S. S. Seay, Sr."

Refused, Jones, Judge

"18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant S. S. Seay, Sr."

Refused, Jones, Judge

"19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant S. S. Seay, Sr. consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant."

Refused, Jones, Judge

"20. I charge you gentlemen of the jury, that unless on the evidence you are convinced that the defendant S. S. Seay, Sr. had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated Tuesday, March 29, 1960, you must find for the defendant."

Refused, Jones, Judge

[fol. 1957y]

REFUSED CHARGES REQUESTED BY THE DEFENDANT FRED L. SHUTTLESWORTH

The following written charges were requested by the defendant, Fred L. Shuttlesworth, and refused by the Court in writing, viz:

"1. I charge you, gentlemen of the jury, to find a verdict in favor of the Defendant, Fred L. Shuttlesworth."

Refused, Jones, Judge

"2. I charge you, gentlemen of the jury, that if you find that the Defendant, Fred L. Shuttlesworth, did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"3. I charge you, gentlemen of the jury, that if you find that the Defendant, Fred L. Shuttlesworth, did not consent to the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"4. I charge you, gentlemen of the jury, that if you find that the Defendant, Fred L. Shuttlesworth, did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict for him."

Refused, Jones, Judge

"5. I charge you, gentlemen of the jury, that if you find that the Defendant, Fred L. Shuttlesworth, did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, Fred L. Shuttlesworth, did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

Refused, Jones, Judge

"8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defendant, Fred L. [fol. 1957z] Shuttlesworth, was the author or the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a writing, and

if the publication was made without the consent of the Defendant, Fred L. Shuttlesworth, the offense is not complete as to him and you must return a verdict in favor of him."

Refused, Jones, Judge

"11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, Fred L. Shuttlesworth, had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the said Defendant."

Refused, Jones, Judge

"12. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, Fred L. Shuttlesworth, directly, or indirectly, or through some other person authorized to act for him, published or consented to the publication of the statements complained of which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said Defendant did directly or indirectly or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant Fred L. Shuttlesworth."

Refused, Jones, Judge

"13. I charge you, gentlemen of the jury, that if you believe from the evidence that the Defendant, Fred L. Shuttlesworth, did NOT authorize the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant."

Refused, Jones, Judge

"14. Gentlemen of the jury, if you believe from the evidence that the Defendant Fred L. Shuttlesworth, did not consent to the use of his name in connection with the

publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a [fol. 1957aa] verdict for said Defendant."

Refused, Jones, Judge

"16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant Fred L. Shuttlesworth did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant."

Refused, Jones, Judge

"17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized any one to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the plaintiff wrote a letter to the Defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further believe from the evidence that the Defendant did not reply to the Plaintiff's letter, I charge you as a matter of law that the Defendant's failure to reply to Plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the Defendant Fred L. Shuttlesworth."

Refused, Jones, Judge

"18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant Fred L. Shuttlesworth."

Refused, Jones, Judge

"19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant Fred L. Shuttlesworth

consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant."

Refused, Jones, Judge

"20. I charge you gentlemen of the jury, that unless on the evidence you are convinced that the defendant Fred L. Shuttlesworth had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated, Tuesday, March 29, 1960, you must find for the defendant."

Refused, Jones, Judge

[fol. 1958]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Thursday, November 3, 1960

Court Met Pursuant to Adjournment

Present the Honorable Walter B. Jones, Judge Presiding

Damages

#27416

L. B. SULLIVAN

vs.

THE NEW YORK TIMES Co., a corp., RALPH D. ABERNATHY, FRED L. SHUTTLESWORTH, S. S. SEAY, SR., and J. E. LOWERY

FINAL JUDGMENT, JURY AND VERDICT—November 3, 1960

This day came the parties by attorney and issue being joined between the parties and upon calling a jury of good and lawful men, to-wit: Joseph W. McDade, Sr., and eleven others who having been duly empaneled and sworn according to law upon their oaths do say: "We the jury find in favor of the plaintiff and assess his damages at $500,000.00".

It is therefore considered, ordered and adjudged by the Court that the plaintiff have and recover of the defendant the said sum of Five Hundred Thousand and no/100 ($500,000.00) Dollars, together with the cost in this behalf expended, for all of which let execution issue.

[fol. 1958a] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 1959]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

At Law.

Case No. 27416

L. B. SULLIVAN, Plaintiff,

vs.

THE NEW YORK TIMES COMPANY, A Corporation, et als. Defendants.

Transcript of Proceedings on Defendant's The New York Times Company, a Corporation, Motion for a New Trial

Before: Hon. Walter B. Jones, Circuit Judge, Presiding, at the Court House, Montgomery, Alabama, Friday, March 3, 1961.

APPEARANCES:

For the Plaintiff: (L. B. Sullivan)

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

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

For the Defendant: (The New York Times Company)

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

[fol. 1960] For the Individual Defendants:
(Ralph D. Abernathy, S. S. Seay, Sr., Fred L. Shuttlesworth and N. L. Lowery.)

Vernon L. Crawford, Esq., Attorney at Law, Mobile, Alabama. Charles Conley, Esq., Attorney at Law, Montgomery, Alabama. Solomon S. Seay, Jr., Esq., Attorney at Law, Montgomery, Alabama.

[fol. 1960a]

STIPULATION REGARDING RECORD—Filed June 22, 1961

At the outset of the proceedings had on March 3, 1961 in connection with the hearing on the motion of the defendant New York Times Company for a new trial, this defendant offered testimony in support of its motion for a new trial. The testimony so offered is contained in the transcript in the form of an offer of proof from this defendant. Plaintiff objected to the introduction of any additional testimony in support of the motion for a new trial, and insisted that the trial court should consider the motion on the basis of the record made at and before the trial on the merits, which culminated in a verdict and judgment for the plaintiff on November 3, 1960.

Plaintiff's objections were based on the following grounds:

1. That as to matters and occurrences covered by the proffered items of evidence which had occurred before or during the trial on the merits, they should have been offered in evidence and brought to the attention of the Court and appropriate action by the Court should have been requested before the close of the trial on November 3, 1960.

2. That as to newspaper articles appearing subsequent to the time the verdict of the jury was rendered, they could not possibly have influenced the deliberations of the jury in reaching its verdict.

3. Under Alabama law, as set forth in such cases as Alabama Gas Co. v. Jones, 244 Ala. 413, 417, 13 So. 2d. 873; and Camp v. A.C.L. R. Co., 251 Ala. 183, 36 So. 2d. 331, the Court in considering the motion for a new trial was confined to the evidence which was introduced on the trial of the case, and could not consider any other evidence in support of or against the verdict. No grounds of the motion for a new trial of this defendant concern a recognized exception to this rule where new trial is sought on the basis of newly discovered evidence.

4. Notice as required by Rule 22 of the Rules of Practice in the Circuit and Inferior Courts had not been given [fol. 1960b] by this defendant to the plaintiff one day before the argument on the motion for a new trial. Plaintiff cited in support of this ground City of Birmingham v. Lane, 210 Ala. 252, 97 So. 728; McCormack Bros. v. Arnold, 233 Ala. 504, 137 So. 288; and Stone v. State, 243 Ala. 605, 11 So. 2d. 386.

The trial court ruled that ground 4 above would not bar the introduction of testimony since Rule 22 applied to additional evidence by way of affidavit only. Plaintiff excepted to this ruling of the Court.

The Court did rule, however, that the evidence proffered by defendant New York Times Company could not be received and considered because of grounds 1, 2 and 3 set out above.

Accordingly, the trial court declined to receive and consider any of the evidence offered by the defendant New York Times in support of its motion for a new trial, said offer of proof appearing in the course of pages 1961 through 2004, and in Volume V of the transcript.

The defendant excepted to this ruling of the Court.

The foregoing should be inserted immediately before page 1961 of the transcript by agreement of counsel as an accurate summary of the proceedings described, said agree-

ment being evidenced by the signature of counsel of record hereon.

New York Times Company, By: Beddow, Embry & Beddow, Its Attorneys.

L. B. Sullivan, By: Steiner, Crum & Baker, His Attorneys.

Approved:

/s/ Walter B. Jones, Judge.

[File endorsement omitted]

[fol. 1961]

COLLOQUY BETWEEN COURT AND COUNSEL ON MOTION FOR NEW TRIAL

Mr. MacLeod: If the Court please, in order to get the Record straight, I think we should start over from the beginning in order to get it exactly right in the Record.

The Court: Well, now, you are talking about Ground No. 182, are you not?

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

The Court: All right. Proceed.

Mr. MacLeod: At this time, Your Honor, in support of our ground No. 182 on our Motion for a New Trial in this cause, we offer to put on the witness stand Mrs. Wanda Bush, who is the librarian and custodian of the Records of the Montgomery Advertiser and the Alabama Journal newspapers.

Mr. Nachman: If the Court please, we object to the putting of a witness on the witness stand and urge that the showing should be restricted to a statement of counsel as to what he proposes to show in support of ground 182 and by whom and by what.

The Court: I think that's the correct procedure.

Mr. MacLeod: If the Court please, we would like to make this same offer of proof in support of ground 182 and ground 183 of the Motion for a New Trial in this cause. We offer to put Mrs. Bush on the witness stand as a witness in support of each ground.

The Court: Well, just talking out loud here, suppose she could testify that these pictures you have attached here to the Motion were taken and published during the trial and displayed on television but she can't say that was the denial of a fair and an impartial verdict by the jury—she can't contend that was the denial of a fair and impartial trial by the jury.

Mr. Embry: That's for the Court, Your Honor.

The Court: Well, that's what I say—

Mr. MacLeod: That's for the Court to decide, Your Honor, but she can testify to facts—

[fol. 1962] The Court: I am willing to let you make that offer.

Mr. MacLeod: All right, Your Honor. I—

The Court: You can make that offer and they can object and then I will rule on it.

Mr. MacLeod: Your Honor, we offer to prove by the witness, Mrs. Wanda Bush, who is the librarian and custodian of the records of the Mongtomery Advertiser newspaper and also librarian and custodian of the records of the Alabama Journal newspaper, both of which are newspapers published in Montgomery, Alabama and circulated generally throughout Montgomery County, Alabama, that these photographs marked as exhibits 2 and 3 which are attached to the defendant, The New York Times, Motion for a New Trial were published in the Alabama Journal newspaper, and that they are pictures of the jury during the trial of the case of L. B. Sullivan against the New York Times Company and that they are pictures which were taken in the court room while the court trial was in progress and that they were published on the front page of the Alabama Journal newspaper during the progress of that trial and we further offer to prove by Mrs. Bush that in conjunction with Exhibit No. 2 attached to the Motion for a New Trial that the names of the twelve jurors who were selected to try the case of Sullivan against The New York Times Company were published on the front page of the Alabama Journal newspaper during the progress of that trial. We further offer to prove by Mrs. Bush in support of Ground Nos. 182 and 183 of the Motion for

a New Trial in this cause that prior to the trial of that case by a jury that the Montgomery Advertiser newspaper—

Mr. Nachman: We will concede that. We will concede that because that's already in the Record.

Mr. MacLeod: That the Montgomery Advertiser newspaper had published—just one minute. Let me get those figures here, Your Honor. We offer to prove that in connection with the trial of L. B. Sullivan versus The New York Times Company that prior to the trial of that case, commencing on the 31st day of October, 1960 that the Montgomery Advertiser had published some forty-five articles in connection with that law suit and that of those [fol. 1963] articles many of them dealt with factual situations about the case and contentions of the parties and that of those articles many of them were editorials that were published in that newspaper and that each editorial that appeared in the paper was derogatory of The New York Times and that each editorial that appeared in that newspaper denounced The New York Times and that each one was in support of the plaintiff's position in that case.

Mr. Nachman: Just a minute. Your Honor, we object to this form of a showing. This is just a speech by Mr. MacLeod. This witness as the librarian would certainly not be able to say whether an editorial was derogatory or whether an editorial denounced The New York Times or—

The Court: Well, I think the newspaper articles would have to speak for themselves.

Mr. Nachman: If the Court please, Mr. MacLeod has said that there were many editorials and we think that he ought to specify each one and he should distinguish as to whether it is a news story or an editorial—

The Court: I think the 7th day of April, 1960 is one. I think we ought to stick to September 7th, 1960. That's the one you are relying on.

Mr. MacLeod: Your Honor, we offer to show by the witness, Mrs. Bush, that in the Montgomery Advertiser of April 9th, 1960 an article appeared entitled, "Commissioners Demand Retraction." "King Ad Charges Prompt Move."

The Court: Well, now, where do you set that out in connection with 183 here?

Mr. MacLeod: Well, I will read that to Your Honor.

The Court: It says that April 7th, 1960 was an editorial.

Mr. MacLeod: These articles are offered in support of the allegation in Ground 183 that there was widespread community sentiment and interest in this case.

Mr. Nachman: We would like to add this objection, Your Honor. What they now propose to show goes even beyond [fol. 1964] Ground 183 because that refers to a particular editorial—such editorial it says. Then it refers to certain pictures of the jury on the front page and now they propose to go even beyond 183 which they said was the ground they were submitting these matters on. We say that the showing is out of bounds and that the only thing they can even try to make a showing on are the matters contained in these grounds.

The Court: It appears to the Court you ought to be confined to April 9th, 1960. Whatever that date is, April 7th, 1960 or April 9th, 1960.

Mr. MacLeod: Let me read this allegation, Your Honor. This is part of the allegation. We are talking about the community sentiment now at the bottom of page 45 in the Motion and I quote. "Such community sentiment was conveyed to the jury which tried this cause by said editorial and other publicity throughout the community." That, Your Honor, in itself is enough to make it relevant and pertinent to that ground of the Motion in addition to the other allegations in there in reference to the widespread community interest in the case. We offer to introduce first, Your Honor, an article that appeared in the Montgomery Advertiser on April 9th, 1960 entitled, "Commissioners Demand Retraction."

Mr. Nachman: We have our same objection throughout with the same ruling—

The Court: Yes.

Mr. MacLeod: We would like to have this identified as Defendant's Exhibit No. 1 to the Motion for a New Trial, Mr. Reporter.

The Reporter: It is marked Defendant's Exhibit No. 1.

Mr. MacLeod: We offer to show Your Honor that the witness, Mrs. Bush, would identify an article published

in the Montgomery Advertiser on April 16th, 1960 entitled, "Research on Move to Sue Times Furnished by Gallion."

Mr. Nachman: Do each one of these have a date?

Mr. MacLeod: Yes. They are all dated. We would like to have this one marked as Defendant's Exhibit No. 2 on the Motion for a New Trial.

[fol. 1965] Mr. Baker: We would like to add an additional ground of objection in that that one does not relate to the plaintiff in this cause nor to his attorneys.

Mr. MacLeod: We offer to prove by the witness, Mrs. Bush, that there appeared in the Montgomery Advertiser under date of April 8th, 1960 entitled, "Gallion Lays Legal Action Against King Ad Sponsors." We ask that one be identified as Defendant's Exhibit No. 3 on the Motion.

Mr. Baker: We add the same additional ground of objection to that one, Your Honor.

Mr. Embry: If the Court please, I have a suggestion that I think will save time. If it is all right, we can stipulate that the Court Reporter can supply an identifying statement in each of these and we can give them to the Court Reporter and the Court Reporter can supply in each of those identifying statements the actual caption of the story. Is that what you had in mind, Mr. Nachman?

Mr. Nachman: Yes. Whatever Mr. MacLeod wants with reference to identification or caption on each one of these can be supplied later by the Court Reporter so that each one won't have to be read out here in Court and we will have the same objection to each one if that's agreeable with counsel.

Mr. MacLeod: Well, could we do this? I think the newspaper would like to have their articles back. Could we substitute copies for the Record? Will that be agreeable to you, Mr. Nachman?

Mr. Nachman: That's agreeable.

Mr. MacLeod: Your Honor, we have a group of 76 articles that appeared in the Alabama Journal. Could we handle those in the same way?

The Court: It is all right with the Court, gentlemen.

Mr. Nachman: Yes. We have the same objection and same ruling.

Mr. MacLeod: Your Honor, that concludes what we offer

to prove by the witness, Mrs. Bush, and we would like a ruling on that for the Record, if the Court please.

[fol. 1966] The Court: Do you want to state the same grounds of objection or—

Mr. Nachman: Yes, sir. We do. These were matters that should have been brought up during the progress of the trial or during the trial or before the trial and they all ante-date or are concurrent with the time of the trial and under our decisions of the Alabama Gas Company against Jones, 244 Ala., 413, since they relate to a ground of excessiveness that they are inappropriate as evidence on a Motion for a New Trial and we also urge Rule 22 as an additional ground of objection.

The Court: I think the objection is well taken. I sustain the objection.

Mr. MacLeod: We except, Your Honor.

Mr. Embry: Did you sustain it, Your Honor?

The Court: Yes.

Mr. Embry: We except.

OFFERS IN EVIDENCE

(The following proposed exhibits were offered into evidence as a showing to the proposed testimony of Mrs. Wanda Bush in support of the Motion for a New Trial in this cause and by stipulation of Counsel with approval of the Court, all previous grounds of objection are assigned hereto separately and severally to each proposed exhibit and the Court sustained each separate and several objection, to which ruling of the Court, the Defendant, The New York Times Company, separately and severally excepts.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Research on Move to Sue Times Furnished by Gallion", dated April 16, 1960 offered in evidence and identified as Defendant's Exhibit No. 1.)

[fol. 1967] (Newspaper Article, The Montgomery Advertiser, captioned, "Commissioners Demand Retraction", dated April 9, 1960, offered in evidence and identified as Defendant's Exhibit No. 2.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Gallion Weighs Legal Action Against King Ad

Sponsors", dated April 8, 1960, offered in evidence and identified as Defendant's Exhibit No. 3.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Commissioners Sue Newspaper", dated April 20, 1960, offered in evidence and identified as Defendant's Exhibit No. 4.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Patterson Plans N. Y. Times Suit", dated April 28, 1960, offered in evidence and identified as Defendant's Exhibit No. 5.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Gallion Libel Suit Decision Ready Today", dated April 19, 1960, offered in evidence and identified as Defendant's Exhibit No. 6.)

[fol. 1968] (Newspaper Article, The Montgomery Advertiser, captioned, "The Big Lie", dated April 15, 1960, offered in evidence and identified as Defendant's Exhibit No. 7.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Commissioners To File Damage Suits Against New York Times For Articles", dated April 16, 1960, offered in evidence and identified as Defendant's Exhibit No. 8.)

(Newspaper Article, The Montgomery Advertiser, captioned, "The Abolitionist Hellmouths", dated April 17, 1960, offered in evidence and identified as Defendant's Exhibit No. 9.)

(Newspaper Article, The Montgomery Advertiser, captioned, "State Board Told to File Times Suit", dated April 21, 1960, offered in evidence and identified as Defendant's Exhibit No. 10.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Asks Court Quash Damage Suit", dated May 21, 1960, offered in evidence and identified as Defendant's Exhibit No. 11.)

[fol. 1969] (Newspaper Article, The Montgomery Advertiser, captioned, "Times Studies Correction of 2 Stories",

dated April 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 12.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Gallion Lauds Suit Planned Against Paper", dated April 20, 1960, offered in evidence and identified as Defendant's Exhibit No. 13.)

(Newspaper Article, The Montgomery Advertiser, captioned, "The Missing If Men Choked", dated May 1, 1960, offered in evidence and identified as Defendant's Exhibit No. 14.)

(Newspaper Article, The Montgomery Advertiser, captioned, "$5 Million Suit Started by Governor", dated May 12, 1960, offered in evidence and identified as Defendant's Exhibit No. 15.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Birmingham Statements Published In The Times", dated May 4, 1960, offered in evidence and identified as Defendant's Exhibit No. 16.)

[fol. 1970] (Newspaper Article, The Montgomery Advertiser, captioned, "Fall Out From Ad Error", dated May 22, 1960, offered in evidence and identified as Defendant's Exhibit No. 17.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Suits Filed Against Times", dated May 7, 1960, offered in evidence and identified as Defendant's Exhibit No. 18.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Patterson Weighs Suit in Light of Retraction", dated May 17, 1960, offered in evidence and identified as Defendant's Exhibit No. 19.)

(Newspaper Article, The Montgomery Advertiser, captioned, "The Times Acknowledges Error", dated May 17, 1960, offered in evidence and identified as Defendant's Exhibit No. 20.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Motion Asks Dismissal of Suits", dated

May 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 21.)

[fol. 1971] (Newspaper Article, The Montgomery Advertiser, captioned, "Five Negroes, Times Sued by Patterson", dated May 31, 1960, offered in evidence and identified as Defendant's Exhibit No. 22.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Challenges Bessemer Suits", dated June 14, 1960, offered in evidence and identified as Defendant's Exhibit No. 23.)

(Newspaper Article, The Montgomery Advertiser, captioned, "N. Y. Times Loses in Move To Have Records Closeted", dated July 1, 1960, offered in evidence and identified as Defendant's Exhibit No. 24.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Switches 'Bama, Ole Miss", dated June 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 25.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Sued by Officials in Bessemer", dated June 1, 1960, offered in evidence and identified as Defendant's Exhibit No. 26.)

[fol. 1972] (Newspaper Article, The Montgomery Advertiser, captioned, "Lawyers Add to Documents In Libel Suit", dated July 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 27.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Suit Testimony Ends, Arguments Set", dated July 28, 1960, offered in evidence and identified as Defendant's Exhibit No. 28.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Detective's Suit Charges Times", dated July 20, 1960, offered in evidence and identified as Defendant's Exhibit No. 29.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Attorneys Contend N. Y. Times Didn't Do Business

In State", dated July 20, 1960, offered in evidence and identified as Defendant's Exhibit No. 30.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Judge Rules Times Suit Legal Here", dated August 6, 1960, offered in evidence and identified as Defendant's Exhibit No. 31.)

[fol. 1973] (Newspaper Article, The Montgomery Advertiser, captioned, "Judge's Ruling Will Hinder Appeal", dated August 7, 1960, offered and identified as Defendant's Exhibit No. 32.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Jefferson Calls Times Reporter", dated August 26, 1960, offered and identified as Defendant's Exhibit No. 33.)

(Newspaper Article, The Montgomery Advertiser, captioned, "U. S. Judge Deals Times Legal Blow", dated September 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 34.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Methodist Leader Jailed For Refusing To Answer", dated September 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 35.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Methodist Minister Awaits Decision By Supreme Court", dated September 4, 1960, offered in evidence and identified as Defendant's Exhibit No. 36.)

[fol. 1974] (Newspaper Article, The Montgomery Advertiser, captioned, "Jury Meets Again Today In Race Study", dated September 6, 1960, offered in evidence and identified as Defendant's Exhibit No. 37.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Jefferson Jury Indicts Times Writer For Libel", dated September 7, 1960, offered in evidence and identified as Defendant's Exhibit No. 38.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Methodists Boot Cleric Held In Jail", dated September 9, 1960, offered in evidence and identified as Defendant's Exhibit No. 39.)

(Newspaper Article, The Montgomery Advertiser, captioned, "The Talk of The Town", dated August 7, 1960, offered in evidence and identified as Defendant's Exhibit No. 40.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Way Cleared For Appeal By N. Y. Times", dated September 9, 1960, offered in evidence and identified as Defendant's Exhibit No. 41.)

[fol. 1975] (Newspaper Article, The Montgomery Advertiser, captioned, "Ousted Cleric Still Vague About Future", dated September 10, 1960, offered in evidence and identified as Defendant's Exhibit No. 42.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Appeals Ruling Allowing Alabama Suit", dated September 10, 1960, offered in evidence and identified as Defendant's Exhibit No. 43.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Controversial Cleric Given African Duty", dated September 11, 1960, offered in evidence and identified as Defendant's Exhibit No. 44.)

(Newspaper Article, The Montgomery Advertiser, captioned, "State Finds Formidable Legal Club To Swing At Out-Of-State Press", dated September 25, 1960, offered in evidence and identified as Defendant's Exhibit No. 45.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Loses Bid To Delay Libel Trials", captioned September 22, 1960, offered in evidence and identified as Defendant's Exhibit No. 46.)

[fol. 1976] (Newspaper Article, The Montgomery Advertiser, captioned, "Issue of Back Issues Argues In New York Times Suit Here," dated June 8, 1960, offered in evidence and identified as Defendant's Exhibit No. 47.)

(Newspaper Article, The Montgomery Advertiser, captioned, "N. Y. Times Retracts Two Ad Paragraphs", dated May 16, 1960, offered in evidence and identified as Defendant's Exhibit No. 48.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Jones Studies Times Motion To Shift Suit", dated August 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 49.)

(Newspaper Article, The Montgomery Advertiser, captioned, "N. Y. Times Loses Bid To Fend Off Libel Suit", dated October 29, 1960, offered in evidence and identified as Defendant's Exhibit No. 50.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Times Libel Suit Opens Here Today", dated November 1, 1960, offered in evidence and identified as Defendant's Exhibit No. 51.)

[fol. 1977] (Newspaper Article, The Montgomery Advertiser, captioned, "Jurors Selected For Times Suit", dated November 1, 1960, offered in evidence and identified as Defendant's Exhibit No. 52.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Witnesses Say Ad Reflected on Sullivan", dated November 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 53.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Writer of Ad Takes Stand In Libel Trial", dated November 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 54.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Sullivan Case Against Times Is Continuing", dated November 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 55.)

(Newspaper Article, The Montgomery Advertiser, captioned, "$500,000 Damages Awarded Sullivan By Times Suit Jury", dated November 4, 1960, offered in evidence and identified as Defendant's Exhibit No. 56.)

[fol. 1978] (Newspaper Article, The Montgomery Advertiser, captioned, "Grossly Unjust Says Times: Asks New

Trial", dated December 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 57.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Lawyers In Times Case Agree To Delay Hearing", dated December 16, 1960, offered in evidence and identified as Defendant's Exhibit No. 58.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Circuit Court '61 Sessions Start January 9", dated December 28, 1960, offered in evidence and identified as Defendant's Exhibit No. 59.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Mayor's Suit Against Times Set For Trial", dated December 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 60.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Sullivan Suit Retrial Bid Set March 3", dated January 14, 1961, offered in evidence and identified as Defendant's Exhibit No. 61.)

[fol. 1979] (Newspaper Article, The Montgomery Advertiser, captioned, "Times Attorney Halted In Quizzing of Mayor", dated January 18, 1961, offered in evidence and identified as Defendant's Exhibit No. 62.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Judge Rules Time Expired For Retrial", dated January 19, 1961, offered in evidence and identified as Defendant's Exhibit No. 63.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Mayor's Suit Against Times Opens Today", dated January 30, 1961, offered in evidence and identified as Defendant's Exhibit No. 64.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Witness Feel James Target Of Ad In Times", dated January 31, 1961, offered in evidence and identified as Defendant's Exhibit No. 65.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Negroes Facing Seizure Of Property Seek Relief", dated February 5, 1961, offered in evidence and identified as Defendant's Exhibit No. 66.)

[fol. 1980] (Newspaper Article, The Montgomery Advertiser, captioned, "Attachment of Money Being Sought", dated February 7, 1961, offered in evidence and identified as Defendant's Exhibit No. 67.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Negroes' Attorneys Seek Cut In Million-Dollar Bond", dated February 8, 1960, offered in evidence and identified as Defendant's Exhibit No. 68.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Auto Seized For Payment In Libel Case", dated February 4, 1960, offered in evidence and identified as Defendant's Exhibit No. 69.)

(Newspaper Article, The Montgomery Advertiser, captioned, "New Trial Motion Set In Libel Suit", dated February 3, 1961, offered in evidence and identified as Defendant's Exhibit No. 70.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Mayor Gains Libel Verdict of $500,000", dated February 2, 1961, offered in evidence and identified as Defendant's Exhibit No. 71.)

[fol. 1981] (Newspaper Article, The Montgomery Advertiser, captioned, "Negroes Mix Circuit Court At Libel Trial", dated February 1, 1961, offered in evidence and identified as Defendant's Exhibit No. 72.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Negroes' Suit Names State, City Officials", dated February 23, 1961, offered in evidence and identified as Defendant's Exhibit No. 73.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Car Attached From Negro Minister Sells For $400", dated February 22, 1961, offered in evidence and identified as Defendant's Exhibit No. 74.)

(Newspaper Article, The Montgomery Advertiser, captioned, "Witnesses Say Ad Reflected On Sullivan", dated November 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 75.)

(Newspaper Article, The Montgomery Advertiser, captioned, "The Times Acknowledges Error", dated May 17, 1960, offered in evidence and identified as Defendant's Exhibit No. 76.)

[fol. 1982] (Newspaper Article, The Montgomery Advertiser, captioned, "Will They Purge Themselves?", dated April 7, 1960, offered in evidence and identified as Defendant's Exhibit No. 77.)

(Newspaper Article, The Alabama Journal, captioned, "Liberals Appeal For Funds To Defend M. L. King", dated April 5, 1960, offered in evidence and identified as Defendant's Exhibit No. 78.)

(Newspaper Article, The Alabama Journal, captioned, "City Demands Retraction Of Ad In Times", dated April 9, 1960, offered in evidence and identified as Defendant's Exhibit No. 79.)

(Newspaper Article, The Alabama Journal, captioned, "Gallion Plans To Take Action On Times Ad", dated April 8, 1960, offered in evidence and identified as Defendant's Exhibit No. 80.)

(Newspaper Article, The Alabama Journal, captioned, "Not The First Lie About South", dated April 9, 1960, offered in evidence and identified as Defendant's Exhibit No. 81.)

[fol. 1983] (Newspaper Article, The Alabama Journal, captioned, "B'ham. Officials To Sue N.Y. Times", dated April 16, 1960, offered in evidence and identified as Defendant's Exhibit No. 82.)

(Newspaper Article, The Alabama Journal, captioned, "Times Reveals Critical Letters", dated April 19, 1960, offered in evidence and identified as Defendant's Exhibit No. 83.)

(Newspaper Article, The Alabama Journal, captioned, "Source Says Gallion To Urge Ad Suit", dated April 15, 1960, offered in evidence and identified as Defendant's Exhibit No. 84.)

(Newspaper Article, The Alabama Journal, captioned, "Report Due On Tuesday On Libel Suit", dated April 17, 1960, offered in evidence and identified as Defendant's Exhibit No. 85.)

(Newspaper Article, The Alabama Journal, captioned, "Unworthy Newspaper Policy", dated April 18, 1960, offered in evidence and identified as Defendant's Exhibit No. 86.)

[fol. 1984] (Newspaper Article, The Alabama Journal, captioned, "Gallion Holding Recommendation For School Board", dated April 19, 1960, offered in evidence and identified as Defendant's Exhibit No. 87.)

(Newspaper Article, The Alabama Journal, captioned, "City Officials Sue N.Y. Times", dated April 20, 1960, offered in evidence and identified as Defendant's Exhibit No. 88.)

(Newspaper Article, The Alabama Journal, captioned, "Governor To Rule On Libel Suits Early Next Week", dated April 21, 1960, offered in evidence and identified as Defendant's Exhibit No. 89.)

(Newspaper Article, The Alabama Journal, captioned, "Not a City Of Race Terror", dated April 22, 1960, offered in evidence and identified as Defendant's Exhibit No. 90.)

(Newspaper Article, The Alabama Journal, captioned, "It's The Same Old Thing", dated April 26, 1960, offered in evidence and identified as Defendant's Exhibit No. 91.)

[fol. 1985] (Newspaper Article, The Alabama Journal, captioned, "Governor Plans To Sue Times For Ad Libel", dated April 28, 1960, offered in evidence and identified as Defendant's Exhibit No. 92.)

(Newspaper Article, The Alabama Journal, captioned, "Times Will Probe Accuracy Of Stories", dated April 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 93.)

(Newspaper Article, The Alabama Journal, captioned, "The Times And Salisbury", dated May 7, 1960, offered in evidence and identified as Defendant's Exhibit No. 94.)

(Newspaper Article, The Alabama Journal, captioned, "B'ham. Officials File Times Suits of $500,000 Each", dated May 6, 1960, offered in evidence and identified as Defendant's Exhibit No. 95.)

(Newspaper Article, The Alabama Journal, captioned, "Governor Prepares Suit Against N.Y. Times", dated May 12, 1960, offered in evidence and identified as Defendant's Exhibit No. 96.)

[fol. 1986] (Newspaper Article, The Alabama Journal, captioned, "Another Times Act", dated May 13, 1960, offered in evidence and identified as Defendant's Exhibit No. 97.)

(Newspaper Article, The Alabama Journal, captioned, "N.Y. Times Retracts Parts of Statement", dated May 16, 1960, offered in evidence and identified as Defendant's Exhibit No. 98.)

(Newspaper Article, The Alabama Journal, captioned, "Patterson Seeks Advice On Retraction", dated May 17, 1960, offered in evidence and identified as Defendant's Exhibit No. 99.)

(Newspaper Article, The Alabama Journal, captioned, "Times Challenges Libel Suit Here", dated May 20, 1960, offered in evidence and identified as Defendant's Exhibit No. 100.)

(Newspaper Article, The Alabama Journal, captioned, "New York Times Asks Dismissal Of Libel Actions", dated May 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 101.)

[fol. 1987] (Newspaper Article, The Alabama Journal, captioned, "Patterson Has To Read The Times", dated May 31, 1960, offered in evidence and identified as Defendant's Exhibit No. 102.)

(Newspaper Article, The Alabama Journal, captioned, "3 Officials Of Birmingham File Times Suit", dated May 31, 1960, offered in evidence and identified as Defendant's Exhibit No. 103.)

(Newspaper Article, The Alabama Journal, captioned, "Patterson Files Suit; Claims Libel Of Million," dated May 30, 1960, offered in evidence and identified as Defendant's Exhibit No. 104.)

(Newspaper Article, The Alabama Journal, captioned, "Times Told To Show Records", dated June 30, 1960, offered in evidence and identified as Defendant's Exhibit No. 105.)

(Newspaper Article, The Alabama Journal, captioned, "Flagrant Errors About South", dated June 24, 1960, offered in evidence and identified as Defendant's Exhibit No. 106.)

[fol. 1988] (Newspaper Article, The Alabama Journal, captioned, "Alabama! Alabama! Wherefore Art Thou?" dated June 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 107.)

(Newspaper Article, The Alabama Journal, captioned, "City Fathers Seeking Back Issues of Times", dated June 8, 1960, offered in evidence and identified as Defendant's Exhibit No. 108.)

(Newspaper Article, The Alabama Journal, captioned, "Times Requests Libel Dismissal In Jefferson", dated June 14, 1960, offered in evidence and identified as Defendant's Exhibit No. 109.)

(Newspaper Article, The Alabama Journal, captioned, "King Ad Netted About $7,000", dated June 16, 1960, offered in evidence and identified as Defendant's Exhibit No. 110.)

(Newspaper Article, The Alabama Journal, captioned, "Time Puts Vandy In Alabama", dated June 24, 1960, offered in evidence and identified as Defendant's Exhibit No. 111.)

[fol. 1989] (Newspaper Article, The Alabama Journal, captioned, "Justice In Alabama", dated June 1, 1960, offered in evidence and identified as Defendant's Exhibit No. 112.)

(Newspaper Article, The Alabama Journal, captioned, "Birmingham Officer Sues N.Y. Times", dated July 20, 1960, offered in evidence and identified as Defendant's Exhibit No. 113.)

(Newspaper Article, The Alabama Journal, captioned, "State Has No Jurisdiction in Libel Suit, Times Says", dated July 25, 1960, offered in evidence and identified as Defendant's Exhibit No. 114.)

(Newspaper Article, The Alabama Journal, captioned, "200 Times Stories About Alabama Put Into Evidence In Court", dated July 26, 1960, offered in evidence and identified as Defendant's Exhibit No. 115.)

(Newspaper Article, The Alabama Journal, captioned, "Times Hearing On Libel Suit In Third Day", dated July 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 116.)

[fol. 1990] (Newspaper Article, The Alabama Journal, captioned, "Important Precedent At Stake In Times Case Before Jones", dated July 28, 1960, offered in evidence and identified as Defendant's Exhibit No. 117.)

(Newspaper Article, The Alabama Journal, captioned, "Jones Hears Arguments In N Y Times Suit", dated August 1, 1960, offered in evidence and identified as Defendant's Exhibit No. 118.)

(Newspaper Article, The Alabama Journal, captioned, "Tempers Flare At Times Hearing", dated July 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 119.)

(Newspaper Article, The Alabama Journal, captioned, "N.Y. Times Can Be Sued By Alabama", dated August 6, 1960, offered in evidence and identified as Defendant's Exhibit No. 120.)

(Newspaper Article, The Alabama Journal, captioned, "Times Writer Called To Testify At Bessemer", dated August 25, 1960, offered in evidence and identified as Defendant's Exhibit No. 121.)

[fol. 1991] (Newspaper Article, The Alabama Journal, captioned, "Where The Damage Is Done," dated August 8, 1960, offered in evidence and identified as Defendant's Exhibit No. 122.)

(Newspaper Article, The Alabama Journal, captioned, "Times Asks Dismissal Of B'ham. Suits", dated August 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 123.)

(Newspaper Article, The Alabama Journal, captioned, "Some Is Unfit", dated September 5, 1960, offered in evidence and identified as Defendant's Exhibit No. 124.)

(Newspaper Article, The Alabama Journal, captioned, "Rowdy South", dated September 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 125.)

(Newspaper Article, The Alabama Journal, captioned, "U.S. Court Rules Times Suits Can Be Tried In State Courts", dated September 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 126.)

[fol. 1992] (Newspaper Article, The Alabama Journal, captioned, "State Can Try N.Y. Times Suits", dated September 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 127.)

(Newspaper Article, The Alabama Journal, captioned, "Cleric Decides To Testify On Race Incidents", dated September 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 128.)

(Newspaper Article, The Alabama Journal, captioned, "Rev. Hughes Reappears Before Jury," dated September 6, 1960, offered in evidence and identified as Defendant's Exhibit No. 129.)

(Newspaper Article, The Alabama Journal, captioned, "Cleric Appeals To Hugo Black", dated September 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 130.)

(Newspaper Article, The Alabama Journal, captioned, "Jailed Minister Seeking Freedom: Jury Back Today", dated September 6, 1960, offered and identified as Defendant's Exhibit No. 131.)

[fol. 1993] (Newspaper Article, The Alabama Journal, captioned, "Methodists Send Hughes To Africa", dated September 10, 1960, offered in evidence and identified as Defendant's Exhibit No. 132.)

(Newspaper Article, The Alabama Journal, captioned, "N. Y. Times To Appeal Ruling On State Suits", dated September 9, 1960, offered in evidence and identified as Defendant's Exhibit No. 133.)

(Newspaper Article, The Alabama Journal, captioned, "Deep Trouble Seen For Demos In South", dated September 7, 1960, offered in evidence and identified as Defendant's Exhibit No. 134.)

(Newspaper Article, The Alabama Journal, captioned, "Salisbury Is Indicted For Times Articles", dated September 7, 1960, offered in evidence and identified as Defendant's Exhibit No. 135.)

(Newspaper Article, The Alabama Journal, captioned, "Times Loses Bid To Delay Libel Suit", dated September 21, 1960, offered in evidence and identified as Defendant's Exhibit No. 136.)

[fol. 1994] (Newspaper Article, The Alabama Journal, captioned, "Times Ruling Appeal Slated", dated September 27, 1960, offered in evidence and identified as Defendant's Exhibit No. 137.)

(Newspaper Article, The Alabama Journal, captioned, "Times Loses Attempt To Throw Out Suit", dated October 29, 1960, offered in evidence and identified as Defendant's Exhibit No. 138.)

(Newspaper Article, The Alabama Journal, captioned, "Libel Suits", dated October 19, 1960, offered in evidence and identified as Defendant's Exhibit No. 139.)

(Newspaper Article, The Alabama Journal, captioned, "City's Libel Claims Attacked By Times", dated October 28, 1960, offered in evidence and identified as Defendant's Exhibit No. 140.)

(Newspaper Article, The Alabama Journal, captioned, "Times Libel Trial Begins Tuesday", dated October 31, 1960, offered in evidence and identified as Defendant's Exhibit No. 141.)

[fol. 1995] (Newspaper Article, The Alabama Journal, captioned, "L. B. Sullivan Testifies In Times Suit", dated November 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 142.)

(Newspaper Article, The Alabama Journal, captioned, "Opposing Sides Give Final Arguments In Times Libel Suit", dated November 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 143.)

(Newspaper Article, The Alabama Journal, captioned, "Jan. 14 Hearing Set For New Trial Bid", dated December 17, 1960, offered in evidence and identified as Defendant's Exhibit No. 144.)

(Newspaper Article, The Alabama Journal, captioned, "Courtroom Segregated In Times Suit", dated February 1, 1961, offered in evidence and identified as Defendant's Exhibit No. 145.)

(Newspaper Article, The Alabama Journal, captioned, "Arguments In Times Case Postponed", dated January 13, 1961, offered in evidence and identified as Defendant's Exhibit No. 146.)

[fol. 1996] (Newspaper Article, The Alabama Journal, captioned, "Judge Denies Another Trial To 4 Negroes", dated January 18, 1961, offered in evidence and identified as Defendant's Exhibit No. 147.)

(Newspaper Article, The Alabama Journal, captioned, "Negroes Integrate Circuit Courtroom", dated January 31,

1961, offered in evidence and identified as Defendant's Exhibit No. 148.)

(Newspaper Article, The Alabama Journal, captioned, "Delay Is Denied In Times Trial", dated January 30, 1961, offered in evidence and identified as Defendant's Exhibit No. 149.)

(Newspaper Article, The Alabama Journal, captioned, "Times Libel Suit Looms By Sellers", dated February 9, 1961, offered in evidence and identified as Defendant's Exhibit No. 150.)

(Newspaper Article, The Alabama Journal, captioned, "Negroes Ask Out of $1 Million Bond", dated February 4, 1961, offered in evidence and identified as Defendant's Exhibit No. 151.)

[fol. 1997] (Newspaper Article, The Alabama Journal, captioned, "Orders To Seize Property Issued", dated February 6, 1961, offered in evidence and identified as Defendant's Exhibit No. 152.)

(Newspaper Article, The Alabama Journal, captioned, "Right Of Notification Given Lawyer In N Y Times Case", dated February 11, 1961, offered in evidence and identified as Defendant's Exhibit No. 153.)

(Newspaper Article, The Alabama Journal, captioned, "Cleric's Car To Be Sold At Auction", dated February 13, 1961, offered in evidence and identified as Defendant's Exhibit No. 154.)

(Newspaper Article, The Alabama Journal, captioned, "4 Negroes File Suit", dated February 13, 1961, offered in evidence and identified as Defendant's Exhibit No. 155.)

(Newspaper Article, The Alabama Journal, captioned, "Jurors Selected For Times Suit", dated November 1, 1960, offered in evidence and identified as Defendant's Exhibit No. 156.)

[fol. 1998] (Newspaper Article, The Alabama Journal, captioned "L. B. Sullivan Testifies In Times Suit", dated November 2, 1960, offered in evidence and identified as Defendant's Exhibit No. 157.)

(Newspaper Article, The Alabama Journal, captioned, "Must Stick To The Truth", dated November 4, 1960, offered in evidence and identified as Defendant's Exhibit No. 158.)

(One Roll of Film, offered to the proposed testimony of Lee Allen Ford, is uncopiable and in compliance with Title 7, Section 827 (1), will be attached to this Record as a part thereof and certified to by the Clerk of the Circuit Court. This roll of film is identified as Defendant's Exhibit No. 159.)

(One W.C.O.V. Television Script, dated November 3, 1960, offered in evidence and identified as Defendant's Exhibit No. 160.)

[fol. 1999] Mr. MacLeod: Now, Your Honor, we offer to call to the witness stand Lee Allen Ford as a witness for The New York Times in support of its Motion For A New Trial in the case of Sullivan against The New York Times Company and others.

Mr. Nachman: If the testimony they propose to introduce by Mr. Ford is about the television programs, then we object to it on the same grounds previously assigned.

The Court: Is that the purpose of this evidence?

Mr. MacLeod: Yes, Your Honor.

The Court: I think the objection is good.

Mr. MacLeod: We propose to show the activities of the television photographer in the court room, Your Honor.

The Court: I think the objection is good.

Mr. Embry: We except.

Mr. MacLeod: Your Honor, at this time we offer to prove by the Witness, Lee Allen Ford, that he is an employee—and at the time of the trial of this case before the jury—that he was an employee of a local television station designated as W.C.O.V. which is located in Montgomery, Alabama which broadcasts over this county and that on the 3rd day of November during the trial of this case that the witness, Lee Allen Ford, was in the Court Room while the trial of this case was in progress and while the jury was in the jury box and that during that time he took in the presence of the jury and within the Court Room moving

pictures of the trial in progress including the participants in the trial and by that, I mean, the parties and the attorneys and the Judge and also including the jury in the box and that at the conclusion of the Judge's Charge to the Jury as the jury was returning to the Jury Room to begin their deliberations that the witness came inside the rail of the Court room and followed the jury toward the jury room taking pictures of the individual jurors as they went into the jury room to deliberate and we offer to show by the witness that these films that were taken in the Court Room were broadcast over television in Montgomery and we offer to prove by the witness that this roll of film which I will ask the Court Reporter to mark as an exhibit was taken in [fol. 2000] the court room during the progress of this trial and was later shown over television station W.C.O.V. in Montgomery and the surrounding communities. I will ask the Court Reporter to identify this roll of film as Defendant's Exhibit No. 159 on the Motion for a new trial. We offer to further prove by the witness that this group of papers clipped together here which I will ask the Court Reporter to mark and identify as Defendant's Exhibit No. 160 now for identification. This is the text of the script of the statements that were made over television accompanying the showing of the television pictures which have just been introduced—offered to be introduced—as Defendant's Exhibit No. 159.

The Court: What was the date of that showing?

Mr. MacLeod: That was the 3rd of November, Your Honor. The 3rd of November, 1960.

Mr. Nachman: Does it fix the hour?

Mr. MacLeod: I don't know whether we have that or not. Your Honor, this script was on a news broadcast between six and six-fifteen. We further offer to show by the witness that during the progress of the trial, on the first two days of the trial, that there were television broadcasts over station W.C.O.V. about the trial and the events taking place there. Now, Your Honor, we would like to make a further offer of proof in connection with this Motion. I offer to prove by my own testimony, and this is part of the Record, that—

The Court: Is this on 182 or 183?

Mr. MacLeod: It is on 183, Your Honor. That during the course of the Voir Dire examination of the jury prior to the time of striking the jury, that a large number of the venire stated that they had read about the case and about the advertisement that was the basis of the suit in the local newspapers.

Mr. Baker: That's already part of the Record, Your Honor.

Mr. Nachman: We have asked the Court Reporter, Your Honor, to transcribe all of the Voir Dire examination of the jurors for incorporation into the Record and I assume [fol. 2001] that will cover all of the statement of the jurors.

Mr. MacLeod: I further offer to prove by my own testimony that during the trial of the cause that within the railing of the court room which separates the portion of the court room from where the audience sits and the place where the actual trial—

The Court: That is the Bar of the Court.

Mr. MacLeod: The Bar of the Court then, Your Honor.

The Court: The Bar of the Court.

Mr. MacLeod: Well, within the Bar of the Court there was a table placed at which during the entire conduct of the trial there were several news reporters and photographers and that that table was, as I said, within the Bar of the Court and in plain view of the jury at all times.

Mr. Baker: Your Honor, this whole thing amazes me to hear The New York Times newspaper objecting to publicity by a newspaper—

Mr. MacLeod: Your Honor, we made the offer of proof as to Lee Allen Ford and I don't believe we have a ruling on that.

The Court: What do you want to prove by him?

Mr. MacLeod: I have stated, Your Honor, that he is the man who was the television photographer—

The Court: Well, I thought I gave a ruling on that. Your offer to prove comes too late. It should have been raised before.

Mr. MacLeod: Does Your Honor sustain the plaintiff's objection—

The Court: I sustain the objection to his testimony along that line. Now, that's on 182—

Mr. MacLeod: That's on 182 and 183 both, Your Honor. We except to that ruling of the Court.

(One roll of film, offered in evidence to the proposed testimony of Lee Allen Ford and identified as Defendant's Exhibit No. 159, is uncopiable and in compliance with Title 7, Section 827 (1) will be attached to this Record as part thereof and certified to by the Clerk of the Circuit Court.)

[fol. 2002] (Four Pages of Television Script, dated November 3, offered in evidence to the proposed testimony of Lee Allen Ford, and identified as Defendant's Exhibit No. 160.)

Mr. MacLeod: Now, Your Honor, I don't believe there was a ruling for the Record of the offer to prove in connection with my testimony about the jury and the table for the photographers and newspapermen inside the Bar of the Court.

Mr. Nachman: Again, Your Honor, there they were, in open Court, and as Mr. MacLeod says, inside the Bar. They made no objections to it. They must have been aware—

The Court: Well, I sustain the objection and let the Record note an exception.

Mr. MacLeod: We except, Your Honor.

Mr. Baker: I would like to ask a question, Your Honor.

The Court: Go ahead.

Mr. Baker: Does Mr. MacLeod have any objections to the press being here today? They are still here.

Mr. MacLeod: Now, Your Honor, I think Mr. Baker has gone beyond the realm of propriety. He is trying to—

The Court: Well, we will let the press sit there.

Mr. MacLeod: I think he well understands just why we have done this and what the import of our contention is in this, Your Honor.

The Court: Well, let's pass on to some of these other points now.

Mr. Nachman: Your Honor, Mr. Ford has pointed out to me that he is required by law to keep this film for a year and that he would like to have some arrangements made about getting it back.

The Court: Well, ask him if he won't keep that film subject to the orders of the Court.

[fol. 2003] Mr. MacLeod: Your Honor, we are going to have to have it. It is quite possible that it may have to be included in the transcript.

The Court: Well, couldn't we have a copy of it made? Can you make copies of those?

Mr. MacLeod: I don't know how you can make a copy of this, Your Honor.

The Court: How long does the law require these to be kept?

A Voice: One year, sir.

Mr. MacLeod: Your Honor, he would be fully protected if it is in the custody of this Court.

Mr. Baker: That film can be copied, Your Honor. It has been done before in a number of cases.

The Court: Well, you can get it copied and he can take that roll of film back with him.

Mr. MacLeod: That will be all right, Your Honor.

Mr. Embry: Your Honor, we would like to call Mr. John Mathews to the witness stand in connection with these same grounds. For the Record, he is the Clerk of the Circuit Court.

The Court: In what respect?

Mr. Embry: We want to offer to show from the records of the Court the size of the highest verdict that has ever been rendered in this county and the nature of the case in which it was returned and to further show by this witness that during the same week this case was tried that a verdict for $1,000 was rendered in this Court Room while we were trying this case in Judge Carter's Court Room in an action for the death of a human being.

Mr. Nachman: Your Honor, we object to that. It is highly improper and—

The Court: Well, it looks like that in order to do that we would have to go into the history of these things as to why the verdict was such and so and re-try the case. Of course, we are always enlightened by the testimony of the Clerk here but I don't believe he can give that sort of testimony.

[fol. 2004] Mr. Nachman: There have been verdicts for the defendant in death cases also, Your Honor, and—

The Court: Well, go ahead and state what you offer to show and let him object and I will rule on it.

Mr. Embry: We offer to show by Mr. Mathews that prior to the conclusion of the case of Sullivan against The New York Times and others that in this Court, during the same week, that a jury returned a verdict for a thousand dollars in a case involving the death of a human being and we offer to show by the witness the correct styling of the case and who the parties were.

The Court: Well, if they object, I think the objection is good.

Mr. Baker: We object, Your Honor.

The Court: I sustain the objection.

Mr. Embry: We except, Your Honor. We further offer to show by Mr. Mathews that the highest verdict rendered in this Court was in the case of Davis against the Johnson Publishing Company which was in the amount of $67,500 and we offer to show when that took place and the identity of the parties and the correct styling and number of the case which I am sure that Your Honor will take judicial knowledge of as it is a record of this Court.

Mr. Baker: We object to it, Your Honor.

The Court: I sustain the objection.

Mr. Embry: We except, Your Honor. That's all the evidence we have, Your Honor, and now I would like to say a few words to the Court in support of the Motion.

(At this point, argument was presented to the Court by Counsel for the Defendant, The New York Times Company, and replied to by Counsel for the Plaintiff, L. B. Sullivan.)

The Court: Mr. Reporter, note this for the Record. The Motion of the Defendant, The New York Times Company, a corporation, to set aside the verdict of the jury rendered in this case on November 3rd, 1960 and to grant this defendant a new trial now coming on regularly to be heard before [fol. 2005] the Court, the said Motion is argued by Counsel for the respective parties and submitted for decision by the Court and the Court does now take said Motion under consideration. Will that protect everybody's rights?

Mr. Embry: Yes, Your Honor. We would suggest that the Court Reporter write that up and that it should be attached to the Motion or written on it.

The Court: Yes. That's what we are going to do. It is in the Record now, anyway.

Mr. Embry: That's all we have, Your Honor.

Lawyer Crawford: Will you hear us, Your Honor?

The Court: What is that?

Lawyer Crawford: Will you hear us, please?

The Court: Well, that matter is not set for today, is it?

Lawyer Crawford: Well, Your Honor, we would like to make a brief statement on that Motion.

The Court: On what?

Lawyer Crawford: We would like to make a brief statement on the Motion For A New Trial in the Sullivan case.

The Court: Well, the other Motion is not set at this time, is it?

Mr. Baker: Mr. Reporter, let the Record show that we withdraw—

The Clerk: That Motion is dead.

Lawyer Crawford: Would the Court hear a brief statement about that Motion?

The Court: I don't see any necessity of hearing it if it is dead.

Lawyer Crawford: Well, is there a ruling on that, Your Honor?

The Court: The law rules on it.

Mr. Nachman: Your Honor was asked to rule on it as a matter of fact. Fred Gray was in the case and you ruled [fol. 2006] on it as I understand it. Isn't that correct, Mr. Mathews?

The Clerk: Well, he never did make a ruling on it. The Court told him it was dead as a matter of law.

The Court: Well, if it is dead under the law, I can't bring it back to life now.

Lawyer Crawford: Well, will the Court indulge us for about thirty seconds?

The Court: What do you want to be indulged about?

Lawyer Crawford: It will take only a minute, Your Honor—

Mr. Nachman: Your Honor, before we get into that, it

was my understanding that there was to be some proceedings in the Parks case. I understand that was to be heard today. As I understand it there were some other matters set for today and these gentlemen from Birmingham were to be here for the drawing of the jurors—

The Clerk: It was set at 12 o'clock and it's that time now—

The Court: Well, I don't want to hear you at this time because I have to go into this other matter now. Bring the jury box in here.

Lawyer Crawford: I don't mean to be contentious, Your Honor, but—

The Court: Let me get through drawing the jury and then I will see what I can do.

[fol. 2006a] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 2011]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF DEFENDANT'S, THE NEW YORK TIMES COMPANY, A CORPORATION, MOTION FOR NEW TRIAL—Filed December 1, 1960

Comes the defendant, The New York Times Company, a corporation, in the above styled cause and moves the Court to set aside the verdict of the jury of November 3, 1960, heretofore returned in said cause and the judgment rendered thereon in said cause and to grant unto this defendant a new trial, and as grounds for said motion said defendant sets down and assigns, separately and severally, the following, to-wit:

1. For that the court erred in entering its order of judgment of the 9th day of June, 1960, requiring this defendant to produce the books and documents and other writings specified in plaintiff's motion to produce theretofore filed in said cause.

2. For that the court erred in entering its order or judgment of the 5th day of August, 1960, denying the motion of

this defendant as amended to quash service of process upon it in this cause.

3. For that the court erred in failing or refusing to quash service of process upon this defendant had upon one Don McKee in this cause.

4. For that the court erred in failing or refusing to quash service of process upon this defendant had upon one John Chadwick in this cause.

5. For that the court erred in failing or refusing to quash service of process upon this defendant had under the provisions of Title 7, Sec. 199 (1) in this cause.

6. For that the court erred in entering its order or judgment of the 5th day of August, 1960, holding that this defendant was "doing business" in Alabama at the time of the purported service of process upon it.

7. For that the court erred in entering its order or judgment of the 5th day of August, 1960, in holding that this defendant had waived its limited appearance in this cause and had entered a general appearance in said cause.

8. For that the court erred in its order or judgment of the 5th day of August, 1960, in holding that this cause of action is an incident to the conduct of business in Alabama by this defendant.

9. For that the court erred in holding that the provisions of Title 7, Section 199 (1) are applicable to the facts of this cause so as to subject this defendant to service of process thereunder in this cause.

10. For that the court erred in its order or judgment of the 5th day of August, 1960, in failing to grant this defendant's motion to quash service of process upon it.

11. For that the court erred in entering its order or judgment of the 20th day of September, 1960, denying this defendant's objections to interrogatories propounded to it [fol. 2012] by the plaintiff.

12. For that the Court erred in entering its order or judgment of the 20th day of September, 1960, requiring

this defendant to make answer to the interrogatories propounded to it by the plaintiff.

13. For that the court erred in overruling this defendant's demurrers and additional demurrers to plaintiff's complaint in this cause.

14. For that the court erred in overruling this defendant's demurrers to plaintiff's complaint in said cause.

15. For that the court erred in overruling this defendant's additional demurrers to plaintiff's complaint in this cause.

16. For that the court erred in overruling this defendant's demurrers to Count One of plaintiff's complaint in this cause.

17. For that the court erred in overruling this defendant's additional demurrers to Count One of plaintiff's complaint in this cause.

18. For that the Court erred in overruling this defendant's demurrers to Count Two of plaintiff's complaint in this cause.

19. For that the court erred in overruling this defendant's additional demurrers to Count Two of plaintiff's complaint in this cause.

20. For that the court erred in overruling the demurrers as amended by the additional grounds assigned of this defendant to the plaintiff's complaint in this cause.

21. For that the Court erred in overruling defendant's demurrer as amended by the assignment of additional grounds to Count One of plaintiff's complaint in this cause.

22. For that the court erred in overruling defendant's demurrers as amended by the assignment of additional grounds to Count Two of plaintiff's complaint in this cause.

23. For that the court erred in sustaining demurrers to defendant's Plea One.

24. For that the court erred in sustaining demurrers to defendant's Plea Two.

25. For that the court erred in sustaining demurrers to defendant's Plea Three.

26. For that the court erred in sustaining demurrers to defendant's Plea Four.

27. For that the court erred in sustaining demurrers to defendant's Plea Five.

28. For that the court erred in sustaining demurrers to defendant's Plea Six.

[fol. 2013] 29. The court erred in permitting plaintiff's interrogatories and the answers of the defendant, The New York Times Company, a corporation, thereto which was plaintiff's Exhibit No. 348 to be sent out as an Exhibit with the jury to have before them in their deliberation after the same had been read into the evidence, to which action of the court this defendant duly and legally objected, and upon said objection being overruled by the court, to which this defendant duly and legally excepted.

30. For that the court erred in its oral charge to the jury wherein the court instructed the jury as follows:

"Now, the court is of the opinion and so charges you, gentlemen of the jury, that the matter complained of in plaintiff's Exhibit No. 347, that's the controversial ad which you will have before you, and parts of which are set out in the counts here in the complaint, belongs to that class of defamation called in law libel per se."

to which portion of the court's oral charge this defendant duly and legally excepted.

31. For that the court erred in its oral charge to the jury wherein the court instructed the jury as follows:

"We can say, as part of the law in this case, that a publication is libelous per se when they are such as to degrade the plaintiff in the estimation of his friends and the people of the place where he lives, as injure him in his public office or impute misconduct in his office, or want of official integrity or want of fidelity to a public trust or such as will subject the plaintiff to ridicule of public distrust. All those kind of charges are called libelous per se."

to which portion of such oral charge of the court this defendant duly and legally excepted.

32. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.1. I charge you, gentlemen of the jury, that the advertisement complained of in plaintiff's complaint is not libelous per se, that is to say, the same is not libelous as a matter of law." Refused, Jones, Judge.

33. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.2. I charge you, gentlemen of the jury, that the advertisement complained of in plaintiff's complaint is not libelous as a matter of law, and if, after reading that advertisement, you find that it was not degrading and would not tend to injure the plaintiff's reputation, then I further [fol. 2014] charge you that such advertisement is not in fact libelous and in that event your verdict must be for the defendant, The New York Times Company, a corporation." Refused, Jones, Judge.

34. For that the court erred in refusing to give the following written instructions to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.3. I charge you, gentlemen of the jury, that if you are reasonably satisfied from the evidence that the publication complained of by plaintiff in his complaint is false, then I further charge you that not every false publication is libelous as a matter of law, and that to make such publication libelous you must further find from the evidence that by reading such publication and giving to the words contained therein their natural and ordinary meaning, that the same is degrading, and would tend to injure the plaintiff's reputation by imputing to him some incapacity or lack of due qualification to fill the public office held by plaintiff or