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.

35. 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.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 reputation by imputing gross negligence, dishonesty or other impropriety in the discharge of his official duties." Refused, Jones, Judge.

36. 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.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 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 damage claimed and with which you, the jury, are primarily concerned is injury to reputation; and I further charge you that in the [fol. 2015] 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.

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37. 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.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.

38. 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.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.

39. 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.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.

40. For that the court erred in refusing to give the following written instructions to the jury in this cause

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at the request of this defendant, The New York Times Company, a corporation:

"T.11. I charge you, gentlemen of the jury, that before you are authorized to award substantial compensatory damages 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.

[fol. 2016] 41. 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.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 sustained no actual injury, then I charge you that your verdict may be for nominal damages." Refused, Jones, Judge.

42. 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.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.

43. 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.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 corpora-

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tion, and the other defendants in this case, for the publication of the advertisement complained of, and I further charge you that 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.

44. 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.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.

45. For that the court erred in refusing to give the following written instructions to the jury in this cause at the [fol. 2017] request of this defendant, The New York Times Company, a corporation:

"T.23. 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." Refused, Jones, Judge.

46. 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.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

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York Times Company, a corporation, in this case under Count One of plaintiff's complaint as last amended." Refused, Jones, Judge.

47. 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.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.

48. 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.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.

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

"T.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.

50. 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.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.

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[fol. 2018] 51. 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.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.

52. 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.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 office, trade, business, or profession, in which case the words used in the advertisement complained of would not be libelous." Refused, Jones, Judge.

53. 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.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.

54. 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, corporation:

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"T.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.

55. 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.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.

[fol. 2019] 56. 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.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.

57. 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.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.

58. For that the court erred in refusing to give the following written instructions to the jury in this cause at

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the request of this defendant, The New York Times Company, a corporation:

"T.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.

59. For that the court erred in denying the right of counsel for this defendant, The New York Times Company, a corporation, to examine the venire from which the jury for the trial of this case was selected on their voir dire, and in the following particular:

"I will ask you gentlemen even though at the close of this case that you may find a certain statement contained in the advertisement made the basis of the plaintiff's complaint in this case in his cause of action are not accurate or correct but the evidence discloses that the advertisement did not refer to the plaintiff, do you entertain any conviction, opinion or predisposition of mind which would compel you to return a verdict in favor of the plaintiff or which would prevent your returning a verdict in favor of the defendant, The New York Times Company, a corporation?"

to which action of the court this defendant duly and legally excepted.

[fol. 2020] 60. For that the court erred in denying the right of counsel for this defendant, The New York Times Company, a corporation, to examine the venire from which the jury for the trial of this case was selected on their voir dire, and in the following particular:

"Have any of you gentlemen ever been a plaintiff in a law suit in this Court any number of times, that is to say, have you filed a suit seeking recovery of money from another person, firm, or corporation?"

to which action of the court this defendant duly and legally excepted.

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61. For that the court erred in denying the right of counsel for this defendant, The New York Times Company, a corporation, to examine the venire from which the jury for the trial of this case was selected on their voir dire, and in the following particular:

"I will ask you gentlemen if at the close of the evidence in this case and the evidence shows that The New York Times Company was not actuated by malice in publishing this paid advertisement, would you refuse to award damages to punish The New York Times, that is to say, would you refuse to award punitive damages in this case?"

to which action of the court this defendant duly and legally excepted.

62. For that the court erred in denying the right of counsel for this defendant, The New York Times Company, a corporation, to examine the venire from which the jury for the trial of this case was selected on their voir dire, and in the following particular:

"Is there any reason, without disclosing that reason to me, that would tend to embarrass you or embarrass you in any way or cause you to hesitate to return a verdict in favor of The New York Times Company, a corporation, in this case?"

to which action of the court this defendant duly and legally excepted.

63. For that the court committed prejudicial error against the interest of The New York Times Company, a corporation, in over-ruling the objections of said defendant to the questions propounded to the witness, Grover C. Hall, Jr. on Direct Examination as follows:

"Q. I direct your attention to the third paragraph in the left hand column of that exhibit which is the paragraph beginning '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,

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their dining hall was padlocked in an attempt to starve them into submission.' I ask you to look at that paragraph, if you will.

"A. Yes, Sir.

[fol. 2021] Q. You are familiar with it?

A. Yes.

Q. I will ask you, Mr. Hall, whether you associate the statements contained in that paragraph with any person or persons?

Mr. Embry: Go ahead and finish your question but don't answer it, Mr. Hall. Let me object to it before you answer.

Mr. Nachman: I am through.

Mr. Embry: Your Honor, we object to that question on the grounds that it invades the province of the jury and it calls for an ultimate inquiry into fact that the jury is to inquire into in this case and it is incompetent, irrelevant and immaterial and it calls for an undisclosed mental operation of this witness and it calls for an unauthorized mental conclusion on the part of this witness. The fact that he is asking about is a fact that is addressed entirely to the jury in this case. It is a fact for the jury to decide, Your Honor, We object to it on those grounds."

"Mr. Embry: Your Honor, I would like to add some other grounds.

The Court: Go ahead.

Mr. Embry: Your Honor, this is an attempt to substitute this witness' opinion for that of the jury. The jurors are the triers of fact in the case and it is what the jury associates from a reading of the article and not from the witness and I have an Alabama authority on that point, Your Honor, if you would like to see it.

The Court: Well, the way I read these cases here, they hold in some of these cases that it is permissible to ask the witness when you get him on the witness stand after he had read that article whether he understood it to refer to the plaintiff, that is, Sullivan here, and I think that would be admissible—

Mr. Embry: Your Honor, that's the Iowa case but we have an Alabama case.

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The Court: Well, let me rule against you—it is a question of identification—let me rule against you and give you an exception.

Mr. Embry: We except, Your Honor."

* * * * * * *

"Q. You may answer the question, Mr. Hall.

A. Please re-state the question.

Q. Referring to the statements contained in the paragraph of the ad to which I referred you, do you associate those statements with any person or persons?

Mr. Embry: We make the same objections, Your Honor—

The Court: Same ruling.

[fol. 2022] Mr. Embry: We except.

The Witness: I think I would associate it with the City government—the Commissioners."

* * * * * * *

Q. The Commissioners of the City.

A. Yes, sir.

Q. Is that the City of Montgomery, Alabama?

A. Yes, sir.

Q. Now, if you believed the statements contained in that same paragraph to be true, Mr. Hall, would that belief affect your opinion or judgment of the persons so associated, and in this case, would it affect your judgment of the fitness of that person to hold the office of Commissioner?

Mr. Embry: We object to that question, Your Honor. It invades the province of the jury and it calls for an unauthorized conclusion on the part of this witness and for an undisclosed mental operation. It is speculative it invades the province of the jury and the question addressed to the witness is the question of ultimate inquiry of fact to be addressed to the jury in the case, if the Court please, and not the opinion of a person brought in here to testify what his impression is or what he thinks or what he speculates or how it might affect him if he believed it is pure speculation, if the Court please. It is a question of fact adduced from that witness stand as to what it may or may not have done—

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Mr. Nachman: Your Honor, this matter was before you in the case of Johnson Publishing Company vs. Davis and a recent opinion by the Alabama Supreme Court in a separate opinion referred to this kind of testimony—

The Court: Well, I don't want to cut you short, but I think the question is good and you may have an exception.

Mr. Embry: We except, your Honor.

* * * * * * *

The Witness: Well, it states there about starving students into submission and starvation is an instrument of reprisal and would certainly be indefensible in my mind in any case.

Mr. Embry: Your Honor, we move that answer be stricken as not responsive to the question—

The Court: Motion denied.

Mr. Embry: We except."

to which action of the court this defendant duly and legally reserved an exception.

64. For that the court committed prejudicial error against the interest of The New York Times Company, a [fol. 2023] corporation, in over-ruling the objections of said defendant to the questions propounded to the witness, Arnold D. Blackwell, on Direct Examination as follows:

"Q. I direct your attention to the third paragraph on the left hand side of the article which reads as follows: "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.' I ask you to look at that paragraph and read it and familiarize yourself with it.

Mr. Embry: Your Honor, while he is doing that may I inquire of the witness on Voir Dire as to when he saw this?

Mr. Nachman: We think that is a matter for cross-examination, Your Honor.

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The Court: I don't believe you can ask that on Voir Dire.

Mr. Embry: Well, Your Honor, you certainly wouldn't permit him to testify about something if he didn't read it in the paper and if he hadn't seen it until it was shown to him by one of the attorneys for the plaintiff in this case—

The Court: I take it it would have to be read before the beginning of the trial, wouldn't it? It would have to be read before the beginning of the trial or before the suit was filed—

Mr. Embry: Well, Your Honor, that would be a publication of Mr. Nachman's and not a publication by this defendant.

Mr. Nachman: Your Honor, we think all of these things can be gone into on cross examination in an attempt to undermine the witness' testimony if they can do so—

The Court: Let me give you an exception to the Court's ruling.

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

The Court: Yes.

Mr. Embry: Your Honor, that would not be a publication upon the part of this defendant if Mr. Nachman went ahead and proffered it to someone who otherwise had not read it—

Mr. Nachman: We are not offering the testimony as a republication of a libel if that's what you are worried about.

The Court: You may have an exception.

Mr. Embry: We except."

* * * * * * *

Q. Have you looked at it, Sir?

[fol. 2024] A. Yes, sir.

Q. Do the statements contained in that paragraph associate in your mind any person or group of persons?

Mr. Embry: Don't answer that question until we have an opportunity to object, please. We object, Your Honor, on the grounds that it invades the province of the jury and it calls for an undisclosed mental operation of the witness, it calls for an unauthorized conclusion on his part, and it goes to the question of the ultimate inquiry of fact before the

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jury, that is to say, whether the advertisement complained of identifies any person or identifies the plaintiff in this cause which is a question of fact for these gentlemen sitting on the jury to determine and it is an attempt to substitute the judgment of the witness of his opinion for that of the jury and that there has been no proper predicate laid or foundation laid for asking of that question."

Mr. Nachman: Your Honor, may we stipulate that the same objections may be made to this question each time as propounded to this witness—

The Court: I will let the question in and hold that it is—

Mr. Embry: I have an exception, Your Honor, and can we have an understanding that the Court Reporter will write it in and write in these objections and any other additional grounds that I can think of—"

Q. Do the statements contained in that paragraph that I have just shown you—are they associated in your mind with any person or persons?

A. Yes, sir.

Q. With whom?

A. With the Police Commissioner and the police force. The people on the police force.

Q. Now, if you believed the statements in that paragraph to be correct, Mr. Blackwell, and true, would they affect your opinion of the Police Commissioner in any way?

Mr. Embry: We object to that question, if it please the court. It is calling for an unauthorized conclusion on the part of the witness, it again invades the province of the jury in determining the fact that that question called for, that is, whether any damages were suffered by the plaintiff and if there is a libelous statement—that's a fact for the jury to determine and it calls for a mental operation. It calls for the witness to determine a fact which is up to the jury here to determine—

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

Mr. Embry: It is also incompetent, irrelevant and immaterial and if we may, Your Honor, we will have the same understanding as to our objections to this same type question whenever he asks that question and to whomever

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he asks that question, if that is agreeable with counsel for the plaintiff.

[fol. 2025] Mr. Nachman: It is agreeable, Your Honor, and as Mr. Baker said, we made the stipulation in order to avoid a repetition of grounds each time the question is asked.

Mr. Embry: This is not the same question as the last question.

Mr. Nachman: We will make the same stipulation in regard to any of them, Mr. Embry.

Mr. Embry: All right. We just want the Record to be right, Your Honor.

* * * * * * *

"Q. You may answer that question too, Mr. Blackwell. If you believed the statements contained in that paragraph to be true and correct, would that belief affect your opinion of the plaintiff in any way?

A. Yes, sir, it would.

Q. In what way, sir?

A. Well, if it were true that "When the entire student protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission, I would think that the people on our police force or the heads of our police force were acting without their jurisdiction and would not be competent for the position.

Q. Now, Mr. Blackwell, I call your attention to this paragraph in the second column which reads as follows. "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.' I ask you there whether those statements associate themselves in your mind with any person or persons?

Mr. Embry: Don't aswer the question yes. We have the same objections and grounds, Your Honor.

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The Court: Yes."

* * * * * * *

The Witness: Which statements particularly?

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

Q. I am referring to, '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.' I refer to those state- [fol. 2026] ments, sir.

A. The last of the statements, '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,' I associate those with the Police Department and with the Police Commissioner, assuming they are referring there to the Police Commissioner and the Police Department. Does that answer your question?

Q. Again, do those statements in that paragraph if you believed them to be true, would they affect your opinion of the Police Commissioner?

A. Yes, sir. They definitely would.

Q. The same way that you previously testified?

A. Yes. The same way I previously testified.

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

to which action of the court this defendant duly and legally reserved an exception.

65. For that the court committed prejudicial error against the interest of The New York Times Company, a Corporation, in over-ruling the objections of said defendant to the questions propounded to the witness, Harry W. Kaminsky, on Direct Examination as follows:

Q. I call your attention to the third paragraph in the left hand column which begins, 'In Montgomery, Alabama,

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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.'

A. Yes, sir.

Q. Are you familiar with the statement and matters contained in that paragraph? Do you want to familiarize yourself with it?

A. Yes, sir. I would like to look at it for a minute.

Q. Now, Mr. Kaminsky, do you associate the statements and material contained in that paragraph that I have just showed you with any person or persons?

Mr. Embry: Your Honor, may we have the same grounds of objection previously assigned—

The Court: Yes, and you may have your exception.

Mr. Embry: We except.

Lawyer Crawford: We have the same objection and exception, if the Court please.

Mr. Nachman: And anything that you may want to dic-
[fol. 2027] tate later into The Record.

The Court: Go ahead.

Mr. Nachman: You may answer.

The Witness: Yes, sir.

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

Q. Who are the person or persons with whom you associate the matters contained in that—

A. I would say the City Commissioner of Montgomery. The Commissioners.

Q. Would you include Mr. Sullivan?

A. Mr. L. B. Sullivan, yes.

Q. If you believed the statements contained in that paragraph to be correct, Mr. Kaminsky, would that affect in any way your opinion of the Police Commissioner?

Mr. Embry: Same objection and same exception, if the Court please.

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The Court: Yes. Go ahead.
Lawyer Crawford: Same objection and exception.
The Witness: Yes, sir.

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

Q. In what way would it affect it?

A. Well, if I believed that, I couldn't go along with that. If Mr. Sullivan would do a thing like that, I couldn't go along with his thinking.

Q. Now, I call your attention to the last paragraph in the second column of this ad, which begins, '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,' and I ask you to look at that and tell us whether you are familiar with the statements contained there? Just look at it.

A. Yes, sir.

Q. Now, I ask you the same question again, sir. Do you associate the matters contained in that paragraph with any person or persons?

A. Well, I would say that it refers to the same people in the paragraph that we looked at before.

Q. The Commissioners?

A. Yes, sir.

Q. Including Mr. Sullivan?

[fol. 2028] A. Yes, sir.

Q. Once again, sir, if you believed those statements to be true, would your opinion of the Commissioner be affected?

A. My answer would be the same.

Q. Your answer would be the same?

A. Yes, sir.

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

to which action of the court this defendant duly and legally reserved an exception.

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66. For that the court committed prejudicial error against the interest of The New York Times Company, a corporation, in over-ruling the objections of said defendant to the questions propounded to the witness, H. M. Price, Sr., on Direct Examination as follows:

Q. Mr. Price, I show you plaintiff's Exhibit No. 347 which is an advertisement and I call your attention to the third paragraph down on the left hand column where it says '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 dininghall was padlocked in an attempt to starve them into submission.' I also call your attention to this paragraph: '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.' Now, having looked at the ad, are you familiar with those?
A. I am familiar with them. Yes, sir.

Mr. Embry: For the Record, Your Honor, we have our same objections and exceptions?
The Court: Yes.
Lawyer Crawford: Same objection and exception.
The Court: Yes, go ahead.

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

Q. Mr. Price, did it—when you read the statements contained in those two paragraphs, do they associate themselves in your mind with any person? Those statements of events?
A. Certainly.
Q. With whom?

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[fol. 2029] A. I would say the head of the Police Department.

Q. Who is that?

A. Mr. L. B. Sullivan.

Q. Mr. Price, if you believed the statements contained in those two paragraphs to be true, regardless of whether you think them to be true, if you believed them to be true, would that affect your opinion of Mr. Sullivan—

Mr. Embry: Same objections, if the Court please.

The Court: Yes, same ruling.

Mr. Embry: We except.

* * * * * * *

The Witness: I don't think there is any question about what I would decide. I think I would decide that we probably had a young Gestapo in Montgomery.

Mr. Nachman: That's all.

Mr. Embry: Your Honor, we move that last answer be stricken as not responsive—

The Court: Well, a shorthand redention of an alleged fact probably—I will let it in and give you an exception.

Mr. Embry: We except.

Lawyer Gray: Same exception?

to which action of the court this defendant duly and legally reserved an exception.

67. For that the court committed prejudicial error against the interest of The New York Times Company, a corporation, in over-ruling the objections of said defendant to the questions propounded to the witness, William M. Parker, Jr. on Direct Examination as follows:

Q. I will ask you to look at these paragraphs and I will read them as follows: '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,' and now this para-

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graph, '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.' They have charged him with perjury—a felony under which they could imprison him for ten years. Look at the contents of those paragraphs and refresh your [fol. 2030] recollection about them, if you will, sir.

Mr. Embry: Do we have the same objections about the same statement about who is associated in his mind and if he believed—

The Court: Yes.

Mr. Embry: The same objections and exceptions."

* * * * * * *

The Court: Yes, Go ahead.

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

Q. Have you looked at them?

A. Yes, sir.

Q. Mr. Parker, do you associate those statements contained in those paragraphs with any person or persons that you know or are acquainted with?

A. Yes, sir.

Q. With whom?

A. All persons or just one person?

Q. Well, name a particular person.

A. I would the—I would associate them with Mr. Sullivan, Mr. James and Mr. Parks.

Q. They are the Commissioners of the City of Montgomery?

A. Yes, They are the Commissioners of the City of Montgomery.

Q. Mr. Parker, on the assumption that you believed those to be true, whether you do or not, but if you did believe them to be true, the statements I have just read, would that affect your opinion of Mr. Sullivan, and if so, state how.

A. Yes, it would.

Q. In what way?

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A. It certainly would. I would think Mr. Sullivan would be trying to run this town with a strong-arm—strong-armed tactics, rather, going against the oath he took to run his office in a peaceful manner and an upright manner for all citizens of Montgomery."

to which action of the court this defendant duly and legally reserved an exception.

68. For that the verdict is contrary to law.

69. For that the verdict is contrary to law in that the amount of the damages is grossly excessive.

70. For that the verdict is contrary to law in that the evidence did not show that the Plaintiff suffered any actual damage.

71. For that the verdict is contrary to law in that the evidence did not show that the plaintiff suffered any substantial damage.

[fol. 2031] 72. For that the verdict is contrary to law in that the evidence did not show that the plaintiff suffered such actual damage as to justify the amount of the verdict.

73. For that the verdict is contrary to law in that the evidence did not show that this defendant published the alleged libel with such malice as to justify the amount of the verdict.

74. For that the verdict is contrary to law in that the evidence did not show that the plaintiff suffered such actual damage or that this defendant published the alleged libel with such malice as to justify the amount of the verdict.

75. For that the verdict is contrary to law in that the evidence did not show this defendant published the alleged libel with the intent to defame the plaintiff.

76. For that the verdict is contrary to law in that the evidence did not show this defendant was actuated by actual malice or ill will toward the plaintiff in the publishing of the alleged libel.

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77. For that the verdict is contrary to law in that the evidence did not show that the alleged libelous material referred to the plaintiff.

78. For that the verdict is contrary to law in that the evidence did not show that the alleged libelous material referred to this plaintiff with sufficient particularity to cause injury or damage to the plaintiff.

79. For that the verdict is contrary to law in that the evidence did not show that this defendant was guilty of gross negligence and recklessness in the publication of the alleged libel so as to indicate a wanton disregard for plaintiff's right.

80. For that the verdict is contrary to the great preponderance of the evidence.

81. For that the verdict is contrary to the great preponderance of the evidence in that the amount of the damages is grossly excessive.

82. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show that the plaintiff suffered any actual damage.

83. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show that the plaintiff suffered any substantial damage.

84. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show that the plaintiff suffered such actual damage as to justify the amount of the verdict.

85. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show that this defendant published the alleged libel with [fol. 2032] such malice as to justify the amount of the verdict.

86. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show that the plaintiff suffered such actual damage or that

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this defendant published the alleged libel with such malice as to justify the amount of the verdict.

87. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show this defendant published the alleged libel with the intent to defame the plaintiff.

88. For that the evidence is insufficient to support the verdict.

89. For that the evidence is insufficient to support the verdict in that the amount of the damages is grossly excessive.

90. For that the evidence is insufficient to support the verdict in that the evidence did not show that the plaintiff suffered any actual damage.

91. For that the evidence is insufficient to support the verdict in that the evidence did not show that the plaintiff suffered any substantial damage.

92. For that the evidence is insufficient to support the verdict in that the evidence did not show that the plaintiff suffered such actual damage as to justify the amount of the verdict.

93. For that the evidence is insufficient to support the verdict in that the evidence did not show that this defendant published the alleged libel with such malice as to justify the amount of the verdict.

94. For that the evidence is insufficient to support the verdict in that the evidence did not show that the plaintiff suffered such actual damage or that this defendant published the alleged libel with such malice as to justify the amount of the verdict.

95. For that the evidence is insufficient to support the verdict in that the evidence did not show this defendant published the alleged libel with the intent to defame the plaintiff.

96. For that the evidence is insufficient to support the verdict in that the evidence did not show this defendant

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was actuated by actual malice or ill will toward the plaintiff in the publishing of the alleged libel.

97. For that the evidence is insufficient to support the verdict in that the evidence did not show that the alleged libelous material referred to the plaintiff.

98. For that the evidence is insufficient to support the verdict in that the evidence did not show that the alleged libelous material referred to this plaintiff with sufficient particularity to cause injury or damage to the plaintiff.

[fol. 2033] 99. For that the evidence is insufficient to support the verdict in that the evidence did not show that this defendant was guilty of gross negligence and recklessness in the publication of the alleged libel so as to indicate a wanton disregard for plaintiff's rights.

100. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show this defendant was actuated by actual malice of ill will toward the plaintiff in the publishing of the alleged libel.

101. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show that the alleged libelous material referred to the plaintiff.

102. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show that the alleged libelous material referred to this plaintiff with sufficient particularity to cause injury or damage to the plaintiff.

103. For that the verdict is contrary to the great preponderance of the evidence in that the evidence did not show that this defendant was guilty of gross negligence and recklessness in the publication of the alleged libel so as to indicate a wanton disregard for plaintiff's rights.

104. For that the verdict is contrary to the great weight of the evidence.

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105. For that the verdict is contrary to the great weight of the evidence in that the amount of the damages is grossly excessive.

106. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show that the plaintiff suffered any actual damage.

107. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show that the plaintiff suffered any substantial damage.

108. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show that the plaintiff suffered such actual damage as to justify the amount of the verdict.

109. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show that this defendant published the alleged libel with such malice as to justify the amount of the verdict.

110. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show that the plaintiff suffered such actual damage or that this defendant published the alleged libel with such malice as to justify the amount of the verdict.

[fol. 2034] 111. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show this defendant published the alleged libel with the intent to defame the plaintiff.

112. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show this defendant was actuated by actual malice or ill will toward the plaintiff in the publishing of the alleged libel.

113. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show that the alleged libelous material referred to the plaintiff.

114. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show that the alleged libelous material referred to this plaintiff with

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sufficient particularity to cause injury or damage to the plaintiff.

115. For that the verdict is contrary to the great weight of the evidence in that the evidence did not show that this defendant was guilty of gross negligence and recklessness in the publication of the alleged libel so as to indicate a wanton disregard for plaintiff's rights.

116. For that the verdict is not sustained by the great preponderance of the evidence.

117. For that the verdict is not sustained by the great preponderance of the evidence in that the amount of the damages is grossly excessive.

118. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show that the plaintiff suffered any actual damage.

119. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show that the plaintiff suffered any substantial damage.

120. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show that the plaintiff suffered such actual damage as to justify the amount of the verdict.

121. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show that this defendant published the alleged libel with such malice as to justify the amount of the verdict.

122. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show that the plaintiff suffered such actual damage or that this defendant published the alleged libel with such malice as to justify the amount of the verdict.

123. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show this defendant published the alleged libel with the intent to defame the plaintiff.

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[fol. 2035] 124. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show this defendant was actuated by actual malice or ill will toward the plaintiff in the publishing of the alleged libel.

125. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show that the alleged libelous material referred to the plaintiff.

126. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show that the alleged libelous material referred to this plaintiff with sufficient particularity to cause injury or damage to the plaintiff.

127. For that the verdict is not sustained by the great preponderance of the evidence in that the evidence did not show that this defendant was guilty of gross negligence and recklessness in the publication of the alleged libel so as to indicate a wanton disregard for plaintiff's rights.

128. For that the verdict is contrary to law in that the words in the alleged libel, when given their natural and ordinary meaning, do not degrade the plaintiff and do not tend to injure the plaintiff's reputation by imputing to him some incapacity or lack of due qualification to fill the public office which he holds, or some positive past misconduct which injuriously effects him in his office or the holding of principles which are hostile to the maintenance of government.

129. For that the verdict is contrary to law in that when the words contained in the alleged libel are given their natural and ordinary meaning the same do not degrade the plaintiff and do not injure his reputation by imputing to him gross negligence, dishonesty or other impropriety in the discharge of his official duties.

130. For that the verdict is excessive.

131. For that the verdict is so excessive as to clearly show it was the result of bias, passion, prejudice or other improper motive on the part of the jury.

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132. For that the amount of the damages is grossly unjust.

133. For that the amount of the damages is so grossly unjust as to show it was the result of bias, passion, prejudice or other improper motive on the part of the jury.

134. For that the verdict was the result of bias, passion, prejudice or other improper motive on the part of the jury.

135. For that it would be wrong and unjust to allow the verdict to stand in that the plaintiff did not suffer damage as a proximate result of the publication by this defendant of the alleged libel and this law suit was contrived and [fol. 2036] manufactured by the plaintiff in an effort to take advantage of sentiment against this defendant and thereby enrich himself.

136. For that it would be wrong and unjust to allow the verdict to stand in that the plaintiff did not suffer damage as a proximate result of the publication by this defendant of the alleged libel and this law suit was contrived and manufactured by the plaintiff in an effort to take advantage of sentiment against this defendant and thereby enrich himself and to let this verdict stand would deprive this defendant of its property without due process of law in contravention of Section 1 of Amendment 14 of the Constitution of the United States.

137. For that it would be wrong and unjust to allow the verdict to stand in that the plaintiff did not suffer damage as a proximate result of the publication by this defendant of the alleged libel and this law suit was contrived and manufactured by the plaintiff in an effort to take advantage of sentiment against this defendant and thereby enrich himself and to let this verdict stand would deprive this defendant of the equal protection of the laws as guaranteed by Section 1, of Amendment 14 to the Constitution of the United States.

138. For that the verdict of the jury was the result of passion, prejudice and bias against this defendant as a result of conduct of counsel for the plaintiff which was highly prejudicial, improper and censurable and which was

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ineradicable from the minds of the jury, and which said conduct consisted of statement by counsel for the plaintiff in final argument to the jury of the following:

"In other words, all of these things that happened did not happen in Russia where the police run everything, they did not happen in the Congo where they still eat them, they happened in Montgomery, Alabama, a law-abiding community."

and which said statement was inflammatory as aforesaid and ineradicable as aforesaid in the minds of the jury inasmuch as the other defendants sued in this cause with this defendant were Negroes, and said improper conduct and statements affected the verdict in this cause and produced a verdict against this defendant or a verdict against this defendant which was grossly excessive.

139. For that the court erred in submitting this cause to the jury in such fashion as to permit the jury only to return a general verdict in this cause where there were five separate defendants, and where, under the evidence and pleadings in said cause either one or more of said defendants might have been liable for either compensatory damages or punitive damages or both, and one or more of the other said defendants may not have been so liable, but the manner in which the case was submitted to the jury did [fol. 2037] not permit the jury under proper instructions of the court to so find, or to acquit either of said defendants in the event that such defendant was found by the jury to have been not liable for punitive damages.

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

"T.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.

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the effect of which refusal was to deprive this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901, and of Section 1 of Amendment 14 to the United States Constitution, in that the refusal of such written instruction permitted the jury in this cause to assess punitive damages against all defendants in this cause without finding that each defendant in this cause was liable for punitive damages.

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

"T.60. I charge you, gentlemen of the jury, that if you believe from all of 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 damages is found and as to which defendant, if any, it is so found." Refused, Jones Judge.

the effect of which refusal was to deprive this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901, and of Section 1 of Amendment 14 to the United States Constitution, in that the jury was permitted only to render a verdict imposing the same amount of damages on all defendants or none on all defendants and was not afforded the opportunity to render a verdict imposing punitive damages as to one or more defendants and no punitive damages as to one or more of the other defendants.

142. The court erred in failing to give the following written instructions to the jury at the request of the defendant, The New York Times Company, a corporation:

[fol. 2038] "T.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.

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the effect of which refusal was to deprive this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901, and of Section 1 of Amendment 14 to the United States Constitution, in that the jury was permitted only to render a verdict imposing the same amount of damages on all defendants or none on all defendants and was not afforded the opportunity to render a verdict imposing punitive damages as to one or more defendants and no punitive damages as to one or more of the other defendants.

143. For that the verdict of the jury, being general in form against all defendants in this cause, deprived this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901, and of Section 1 of Amendment 14 to the United States Constitution.

144. For that the verdict of the jury, being general in form against all defendants in this cause, deprived this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901 and of Section 1 of Amendment 14 to the United States Constitution, in that it permitted the assessment of punitive damages against all defendants in this cause upon a finding by the jury that only one or more, but less than all of said defendants were liable for punitive damages.

145. For that the verdict of the jury, being general in form against all defendants in this cause, deprived this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901 and of Section 1 of Amendment 14 to the United States Constitution, in that the jury was not permitted, upon finding that only one or more but not all of said defendants were liable for the payment of punitive damages, to acquit or discharge such defendants as the jury might find were not liable for the payment of punitive damages or guilty of actual malice.

146. For that the verdict of the jury was a result of passion or prejudice against this defendant, The New York

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Times Company, a corporation, as a result of an improper remark of the court made in the presence and hearing of the jury which was highly prejudicial, improper, censurable and ineradicable from the minds of the jury and consisted of the following statement made during the proceedings on the cross examination of the witness, Gershon Aronson,"

[fol. 2039] "Cross examination by Mr. M. R. Nachman, Jr.:

* * * * * * *

Q. Would you state now, sir, what that word means to you: Whether it has only a time meaning or whether it also to your eye and mind has a cause and effect meaning?

Mr. Embry: Now, we object to that, Your Honor, That's a question for the jury to determine—

The Court: Well, of course, it probably (ultimately) will be a question for the jury, but this gentleman here is a very high official of The Times, and I should think he can testify—

Mr. Daly: I object to that, Your Honor, He isn't a high official of The Times at all—

Mr. Embry: He is just a man that has a routine job there, Your Honor, He is not—

The Court: Let me give you an exception to the court's ruling.

Mr. Embry: We except.

to which remark of the court this defendant duly and legally objected, but which remark was ineradicable from the minds of the jury and created such prejudice against this defendant in this cause as to result in the verdict of the said jury against this defendant.

147. For that the verdict of the jury is contrary to the law in this case in that there was no allegation or proof that the matter complained of as being libelous was spoken of and concerning the plaintiff.

148. For that the verdict of the jury is contrary to the evidence in this case in that there was no evidence properly before the jury in this case authorizing the jury to find that

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the matter complained of as being libelous referred to or was spoken of and concerning the plaintiff in this case.

149. For that the verdict of the jury is the result of bias, passion, and prejudice against the defendant, The New York Times Company, a corporation.

150. For that the verdict is so excessive as to demonstrate that the same was the result of bias, passion and prejudice against The New York Times Company, a corporation.

151. For that the verdict of the jury is so excessive as to shock the conscience of the court.

152. For that the verdict in this cause deprives this defendant of its property without due process of law by imposing on it the obligation to pay damages that were assessed and designed to punish one or more other defendants for whose actions this defendant was not legally responsible.

153. For that the verdict in this cause deprives this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution [fol. 2040] of Alabama of 1901 by imposing on it the obligation to pay damages that were assessed and designed to punish one or more other defendant for whose actions this defendant was not legally responsible.

154. For that the verdict in this cause deprives this defendant of its property without due process of law in contravention of Section 1 of Amendment 14 to the United States Constitution by imposing on it the obligation to pay damages that were assessed and designed to punish one or more other defendant for whose actions this defendant was not legally responsible.

155. The court erred in submitting this cause to the jury for its consideration on the question of whether the matter complained of as being libelous referred to or was of and concerning the plaintiff and by so doing and thereby permitting the jury to return a verdict against this defendant denied to this defendant equal protection of the laws as guaranteed to it by Section 1 of the 14th Amendment to

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the Constitution of the United States and Sections 6 and 13 of Article 1 of the Constitution of Alabama of 1901.

156. The court erred in submitting this cause to the jury for its consideration on the question of whether the matter complained of as being libelous referred to, or was of and concerning the plaintiff, and by so doing and thereby permitting the jury to return a verdict against this defendant denied to this defendant equal protection of the laws as guaranteed to it by Section 1 of the 14th Amendment to the Constitution of the United States.

157. The court erred in submitting this cause to the jury for its consideration on the question of whether the matter complained of as being libelous, referred to, or was of and concerning the plaintiff, and by so doing and thereby permitting the jury to return a verdict against this defendant denied to this defendant equal protection of the laws as guaranteed to it by Sections 6 and 13 of Article 1 of the Constitution of Alabama of 1901.

158. For that the court erred in submitting this cause to the jury for its consideration and in so doing denied to this defendant equal protection of the laws as guaranteed to it by the Constitution of the United States and Section 1 of Amendment 14 thereto.

159. For that the cumulative effect of the errors in the trial of this cause was such as to deprive this defendant of a fair trial so as to thereby deprive it of its property without due process of law in contravention of Section 1 of the 14th Amendment to the Constitution of the United States.

160. For that the cumulative effect of the errors in the trial of this cause was such as to deprive this defendant of a fair trial so as to thereby deprive it of its property without due process of law in contravention of Section 6 and 13 of Article 1 of the Constitution of Alabama of 1901.

[fol. 2041] 161. For that the cumulative effect of the errors in the trial of this cause was such as to deny this defendant equal protection of the laws as guaranteed to it under the provisions of Section 1 of the 14th Amendment to the Constitution of the United States.

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162. For that the cumulative effect of the errors in the trial of this cause was such as to deny this defendant equal protection of the laws as guaranteed to it under the provisions of Article 1, Section 35 of the Constitution of Alabama of 1901.

163. For that the venire from which the jury was selected for the trial of this cause was selected and empaneled under the provisions of Act 118 of March 8, 1939, a local act of the Regular Session of the Legislature of Alabama, 1939, establishing the jury commission in Montgomery County, Alabama, and said jury venire was improperly selected and empaneled in that said Act is violative of the Constitution and laws of the State of Alabama.

164. For that the venire from which the jury was selected for the trial of this cause was selected and empaneled under the provisions of Act 118 of March 8, 1939, a local act of the Regular Session of the Legislature of Alabama, 1939, establishing the jury commission in Montgomery County, Alabama, and said jury venire was improperly selected and empaneled in that said Act is violative of Article 4, Section 105 of the Constitution of Alabama, 1901.

165. For that the venire from which the jury was selected for the trial of this cause was selected and empaneled under the provisions of Act 118 of March 8, 1939, a local act of the Regular Session of the Legislature of Alabama 1939, establishing the jury commission in Montgomery County, Alabama, and said jury venire was improperly selected and empaneled in that said Act is in contravention of Section 1 of the 14th Amendment to the Constitution of the United States and deprives this defendant of its property without due process of law.

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

"T.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

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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.

the effect of which refusal was to deprive this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901, and of Section 1 of Amendment 14 to the United States Constitution in that the refusal of such written instruction permitted the jury in this cause to return a verdict which would require this defendant to pay damages and [fol. 2042] suffer punishment disproportionate to the degree of misconduct, if any, on the part of this defendant.

167. The court erred in failing to give the following written instructions to the jury at the request of the defendant, The New York Times Company, a corporation:

"T.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.

the effect of which refusal was to deprive this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901, and of Section 1 of Amendment 14 to the United States Constitution in that the jury was permitted to return a verdict which would require this defendant to pay damages and suffer punishment disproportionate to the degree of misconduct, if any, on the part of this defendant.

168. The court erred in failing to give the following written instructions to the jury at the request of this defendant, The New York Times Company, a corporation:

"T.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

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return a verdict in favor of all the defendants." Refused, Jones, Judge.

the effect of which refusal was to deprive this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901, and of Section 1 of Amendment 14 to the United States Constitution in that the jury was permitted to return a verdict which would require this defendant to pay damages and suffer punishment disproportionate to the degree of misconduct if any, on the part of this defendant.

169. For that the verdict of the jury, being general in form against all defendants in this cause, deprived this defendant of its property without due process of law in contravention of Section 6, Article 1, of the Constitution of Alabama of 1901 and of Section 1 of Amendment 14 to the United States Constitution in that it required this defendant to pay damages and suffer punishment disproportionate to the degree of misconduct, if any, on the part of this defendant.

[fol. 2043] 170. For that the verdict in this cause deprives this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901 by imposing on it the obligation to pay damages and suffer punishment disproportionate to the degree of misconduct, if any, on the part of this defendant.

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

"T.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.

the effect of which refusal was to deprive this defendant of its property without due process of law in contravention

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of Section 1, Amendment 14 to the Constitution of the United States.

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

"T.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.

the effect of which refusal was to deprive this defendant of its property without due process of law in contravention of Section 1, Amendment 14 to the Constitution of the United States.

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

"T.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.

the effect of which refusal was to deprive this defendant of its property without due process of law in contravention of Section 1, Amendment 14 to the Constitution of the United States.

[fol. 2044] 174. For that the verdict of the jury was the result of passion, prejudice and bias against this defendant as a result of conduct of counsel for the plaintiff which was highly prejudicial, improper and censurable and which

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was ineradicable from the minds of the jury, and which said conduct consisted of statement by counsel for the plaintiff in final argument to the jury of the following:

"In other words, all of these things that happened did not happen in Russia where the police run everything, they did not happen in the Congo where they still eat them, they happened in Montgomery County, Alabama, a law abiding community."

and which said statement was inflammatory as aforesaid and ineradicable as aforesaid in the minds of the jury inasmuch as the other defendants sued in this cause with this defendant were Negroes, and said improper conduct and statements affected the verdict in this cause and produced a verdict against this defendant or a verdict against this defendant which was grossly excessive and deprived this defendant of its property without due process of law in contravention of Section 1 of Amendment 14 to the Constitution of the United States.

175. For that the verdict of the jury was the result of passion, prejudice and bias against this defendant as a result of conduct of counsel for the plaintiff which was highly prejudicial, improper and censurable and which was ineradicable from the minds of the jury, and which said conduct consisted of statement by counsel for the plaintiff in final argument to the jury of the following:

"In other words, all of these things that happened did not happen in Russia where the police run everything, they did not happen in the Congo where they still eat them, they happened in Montgomery County, Alabama, a law abiding community."

and which said statement was inflammatory as aforesaid and ineradicable as aforesaid in the minds of the jury inasmuch as the other defendants sued in this cause with this defendant were Negroes, and said improper conduct and statements affected the verdict in this cause and produced a verdict against this defendant, or a verdict against this defendant which was grossly excessive and denied this defendant equal protection of the laws as guaranteed by

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Section 1 of Amendment 14 to the Constitution of the United States.

176. For that the verdict of the jury was the result of passion, prejudice and bias against this defendant as a result of conduct of counsel for the plaintiff which was highly prejudicial, improper and censurable and which was ineradicable from the minds of the jury, and which said conduct consisted of statement by counsel for the plaintiff in final argument to the jury of the following:

[fol. 2045] "In other words, all of these things that happened did not happen in Russia where the police run everything, they did not happen in the Congo where they still eat them, they happened in Montgomery County, Alabama, a law abiding community."

and which said statement was inflammatory as aforesaid and ineradicable as aforesaid in the minds of the jury inasmuch as the other defendants sued in this cause with this defendant were Negroes, and said improper conduct and statements affected the verdict in this cause and produced a verdict against this defendant or a verdict against this defendant which was grossly excessive, and denied this defendant a trial by a fair and impartial jury as guaranteed by the provisions of the Constitutions of the United States and of the State of Alabama.

177. For that the verdict of the jury, being general in form against all defendants in this cause, deprived this defendant of its property without due process of law in contravention of Section 6, Article 1 of the Constitution of Alabama of 1901, and of Section 1 of Amendment 14 to the United States Constitution in that the verdict and judgment rendered thereon prevent an ascertainment of the amount and nature of the damages which the jury found this defendant should pay as a proximate consequence of its conduct in this case as distinguished from the amount and nature of damages any other of the defendants should pay as a result of their conduct in this case.

178. For that the verdict of the jury, being general in form against all defendants in this cause, deprived this defendant of its property without due process of law in

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contravention of Section 1 of Amendment 14 to the United States Constitution in that the verdict and judgment rendered thereon prevent an ascertainment of the amount and nature of the damages which the jury found this defendant should pay as a proximate consequence of its conduct in this case as distinguished from the amount and nature of damages any other of the defendants should pay as a result of their conduct in this case.

179. For that the court erred in submitting this cause to the jury in such fashion as to permit the jury only to return a general verdict where there were five separate defendants and where, under the evidence and pleadings in the said cause, either one or more of said defendants might have been liable for either compensatory damages or punitive damages, or both and each defendant's liability for punitive damages might have been in different amounts, and said general verdict would prevent an ascertainment of the amount and nature of the damages which the jury found this defendant should pay as a proximate consequence of its conduct in this case and thereby deprived this defendant of its property without due process of law in contra- [fol. 2046] vention of the provisions of Section 1 of Amendment 14 to the Constitution of the United States.

180. For that the court erred in submitting this cause to the jury in such fashion as to permit the jury only to return a general verdict where there were five separate defendants and where, under the evidence and pleadings in said cause, either one or more of said defendants might have been liable for either compensatory damages or punitive damages, or both, and each defendant's liability for punitive damages might have been in different amounts, and said general verdict would prevent an ascertainment of the amount and nature of the damages which the jury found this defendant should pay as a proximate consequence of its conduct in this case and thereby deprived this defendant of its property without due process of law in contravention of the provisions of Section 6, Article 1 of the Constitution of Alabama of 1901.

181. The court erred in charging the jury in contravention of the established law of libel as established by the deci-

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sions of the highest appellate court of Alabama that the matter complained of and contained in the advertisement which was plaintiff's Exhibit #347 was libelous per se and thereby denied to this defendant the equal protection of the laws as guaranteed to it by the Constitution of the United States in Section 1 of Amendment 14 thereto.

182. The court erred in allowing photographs of the jury to be taken in the courtroom during the trial of this cause which were used and printed in a newspaper during the trial of this cause in Montgomery, Alabama, which photographs are attached hereto as Exhibits II and III and in permitting motion pictures to be taken in the court room of the jury in this cause during the trial thereof which motion pictures were for the purpose of and were displayed on television in Montgomery County, Alabama, during the trial of this cause, and thereby denied to this defendant a trial by a fair and impartial jury as guaranteed by the Constitution of the United States and Section 1 of Amendment 14 thereto and by the Constitution of the State of Alabama.

183. For that this defendant was denied a fair trial by an impartial jury as guaranteed to it by the provisions of Section 1 of Amendment 14 to the Constitution of the United States and Article 1, Section II of the Constitution of Alabama of 1901 in that the jury which tried this cause and rendered the verdict herein was overreached and subjected to pressure of community sentiment against this defendant evidenced, among other things, by the following: prior to the trial of this cause and on or about the 7th day of April, 1960, there appeared in the Montgomery Advertiser, a newspaper of general circulation in Montgomery County, Alabama, and in the City of Montgomery, the [fol. 2047] editorial concerning the advertisement which was the basis of plaintiff's complaint in this cause and which is attached hereto as Exhibit I and on voir dire examination a large number of the venire from which the jury that tried this case was selected, stated that they had read about the case and said advertisement in the local press. This defendant says that such editorial expresses the widespread sentiment of the community of the City

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of Montgomery and Montgomery County, Alabama, which was prevalent prior to and during the trial of this cause. Such community sentiment was conveyed to the jury which tried this cause by said editorial and other publicity throughout the community and the pressure of such sentiment to award a verdict against this defendant in this cause was exerted upon the said jury trying said cause by the publication on the front page of the Alabama Journal a newspaper of general circulation in the City and County of Montgomery, Alabama, of a photograph of the venire and of the names of the jurors selected for the trial of this cause on November 1, 1960, which said photograph and publication of said names are as found and contained in Exhibit II hereto attached.

After the selection of said jury for the trial of this cause such pressure of such sentiment was further exerted upon them by the publication of news stories relating to this case and photographs of the jury during the trial of this cause in both the Alabama Journal and The Montgomery Advertiser as appear from Exhibits III, IV, and V attached hereto as well as by the presence within the bar railing near counsel tables in plain view of and in close proximity to the jury, of numerous news reporters and photographers.

Such pressure of such public sentiment was further exerted upon said jury by the taking, during the trial of this cause within the courtroom, of motion pictures of the jury and the conduct of said trial as well as the taking of such motion pictures of said jury as they entered the jury room for their deliberations in this cause; all of which above had the effect so overreaching said jury as to influence them to render a verdict against this defendant to make it impossible for them to render a fair and impartial verdict in this cause.

184. For that the defendant was deprived of a fair and impartial trial under the 14th Amendment to the United States Constitution in that counsel for the plaintiff was allowed to present the case to the jury as a sectional conflict rather than as a cause of action for libel, and in particular the closing remarks of counsel for the plaintiff were designed and did inflame the jury so as to prevent the jury

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from impartially deciding the cause on its merits and so as instead to cause the jury ineradicably to conceive the issue presented to them to be whether or not to punish a Northern newspaper for what it had published regarding [fol. 2048] the local community at large. These remarks were:

Mr. Steiner: Now, this is a libel suit. In our complaint we alleged that on March 29th, 1960 the New York Times, that great newspaper, who in their masthead say, we print all the news that's fit to print, published a pack of lies about this man right here. For that, we ask that you return a verdict of $500,000. That, gentlemen, is what we are asking for and that is what we will continue to ask for no matter what any of these lawyers say. Now, what does the ad say? "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol Steps"—that's the first thing. Gentlemen, they couldn't even get the song right! Mr. Sitton, who comes to Montgomery—it's in his territory—he was right on hand. There is, of course, some distance between New York and Montgomery, or New York and Birmingham. All they had to do was pick up the phone and say, Mr. Sitton, did those folks sing "My Country, 'Tis of Thee"? Not that that's material, but, gentlemen, they didn't even get the song right! Sitton said they sang the National Anthem. Now, then, what happened? In Montgomery, after they sang—their leaders were expelled from school. In other words, all of these things that happened didn't happen in Russia where the police run everything; they didn't happen in the Congo where they still eat 'em; they happened in Montgomery Alabama, a law-abiding community, etc."

185. For that the verdict of the jury was an abridgment of freedom of the press in violation of the 1st Amendment to the Constitution of the United States and the 14th Amendment thereto in that it penalized defendant for publishing statements which, under the aforesaid amendment, could not constitutionally be held to be defamatory of this plaintiff.

186. For that the verdict of the jury was not merely punitive but prohibitive and confiscatory and amounts to

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an improper restraint on freedom of the press in violation of the 1st and 14th Amendment to the Constitution of the United States.

187. For that the verdict of the jury constitutes an unreasonable burden on interstate commerce in violation of Article 1, Section 8, and the 14th Amendment to the Constitution of the United States.

188. For that the court's oral charge to the jury erroneously instructed the jury that the publication complained of was of and concerning the plaintiff, and thereby withdrew that issue from the consideration of the jury, by the following portion of said charge, to which this defendant duly and legally excepted:

The Court: "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 [fol. 2049] 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."

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."

189. For that the cumulative effect of the errors in the trial of this cause was such as to constitute an abridgment of freedom of the press in contravention of the 1st and 14th Amendments to the Constitution of the United States.

190. For that the cumulative effect of errors in the trial of this cause was such as to impose an undue burden upon interstate commerce in contravention of Article 1, Section 8 of the Constitution of the United States.

191. The court erred in submitting this cause to the jury for its consideration on the question of whether the matter complained of as being libelous referred to or was of and concerning the plaintiff and by so doing and thereby per-

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mitting the jury to return a verdict against this defendant abridged freedom of the press in contravention of the 1st and 14th Amendments to the Constitution of the United States.

192. The court erred in submitting this cause to the jury for its consideration on the question of whether the matter complained of as being libelous referred to or was of and concerning the plaintiff and by so doing and thereby permitting the jury to return a verdict against this defendant imposed an undue burden upon interstate commerce in contravention of Article 1, Section 8 of the Constitution of the United States.

193. The court erred in its oral instructions to the jury in this case to the effect that the matter complained of by plaintiff, contained in plaintiff's Exhibit No. 347, was libelous per se, to which this defendant duly and legally excepted and which said charge was in contravention of the established law of libel as pronounced by the decisions of the highest appellate court of Alabama, and thereby imposed an undue burden upon interstate commerce in contravention of Article 1, Section 8 of the Constitution of the United States.

194. The court erred in its oral instructions to the jury in this case to the effect that the matter complained of by plaintiff, contained in plaintiff's Exhibit No. 347, was libelous per se to which this defendant duly and legally excepted and which said charge was in contravention of the established law of libel as pronounced by the decisions of the highest appellate court of Alabama and thereby imposed an undue burden upon interstate commerce in contravention of the 1st and 14th Amendments to the Con- [fol. 2050] stitution of the United States.

195. For that the error of the court in refusing to give the written instructions to the jury as complained of in ground No. 140 of this motion placed an undue burden upon interstate commerce in contravention of Article 1, Section 8 of the United States Constitution by permitting the jury in this cause to assess punitive damages against all defen-

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dants in this cause without finding that each defendant was liable for punitive damages.

196. For that the error of the court in refusing to give the written instructions to the jury as complained of in ground No. 140 of this motion constituted an abridgement of freedom of the press in contravention of the 1st and 14th Amendments to the Constitution of the United States by permitting the jury in this cause to assess punitive damages against all defendants in this cause without finding that each defendant in this cause was liable for punitive damages.

197. For that the error of the court in failing to give the written instructions complained of in ground No. 141 of this motion imposed an undue burden upon interstate commerce in violation of Article 1, Section 8 of the Constitution of the United States.

198. For that the error of the court, in failing to give the written instructions complained of in ground No. 141 of this motion constitutes an abridgement of freedom of the press in violation of the 1st and 14th Amendments to the Constitution of the United States.

199. For that the error of the court in failing to give the written instructions to the jury as complained of in ground No. 142 of this motion imposes an undue burden upon interstate commerce in violation of Article 1, Section 8, of the Constitution of the United States.

200. For that the error of the court in refusing to give the written instructions as complained of in ground No. 142 of this motion constitutes an abridgement of freedom of the press in violation of the 1st and 14th Amendments of the Constitution of the United States.

201. For that the verdict of the jury, being general in form against all defendants in this cause, constitutes an undue burden upon interstate commerce in violation of Article 1, Section 8 of the United States Constitution.

202. For that the verdict of the jury, being general in form against all defendants in this cause, constitutes an

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abridgement of freedom of the press in violation of the 1st and 14th Amendments to the United States Constitution.

Beddow, Embry and Beddow, By: Roderick M. MacLeod, Jr., Attorneys of record for The New York Times Company, a corporation.

[fol. 2051]

EXHIBIT I TO MOTION OF DEFENDANTS THE NEW YORK TIMES FOR NEW TRIAL

MONTGOMERY ADVERTISER

Montgomery, Ala., April 7, 1960

WILL THEY PURGE THEMSELVES?

There are voluntary liars, there are involuntary liars. Both kinds of liars contributed to the crude slanders against Montgomery broadcast in a full-page advertisement in *The New York Times* March 29.

And its up to *The New York Times* and the involuntary liars to purge themselves of their false witness.

The Times boasts that it screens advertisements to eliminate what is indelicate or in bad taste. Perhaps demonstrable lies will at some future time be screened and found unfit for print.

This advertisement was sponsored by the "Committee To Defend Martin Luther King And The Struggle For Freedom In The South." And of course it was an appeal for cash contributions of the kind now in question on the Reverend Doctor's state income tax return.

Among others, the ad contains this statement:

"In Montgomery, Alabama, after students sang *My Country 'Tis of Thee* On the State Capitol steps, their leaders were expelled from school, and truck loads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body

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protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

Lies, lies, lies—and possibly willful ones on the part of the fund-raising novelist who wrote those lines to prey on the credulity, self-righteousness and misinformation of northern citizens.

The Republic paid a dear price once for the hysteria and mendacity of abolitionist agitators. The author of this ad is a lineal descendant of those abolitionists and the breed runs true.

On the committee whose names are affixed as sponsors of the propaganda are some distinguished persons, such as Dr. Harry Emerson Fosdick, Elmer Rice and Norman Thomas. Such ones were victimized and we should think they will deem it a duty to their own honor to test *The Advertiser's* perjury charges and cleanse their names.

Others on the committee are just corner pick-ups from the Broadway marquee such as Harry Belafonte, Marlon Brando, Eartha Kitt, Shelley Winters and Mrs. Roosevelt. They, of course, just came along for the ride and it probably is not possible to excite their interest in a thing so homely as truth.

But *The Advertiser* is going to have to revise some estimates if committeemen such as Dr. Fosdick, Rice and Thomas and *The New York Times* do not feel called upon to ascertain whether *The Advertiser* is correct in asserting their names are married to a slanderous lie.

As for the Reverend Doctor King, let the people of Montgomery—colored and white—judge him. People here know what happened. King knows what happened. It may be that he never saw the ad before publication. If so, let white and colored alike see what King does to unwork this slander in his name.

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[fol. 2052]

Exhibit II to Motion of Defendants
The New York Times for New Trial

WEATHER

nny and mild this afternoon; and cold again tonight with ered light frost. Sunday and m Wednesday. Low tonight high tomorrow 72.

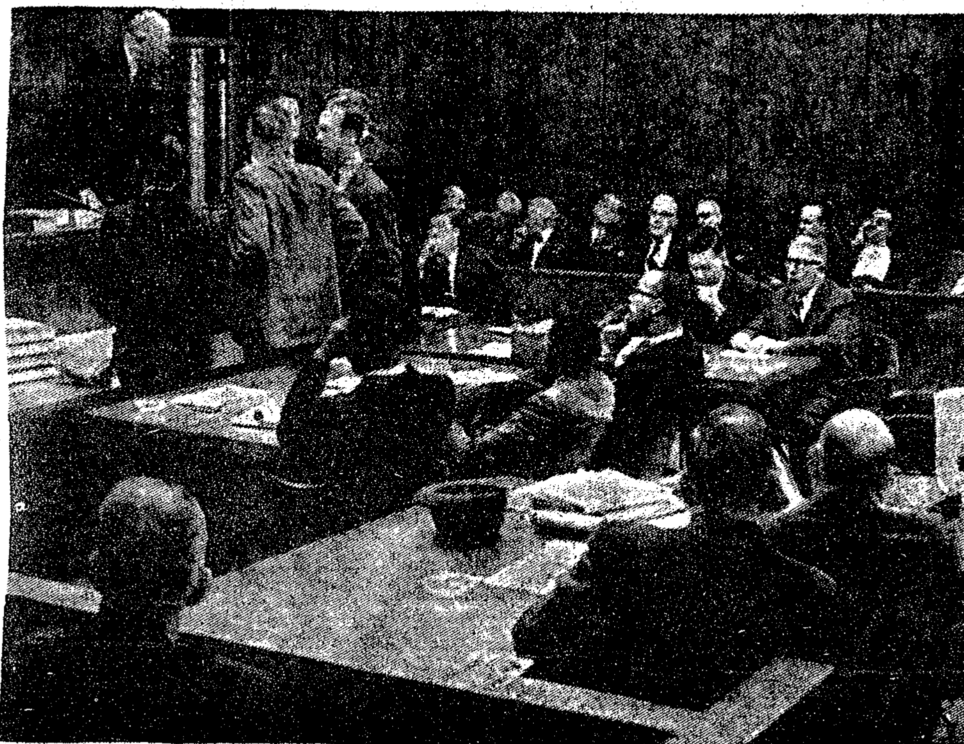
(More Weather, Page 5-A)

ALABA

Ala bama Journal 11/1/60

Central And

ɩnd YEAR—NO. 262 Ph. *AM 2-1611 THE ASSOCIATED PRESS MO



ATTORNEYS HUDDLE around Judge Walter B. Jones at opening of New York Times libel trials. An even dozen attorneys were participating, indicating the importance of the case. Lawyers came from Montgomery, Mobile, Birmingham, and New York.—(Journal photo by Tom Davis Jr.)

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OFF TO SLOW START

JURORS SELECTED FOR TIMES SUIT

By Judith Rushin
Journal Staff Writer

Police Commissioner L. B. Sullivan's $500,000 libel suit against The New York Times got off to a slow start this morning, the majority of the time being taken for selection of a jury.

Times attorneys questioned all jurors at length concerning their feelings toward any position the New York newspaper might have taken and any connection the jurors might have with Sullivan's lawyers or the City of Montgomery.

Two Negroes were among the original 37 jurors called for service this week, however they were immediately struck from the list by attorneys for Sullivan.

JURORS SEATED

Jurors who will hear the controversial case, which is expected to last all week are John B. Sanford, Boland R. Albright, John C. Boswell, Patrick T. Cahalin, Richard C. Croy, Guy Davidson, Carl Henry, Billy R. Miller, J. Auburn Moorer, Joseph W. McDade, Henry W. Rawls, and John R. Rigsby.

Sullivan's suit is one of three libel actions brought against The Times and four Alabama Negroes based on an advertisement which ran in the Times March 29.

The ad placed in the newspaper by the Committee to Defend Martin Luther King and the Struggle for Freedom in the South, allegedly libeled Sullivan and city commissioners Earl James and Frank Parks in referring to police action taken in regard to Negro student demonstrations here.

2 OTHER CASES ON FILE

James and Parks have also each sued for $500,000.

Named as defendants, along with The New York Times, are Negro ministers Ralph D. Abernathy, Solomon S. Seay

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Sr., Fred H. Shuttlesworth and J. E. Lowery, all of whom endorsed the advertisement.

According to one of Sullivan's attorneys, Roland Nachman, The Times retracted the incorrect portions of the ad referring to Montgomery to Gov. John Patterson, but never to Sullivan himself.

No retraction was ever made by the Negro defendants in the case, Nachman said.

Attorneys for The Times denied that the ad in question libeled Sullivan and said no where in the advertisement was there any reference to Sullivan or the police department.

JUDGE JONES PRESIDES

The Times had no reason to believe that material in the ad was false because it received the ad from a reputable advertising agency, said Atty. T. Eric Embry of Birmingham who represents the newspaper in the suit.

Sullivan's suit charges The Times with falsely and maliciously publishing the alleged libelous matter and asks for both general damages for injury to himself and punitive damages against the newspaper.

Opening statements as to what they expected to prove were

(See TIMES SUIT, Page 2-A)

given the jury by attorneys on both sides of the controversy before the court recessed for lunch. Testimony will begin this afternoon.

Circuit Judge Walter B. Jones is presiding over the case.

Attorney Fred Gray, representing the Negro defendants, told the jury that his clients did not sign the ad, were not members of the committee which published the ad, were never approached by that committee as to the use of their names, and in fact did not know that the ad was to be run.

"What happened to them could happen to you or anyone else," Gray said.

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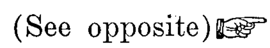
[fol. 2053]

EXHIBIT III TO MOTION OF DEFENDANTS
THE NEW YORK TIMES FOR NEW TRIAL

(See opposite)


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WEATHER

Fair and warmer this afternoon and tonight. Partly cloudy and mild Thursday. Low tonight 50, high tomorrow 68.
(More Weather, Page 3-A.)

ALABAMA JOURNAL

Central And Southeast Alabama's Largest Evening Newspaper

2nd YEAR—NO. 263 Ph. *AM 2-1611 THE ASSOCIATED PRESS MONTGOMERY, ALABAMA, WEDNESDAY, NOVEMBER 2, 1960 UNITED PRESS

L.B. Sullivan Testifies In Times Suit

By JUDITH RUSHIN
Journal Staff Writer

Police Commissioner L. B. Sullivan told a Circuit Court jury this morning that in his opinion statements in a New York Times advertisement referred to him and reflected upon his "ability and integrity."

Attorneys for Sullivan in his $500,000 libel action against the New York newspaper rested their case after hearing from one more witness.

DEFENSE TO OPEN

Defense attorneys for The Times and for four Alabama Negroes also being sued are expected to present their evidence this afternoon.

JURORS IN NEW YORK TIMES LIBEL TRIAL LISTEN ATTENTIVELY

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On cross examination, Times attorney T. Eric Embry of Birmingham attempted to prove that Sullivan had not in fact been damaged by the wording in the ad published March 29, in The Times, soliciting funds for the defense of King.

"Have you ever been ridiculed? Do you feel ill at ease walking about the streets of Montgomery?" Embry asked.

"I haven't had anyone come up to me personally and say they held me in ridicule because of the ad," Sullivan said.

"Has anyone threatened to have you removed from office?" Embry asked, to which the commissioner replied, "No."

"Have you been shunned by anyone in a public place

(See TIMES SUIT, Page 2-A)

or at the house of a friend or in any restaurant where you have been since the publication of the ad?"

"I don't recall," Sullivan answered.

Negro attorney V. Z. Crawford, of Mobile, who represents the four Negro defendants, then asked Sullivan if he filed suit to get publicity to run for another office.

Circuit Judge Walter B. Jones threw the question out as improper as Sullivan's attorneys jumped up to object.

After the plaintiff rested his case this morning, Negro atty. Fred Gray, of Montgomery, who is also representing the Negro defendants, filed a motion with the court to have his clients excluded on the grounds that Sullivan's attorneys failed to connect them with the case.

Judge Jones over-ruled the motion, recessed the trial for lunch, and said court would re-convene at 2:30 today.

DEFENDANTS

The Negro defendants, Ralph D. Abernathy, S. S. Seay Sr., Fred Shuttlesworth and J. E. Lowery, were made parties to the suit because their names appear at the bottom of the full-page ad, allegedly as endorsers.

A Dothan trucking official was the first witness to take the stand this morning as the case went into its second day. Horace D. White, an officer in the P. C. White Truck Lines,

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said Sullivan had formerly worked for his company as safety director.

White testified that had he believed the information in the ad about police handling of student demonstrations here he would be reluctant to re-hire Sullivan.

OTHER INCIDENTS

Testimony also went into the record concerning other incidents mentioned in the ad. Circuit Clerk John Matthews read the names of student demonstrators who pleaded guilty to disorderly conduct and refusing to obey an officer and the fines they received, over Gray's objection that the cost of appeal was the reason for their pleading guilty.

Police detective Lt. E. Y. Lacy told the jury of the bombings at King's house, saying one of the bombs failed to go off. The other caused no injury.

Lacey said the police conducted an intensive investigation into the incident and even worked with other departments throughout the country.

The advertisement had stated that King's house was bombed and his wife and child were almost killed.

Police officer O. M. Strickland testified that he was one of the officers who arrested King for loitering around the city hall courtroom after he had been refused admittance because he did not produce a subpoena.

"Was King assaulted?" Nachman asked.

"No, he was not," Strickland replied emphatically.

Nachman then questioned Strickland as to his height and weight in relation to King's and solicited the information that the policeman was a smaller man.

THE ASSAULT QUESTION

The ad also charged that King's "person had been assaulted."

Another witness for the plaintiff, Dr. Frank R. Stewart, state superintendent of education, told the court that when nine students at Alabama State were expelled by the state board for disobeying the law during the demonstrations

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the board heard no discussion about "singing on the capitol steps."

According to the advertisement in question, the expulsion came after students gathering at the capitol and sang "My Country, 'Tis of Thee."

YESTERDAY'S ACTION

Yesterday, attorneys for the Times began by calling witnesses to lay the groundwork for their suit.

Five witnesses testified they felt an ad soliciting funds for the defense of the Rev. Martin Luther King Jr. clearly reflected on Sullivan and his conduct of office, even though he was not specifically mentioned in the ad.

Attorneys representing The Times, however, managed to get most of these witnesses to concede that they never believed the statements which they felt referred to Sullivan and that they think no less of the police commissioner's integrity today as a result of the publication.

The first witnesses were Grover C. Hall Jr., editor of The Montgomery Advertiser; Arnold Blackwell, a real estate and insurance broker; Harry Kaminsky, sales manager of a downtown clothing store; William M. Parker, a service station operator, and H. M. Price Sr., who runs a food service equipment business.

SAY AD REFLECTED ON CITY

All made substantially the same testimony, that they felt the ad reflected on the city government and Sullivan in particular as police commissioner. Had they believed the statements to be true, Sullivan would have fallen in their estimation, they testified.

Sullivan's attorneys attempted to introduce evidence of racial tension that existed in Montgomery at the time the ad appeared. Advertiser Assistant Editor William H. McDonald was called to the stand to identify pictures of Negro demonstrations during March, but Judge Walter B. Jones ruled such evidence irrelevant and inadmissible.

There was one brief skirmish before testimony began.

When Atty. Calvin Whitesell, a city attorney representing Sullivan along with several others, began reading the

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controversial advertisement, Negro Atty. V. Z. Crawford of Mobile objected that Whitesell was pronouncing the word "nigger" instead of "Negro," as it appeared in the ad.

Judge Jones asked Whitesell if he was indulging in "interpolations" in his pronunciation. Whitesell replied he was pronouncing the word as he had done "all my life."

To newsmen, he did not seem to be saying "nigger," but something closer to "nigra" or "nigro."

SAY AD NOT LIBELOUS

The Times, represented by the Birmingham law firm of Beddow, Embry, and Beddow, does not contend the ad was entirely true. They do maintain, however, that it did not refer to any identifiable person nor is it libelous.

Further, they contend that it came from a reputable advertising agency and was signed by many persons of high character.

They cited several types of advertising which The Times will not accept. This was done to prove that the newspaper exercises diligent caution in screening out libelous, distasteful, and erroneous advertising.

Montgomery's other two commissioners, Mayor Earl James and Frank Parks, have also filed $500,000 suits against The Times.

[fol. 2055]

Exhibit IV to Motion of Defendants
The New York Times for New Trial

ADVERTISER

Montgomery, Ala., Thursday Morning, November 3, 1960

WRITER OF AD TAKES STAND IN LIBEL TRIAL

By Arthur Osgoode

Only closing arguments remain in the $500,000 libel suit against the New York Times by City Commissioner L. B. Sullivan, with all indication that the case will go to a Circuit Court jury Thursday.

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Testimony was completed Wednesday night. Highlights included the appearance on the stand of the plaintiff, Sullivan, and a New York writer who said he helped write the advertisement that led to four local libel actions.

The latter, John Murray, who described himself as a former movie scenario writer and author of industrial and armed forces film scripts, appeared for the four Negro co-defendants.

All four—the Revs. Ralph Abernathy and Solomon Seay Sr., of Montgomery, Fred Shuttleworth of Birmingham, and J. E. Lowery of Mobile—had denied on the stand that they had any knowledge of the ad or had authorized use of their names in it.

SUDDEN "IDEA"

Murray said the names of the four appeared as a result of a sudden "idea" on the part of Bayard Rustin, professional organizer and a signer of the advertisement.

Rustin took the names from a list of ministers in the Southern Christian Leadership Conference, Murray related. He said Rustin felt it would not be necessary to seek the consent of the ministers because he felt sure they would approve the advertisement.

Earlier, said Murray, he and two other writers had written the advertisement from material furnished them by Rustin, which they sought to put in "an appealing form."

He told the court at the time he had no reason to believe the material was not accurate.

"COMPLETELY FALSE"

Sullivan called sections of the advertisement portraying suppression of Negro demonstrators at Alabama State College "completely false."

He added that, "I resent it very much."

Referring to a paragraph in which it was alleged that a college lunchroom was closed to starve students into submission

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(Continued From Page 1)

Sullivan said that "in my opinion, it never happened in the city of Montgomery."

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He also said it was false that Negro integration leader Martin Luther King had been arrested here several times on trumped-up offenses or been assaulted by a Montgomery policeman.

He singled out the statements alleging the arrests of King and the ringing of the college campus by "truckloads of police" as reflecting on his performance as police commissioner.

He said the advertisement was "associated with me when it describes police activities." He said he felt it "reflects on my ability, my integrity, and it has been established here that it is not true."

ILL AT EASE?

Sullivan was pressed by defense attorney Eric Embry as to whether he felt he had been damaged by the advertisement.

"Do you feel ill at ease in walking the streets of Montgomery?" asked Embry.

"No one has come up to me personally," answered Sullivan, but added that he did not know what effect the advertisement might have had on others.

But Sullivan conceded that the ad had not damaged his reputation in any obvious way or damaged his social life.

Negro attorney V. Z. Crawford of Mobile asked Sullivan if the suit was a basis for "statewide publicity for running for another office." But the question was ruled improper.

Three Times employes, including the secretary of the newspaper, Harding Bancroft, testified. Bancroft said that no retraction was made to Sullivan because it was believed that he had not been libeled in the ad.

But, he continued, a retraction was made in the case of Gov. John Patterson, because the paper did not intend "any reflection on the state of Alabama," of which the governor was "the embodiment."

EMPLOYES ON STAND

Defense attorneys placed two Times employes on the stand in an effort to show that the advertisement was accepted in good faith in the normal course of business.

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D. V. Redding, manager of the Times advertising acceptability department, said it was the department's job to "screen the advertising" in an effort to keep out objectionable matter.

He approved the ad, he said, because it was signed by "a number of people who were well known and whose motives I had no reason to question."

He cited Dr. Harry Emerson Fosdick, Mrs. Franklin D. Roosevelt, Harry Belafonte, Sidney Poitier, Norman Thomas, Marlon Brando, and Mrs. Ralph Bunche.

But Redding conceded that it was "a fair statement" that he made no attempt to check the accuracy of the statements made.

Gershon T. Aronson of The Times advertising department said he took the order, for the ad, which was from Union Advertising Service, "a regularly recognized agency."

He also said he saw no reason to question the accuracy of the ad which he merely "scanned hurriedly."

Other witnesses, who appeared for the plaintiffs Wednesday, were City Det. Lt. E. Y. Lacy and Advertiser Managing Editor L. P. Patterson. Lacy said city police worked overtime to find who bombed the home of Martin Luther King.

SAW ADVERTISEMENT

Patterson said he saw the advertisement in the Times and noted some "facts that were strange to me—that I'd never heard of before." He said he put the ad on the desk of Grover C. Hall Jr., editor of The Advertiser.

The suit is over an advertisement that sought funds to defend Martin Luther King at his perjury trial here. Dr. King was subsequently acquitted of lying about his income on a state income tax return.

Incidents referred to in the ad concern events that followed an attempt by Alabama State College students to seek service in a courthouse snack bar, including demonstrations at the Capitol and on the college campus.

Suits were also brought over the ad by City Commissioners Earl James and Frank Parks, also for $500,000 each, and by Gov. John Patterson, for one million dollars.

The Sullivan suit will be resumed before Judge Walter B. Jones at 9:30 a.m. Thursday.

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[fol. 2056]

EXHIBIT V TO MOTION OF DEFENDANTS
THE NEW YORK TIMES FOR NEW TRIAL

Alabama Journal—November 3, 1960

OPPOSING SIDES GIVE FINAL ARGUMENTS IN TIMES LIBEL SUIT

JURY EXPECTED TO GET CASE SOMETIME THIS AFTERNOON

By JUDITH RUSHIN
Journal Staff Writer

Attorneys for Commissioner L. B. Sullivan, for The New York Times, and for four Alabama Negroes hammered away at their opposition in final jury arguments today in an attempt to get a verdict for their clients. The case was expected to go to the jury this afternoon.

Robert E. Steiner III, speaking for Sullivan, re-emphasized that the commissioner is asking for $500,000 for the libelous statements he says The Times printed about him in an advertisement.

Negro attorney Fred Gray, representing the four Negroes who allegedly endorsed the ad, maintained that Sullivan's attorneys "failed miserably" to prove that the ministers actually endorsed the ad or knew anything about it."

THEY DIDN'T "TRACT"

In a question which drew laughter from attorneys and spectators Gray asked the jury, "How could these individual defendants retract something—if you'll pardon the expression—they didn't tract?"

T. Eric Embry, a Birmingham attorney representing The Times, shouted to the jury, "Where is the evidence that has shown you that Mr. Sullivan suffered any injury?

"Has Mr. Sullivan suffered or has possibly his standing in the community been enhanced?"

ONLY WAY TO IMPRESS

Steiner, in his opening remarks, said the only way to impress on The Times or any other newspaper or magazine

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that they must tell the truth is to "hit them in the pocketbook."

He then pointed out the falsity of certain statements contained in the full page ad which ran March 29 to solicit funds for the defense of Negro integration leader Martin Luther King in his perjury trial here.

"They couldn't even get the song right," he said, referring to a statement in the advertisement that Alabama State College students sang "My Country, 'Tis of Thee" on the Capitol steps.

Steiner said one of the Times' correspondents reported that the song was "The National Anthem."

He also attacked the statement concerning police "ringing" the campus with shotguns and tear gas by saying, "It would take thousands of police probably to ring the campus—approximately 12 square blocks."

As to the reference in the ad to "state authorities padlocking the dining room in an attempt to starve the students into submission," he shouted, "That didn't even happen. They couldn't prove it."

"ATTACKED SULLIVAN"

Steiner also mentioned a statement about King's house being bombed and said although Sullivan was not in office when the bombings occurred, "the ad doesn't say so—it was designed to attack the present city commission."

"Let The Times explain to you who in the world they were talking about if it wasn't the city commissioners of Montgomery," he told the jury.

In winding up his argument, Steiner said the fact that the names of two Negroes from Montgomery (Ralph D. Abernathy and S. S. Seay Sr.) were placed on the ad was "proof positive the ad was talking about Mr. Sullivan."

Gray referred to his clients in the case, Abernathy, Seay, J. E. Lowery of Mobile and Fred Shuttlesworth of Birmingham, as "the forgotten defendants in this case."

"They had no business in the case in the first place," he said.

Gray told the jurors the testimony conclusively shows the Negro defendants didn't know their names were on the ad or that the ad was even going to be published.

He said only one witness for Sullivan or for The Times mentioned his clients and that was Sullivan himself, who

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said he had sent letters to the four Negroes asking for a retraction.

Embry contended that The Times took all precautions a "normal human being" would take before accepting the advertisement and said Sullivan's attorneys were suggesting that a newspaper "set up some superhuman system" to screen advertising.

He told the jury the only statement in the ad which was not substantially correct was the one referring to padlocking the college dining hall and "that statement could not possibly have referred to Sullivan," he said.

Embry also accused Steiner of "appealing to every base motive in man by snide references to people living in other parts of the country."

Attorneys for The Times Wednesday called three employes of the newspaper to testify to the effect that The Times accepted in good faith the ad which prompted the Sullivan suit and similar legal action by two other city commissioners and the governor.

CONFLICTING TESTIMONY

Though Times attorneys produced evidence that a noted Negro leader, A. Philip Randolph, had notified the newspaper that the endorsers of the ad had consented to use of their names, Negro attorneys for the four drew conflicting testimony.

New York Writer Jon Murray testified that names of the four Alabama Negro defendants were not in the list originally covered by a letter from Randolph. He said their names were added by Bayard Rustin of New York, executive director of the Committee to Defend Martin Luther King, which sponsored the advertisement.

Last witness of the day was Harding Bancroft, secretary of The New York Times Co., called by Times attorneys. He testified that the newspaper considered the ad as having no reference, direct or indirect, to Sullivan.

Times advertising salesman Gershon T. Aronson and D. Vincent Redding, manager of the newspaper's advertising acceptability department, testified that they found no reason to question the advertisement.

Redding said he depended on reputations of some endorsers of the ad in determining its reliability.

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[fol. 2057]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

No. 27416

CONTINUANCE OF MOTION—December 1, 1960

The above and foregoing motion for new trial was duly presented to me, the undersigned Judge of said court, on the 1st day of December, 1960, and by me the same is hereby continued to the 16th day of December, 1960, at 10:00 o'clock A. M., and execution is hereby ordered stayed for the collection of any judgment or court costs in said cause pending the final disposition of said motion.

Done and ordered this 1 day of December, 1960.

Walter B. Jones, Circuit Judge.

Certificate of service (omitted in printing).

[File endorsement omitted]

[fol. 2057a]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Walter B. Jones, Judge Presiding

[Title omitted]

ORDER OF COURT CONTINUING MOTION FOR NEW TRIAL—December 16, 1960

This day came the plaintiff by attorney and came also the New York Times by attorneys and it is considered and ordered by the Court that the motion of the New York Times to set aside the verdict of the jury heretofore rendered in this cause and the judgment of the Court entered thereon and to grant it a new trial herein be and the same is hereby continued for hearing at 10:00 A. M. on January 14, 1961.

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In Circuit Court of Montgomery County, Alabama

Court Met Pursuant to Adjournment

Present the Honorable Walter B. Jones, Judge Presiding

[Title omitted]

Order of Court Continuing Motion for New Trial—January 14, 1961

This day came the plaintiff by attorney and came also the New York Times by attorneys and it is considered and ordered by the Court that the motion of the New York Times to set aside the verdict of the jury heretofore rendered in this cause and the judgment of the Court entered thereon and to grant it a new trial herein be and the same is hereby continued for hearing at 10:00 A.M. on February 10, 1961.

[fol. 2057b]

In Circuit Court of Montgomery County, Alabama

Court Met Pursuant to Adjournment

Present the Honorable Walter B. Jones, Judge Presiding

[Title omitted]

Order of Court Continuing Motion for New Trial—February 10, 1961

This day came the plaintiff by attorney and came also the New York Times by attorneys and it is considered and ordered by the Court that the motion of the New York Times to set aside the verdict of the jury heretofore rendered in this cause and the judgment of the Court entered thereon and to grant it a new trial herein be and the same is hereby continued for hearing at 10:00 A. M. on March 3, 1961.

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[fol. 2057c]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

AT LAW

No. 27416

[Title omitted]

AMENDMENT TO DEFENDANT'S, THE NEW YORK TIMES COMPANY, A CORPORATION, MOTION FOR NEW TRIAL—Filed March 3, 1961

Comes the defendant, The New York Times Company, a corporation, in the above styled cause and with leave of the court first being had and obtained, amends its motion for new trial in said cause as follows:

1. By striking therefrom grounds numbered 4 and 23.

2. By substituting for the words "Article 1, Section 11 of the Constitution of Alabama 1901," everywhere the same appear in ground No. 183, the words "Article 1, Section 6 of the Constitution of Alabama 1901".

Beddow, Embry and Beddow, By: /s/ Roderick M. MacLeod, Jr., Attorneys for Defendant, The New York Times Company, a corporation.

[File endorsement omitted]

[fol. 2057d]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Walter B. Jones, Judge Presiding

[Title omitted]

ORDER OF COURT TAKING MOTION FOR NEW TRIAL UNDER CONSIDERATION—March 3, 1961

The motion of the Defendant, The New York Times, 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

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before 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.

This the 3rd day of March, 1961.

Walter B. Jones, Circuit Judge Presiding.

In Circuit Court of Montgomery County, Alabama

Court Met Pursuant to Adjournment

Present the Honorable Walter B. Jones, Judge Presiding

[Title omitted]

Order of Court Denying Motion of New York Times Company for a New Trial—March 17, 1961

Upon consideration of the Motion of the defendant, the New York Times Company for a new trial, and same having been argued to the Court and submitted for decision, the Court is of opinion that the said motion for a new trial is not well taken. It is, therefore,

Considered, ordered and adjudged by the Court that the motion of the New York Times Company for a new trial be and the same is hereby denied.

Dated at Montgomery this March 17, 1961.

Walter B. Jones, Circuit Judge Presiding.

[fol. 2058]

In Circuit Court of Montgomery County, Alabama

Motion of Defendant, Ralph D. Abernathy for New Trial—Filed December 2, 1960

Comes now the Defendant, Ralph D. Abernathy, in the above styled cause and moves the Court to set aside the verdict of the jury heretofore returned and the judgment rendered thereon in this Court on, to-wit: November 3, 1960, and to grant a new trial of the issues herein and, as

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grounds therefor, sets forth and assigns, separately and severally, the following:

1. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the Defendant in the cause:

Charge No. 1. I charge you gentlemen of the jury, to find a verdict in favor of the Defendant, Ralph D. Abernathy.

2. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 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.

3. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 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."

4. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 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."

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5. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 5. I charge you, gentlemen of the jury, that if you find that the defendant, Ralph D. Abernathy did not [fol. 2059] 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.

6. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 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.

7. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the defendant, Ralph 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.

8. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a

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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.

9. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 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.

10. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 12. I charge you, gentlemen of the jury, that [fol. 2060] 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.

11. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 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

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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.

12. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 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 York Times on March 29, 1960, you must return a verdict for said defendant.

13. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 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.

14. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 17. I charge you, gentlemen of the jury, that [fol. 2061] if from the evidence you believe that the defendant never authorized anyone 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 advertise-

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ment, 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.

15. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant, Ralph D. Abernathy.

16. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 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.

17. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

Charge No. 20. I charge you, gentlemen of the jury, that unless on the evidence you are convinced that the defendant 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.

18. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "Now, the Court is of the opinion and so charges you, gentlemen of the

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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."

19. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "We can say, [fol. 2062] 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 of 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."

20. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "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 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, 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

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advertisement now before you, that is, ratified that advertisement as I have defined the word ratification to you."

21. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "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."

22. The Court erred in overruling defendant's demurrers to the complaint and to each count thereof.

23. The Court erred in overruling defendant's amended demurrers to the complaint and to each count thereof.

24. The Court erred in denying and overruling defendant's motion to exclude plaintiff's evidence, said motion having been made at the conclusion of the plaintiff's [fol. 2063] case.

25. The Court erred in denying and overruling the defendant's motion to exclude the plaintiff's evidence, said motion having been made at the conclusion of the introducing of all of the evidence in the case.

26. There existed an irregularity in the proceedings of the Court by which the party defendant was prevented from having a fair trial in that the Court is a member of the Board of Jury Supervisor of Montgomery, Alabama; and that said Board selected jurors pursuant to Act No. 118 of March 8, 1939, said Act being unconstitutional, said selection of jurors thereunder by the Court being in violation of Article I, Section 11 of Alabama Code of 1901 and the Code of Alabama (1940) Title 7, Section 260, in that the Court as a member of the Board by so selecting those persons who are to decide the case decided both the facts and the law.

27. There existed an irregularity in the proceedings of the Court by which the party defendant was prevented from having a fair trial in that defendant was subjected to the exercise of judicial power before a tribunal which required

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its very facilities to be segregated on the basis of race and color and that the imposition of judicial power upon defendant in a segregated tribunal denied to defendant his right to due process and equal protection of the law as guaranteed him under the Alabama and Federal Constitutions.

28. There existed an irregularity in the proceedings of the Court which prevented the party defendant from having a fair trial in that Alabama's Constitutional Amendment of 1850 required the popular election of judges, said amendment being codified in Section 152 of the Alabama Constitution of 1901, and that under Section 152 of a judge's lawful election to the court by all qualified electors is constitutionally pre-requisite to the lawful exercise of judicial power vested in the Court by Article 6, Section 139 of the Alabama Constitution; that said Negro defendant is a member of a class of eligible qualified electors, and that Negroes have been intentionally, and systematically excluded from participating in the electoral selection of judges required by Section 152 of the Alabama Constitution and as a consequence thereof the imposition of judicial power over defendant Negro member of said systematically excluded class of qualified electors by a judge not lawfully elected results in a taking of defendant's property without due process of law as guaranteed to defendant under the constitution and laws of the State of Alabama, and the Federal Constitution; and deprives defendant of the equal protection of the law guaranteed him under the Fourteenth Amendment to the United States Constitution.

29. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff having failed to present any evidence upon which it could [fol. 2064] rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the court against the defendant in the amount of $500,000.00 deprived the defendant of due process of law in violation of the Constitution and laws of the State of Alabama.

30. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff

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having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the Court against the defendant in the amount of $500,000.00 deprived the defendant of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

31. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the court against the defendant in the amount of $500,000.00 deprived this defendant of his property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

32. The verdict of the jury and the decision of the Court against the defendant in the amount of $500,000.00 is not supported by any evidence, and, as such, it deprives the defendant of his property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

33. The verdict of the jury and the decision of the court were not sustained by the great preponderance of the evidence.

34. The verdict of the jury and the decision of the court were not sustained by the great preponderance of the evidence as follows:

(a) The evidence showed clearly that the defendant did not publish nor cause to be published the advertisement which is the basis of this suit.

(b) The evidence showed clearly that defendant did not give his consent for his name to be placed on the advertisement, which advertisement is the basis of this suit.

(c) The evidence showed clearly that defendant had no prior knowledge that said advertisement was going to be published.

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(d) The plaintiff's evidence failed to show any causal connection between the defendant and the alleged libelous matter stated in the complaint.

(e) There is no evidence in the record to show that the [fol. 2065] defendant ratified the alleged libelous matter contained in the complaint.

35. That the verdict of the jury and the decision of the court is contrary to law in that plaintiff is an official of the government of Alabama, and that the institution of this libel action for alleged defamation of plaintiff governmental official and the consequent imposition of damages upon defendant is an unconstitutional use of the judicial machinery of the State of Alabama infringing upon defendant's freedom of speech and association, violative of defendant's constitutional right under the First Amendment as incorporated into the Fourteenth Amendment to the Federal Constitution, in that said judgment of the court was imposed on defendant because of his well known past and present activities and views on civil rights, said view being diametrically opposed to those of plaintiff; said decision of the court having the practical effect of deterring and/or discouraging defendant's exercise of his constitutionally protected political rights of speech, press and association.

36. For that the verdict of the jury is contrary to the law and evidence in the case.

37. For that the verdict of the jury is not sustained by the great preponderance of the evidence and is contrary to both the law and the facts in the case.

38. For that the verdict of the jury is contrary to the law in the case.

39. For that the verdict of the jury is contrary to the facts in the case.

40. For that the verdict of the jury and the judgment entered thereon are contrary to the great weight and preponderance of the evidence in the case.

41. For that the verdict of the jury is excessive in that it is reported to have been the largest verdict ever rendered by a jury in the State of Alabama.

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42. For that the verdict of the jury is so excessive as to shock the conscience of the court and was a result of bias, passion, and prejudice against the defendants.

43. For that the verdict of the jury is excessive and a result of bias passion and prejudice against the defendants.

44. There existed an irregularity in the proceedings of the Court by which the party defendant was prevented from having a fair trial.

45. There existed an irregularity in the proceedings of the jury by which the party defendant was prevented from having a fair trial.

46. There existed an irregularity in the proceedings by the prevailing party, by which the defendant was prohibited from having a fair trial.

47. There existed an irregularity in an order of the Court by which the defendant was prevented from having a fair trial.

48. There existed in the case an abuse of discretion of [fol. 2066] the Court by which the defendant was prevented from having a fair trial.

49. The jury in the cause was guilty of a misconduct during the trial of the case.

50. The prevailing party was guilty of misconduct in the trial of the case.

51. For that during the trial an error of law occurred which was excepted to by the defendant.

52. For that during the trial an error of law occurred which was excepted to by the defendant, that is the failure of the Court to make special findings of the issues of the cause in the case after being asked to do so by the defendant in the cause.

53. For that the Court abused its discretion in denying the defendant's request for special findings of the issues in this cause in that the defendant requested that compensatory damages and punitive damages be assessed separately in the cause and the Court refused defendant's request for

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such separate findings and the defendant was thereby prevented from having a fair trial of this cause.

54. For that the Court abused its discretion in denying the defendant's request for special findings of the issues in this cause.

55. For that all of the evidence produced at the trial relating to damages indicated that the plaintiff suffered no damage as a result of any action on the part of this defendant.

56. For that the trial Court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness, Grover Hall, as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

57. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Arnold Blackwell as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

58. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. William McDonald as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his [fol. 2067] opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

59. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. Harry Kaminsky as to his opinion that the advertisement, which advertisement is the basis of

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this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

60. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. H. M. Price, Sr., as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

61. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness, Mr. William Parker, as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

62. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness, Mr. Horace D. White, as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

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

Solomon S. Seay, Jr., 29 N. McDonough St., Montgomery, Alabama

Attorneys for Defendant

By: Solomon S. Seay, Jr., Attorney for named Defendant.

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[fol. 2068] [File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

CONTINUANCE OF MOTION—December 2, 1960

The foregoing motion was presented to me on this the 2d day of December, 1960, and it is hereby continued to the 16 day of December, 1960, at 11 A.M., for hearing. Execution is hereby stayed by the Court during the pendency of this motion.

Walter B. Jones, Circuit Judge. 15th Judicial Circuit of Alabama.

Certificate of service (omitted in printing).

December 16, 1960. Motion continued for hearing at 10:00 A.M. January 14, 1961.

Walter B. Jones, Judge.

[fol. 2069]
IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Walter B. Jones,
Judge Presiding

[Title omitted]

ORDER CONTINUING MOTION FOR NEW TRIAL—
December 16, 1960

This day came the parties by attorneys and the motion of the defendant, Ralph D. Abernathy, to set aside the verdict of the jury and the judgment of the Court entered thereon and to grant him a new trial herein, be and the same is hereby continued until January 14, 1961 at 10:00 A.M.

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[fol. 2070]

Motion of Defendant, J. E. Lowery for New Trial—
Filed December 2, 1960

Comes now the defendant, J. E. Lowery, in the above styled cause and moves the Court to set aside the verdict of the jury heretofore returned and the judgment rendered thereon in this Court on, to-wit: November 3, 1960, and to grant a new trial of the issues herein and, as grounds, therefor, set forth and assigns, separately and severally, the following:

1. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 1. I charge you, gentlemen of the jury, to find a verdict in favor of the defendant, J. E. Lowery.

2. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant, in the cause:

"Charge No. 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."

3. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 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."

4. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court

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refused to give the following written charge requested by the defendant in this cause:

"Charge No. 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."

5. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 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 for him".

[fol. 2071] 6. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 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 in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

7. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 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."

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8. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 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."

9. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 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."

10. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 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 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 [fol. 2072] 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, J. E. Lowery."

11. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court

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refused to give the following written charge requested by the defendant in the cause:

"Charge No. 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."

12. For that during the trial an error of law occurred which was excepted to by the defendant, in that the court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 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."

13. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 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 to the alleged libelous matters, and you must return a verdict for said defendant."

14. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never

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authorized anyone 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 [fol. 2073] 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."

15. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant, J. E. Lowery."

16. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 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."

17. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 20. I charge you gentlemen of the jury, that unless on the evidence you are convinced that the defendant, 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."

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18. For that during the trial an error of law occurred which was excepted to by the defendant, in that the court gave the following oral charge to the jury: "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."

19. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "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 of official integrity, or want of fidelity to a public trust, or such as will subject [fol. 2074] the plaintiff to ridicule or public distrust. All those kind of charges are called, libelous, per se."

20. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "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 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, 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

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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."

21. For that during the trial an error of law occurred which was excepted to by the defendant, in that the court gave the following oral charge to the jury: "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."

22. The Court erred in overruling defendant's demurrers to the complaint and to each count thereof.

23. The Court erred in overruling defendant's amended demurrers to the complaint and to each count thereof.

24. The Court erred in denying and overruling the defendant's motion to exclude plaintiff's evidence, said motion having been made at the conclusion of the plaintiff's case.

25. The Court erred in denying and overruling the defendant's motion to exclude the plaintiff's evidence, said motion having been made at the conclusion of the introducing of all of the evidence in the case.

[fol. 2075] 26. There existed an irregularity in the proceedings of the Court by which the party defendant was prevented from having a fair trial in that the Court is a member of the Board of Jury Supervisor of Montgomery, Alabama; and that said Board selected jurors pursuant to Act No. 118 of March 8, 1939, said Act being unconstitutional, said selection of jurors thereunder by the Court being in violation of Article I, Section 11 of Alabama Code of 1901 and the Code of Alabama (1940) Title 7, Section 260, in that the Court as a member of the Board by so selecting those persons who are to decide the case decided both the facts and the law.

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27. There existed an irregularity in the proceedings of the Court by which the party defendant was prevented from having a fair trial in that defendant was subjected to the exercise of judicial power before a tribunal which required its very facilities to be segregated on the basis of race and color and that the imposition of judicial power upon defendant in a segregated tribunal denied to defendant his right to due process and equal protection of the law as guaranteed him under the Alabama and Federal Constitutions.

28. There existed an irregularity in the proceedings of the Court which prevented the party defendant from having a fair trial in that Alabama's Constitutional Amendment of 1850 required the popular election of judges, said amendment being codified in Section 152 of the Alabama Constitution of 1901, and that under Section 152 a judge's lawful election to the court by all qualified electors is constitutionally pre-requisite to the lawful exercise of judicial power vested in the court by Article 6, Section 139 of the Alabama Constitution, that said Negro defendant is a member of a class of eligible qualified electors, and that Negroes have been intentionally, and systematically excluded from participating in the electoral selection of judges required by Section 152 of the Alabama Constitution and as a consequence thereof the imposition of judicial power over defendant Negro member of said systematically excluded class of qualified electors by a judge not lawfully elected results in taking of defendant's property without due process of law as guaranteed to defendant under the constitution and laws of the State of Alabama and the Federal Constitution; and deprives defendant of the equal protection of the law guaranteed him under the Fourteenth Amendment to the United States Constitution.

29. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the Court against the defendant in the amount of

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$500,000.00 deprived the defendant of due process of law [fol. 2076] in violation of the Constitution and laws of the State of Alabama.

30. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the Court against the defendant in the amount of $500,000.00 deprived the defendant of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

31. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the court against the defendant in the amount of $500,000.00 deprived this defendant of his property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

32. The verdict of the jury and the decision of the Court against the defendant in the amount of $500,000.00 is not supported by any evidence, and as such, it deprives the defendant of his property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

33. The verdict of the jury and the decision of the court were not sustained by the great preponderance of the evidence.

34. The verdict of the jury and the decision of the court were not sustained by the great preponderance of the evidence as follows:

(a) The evidence showed clearly that the defendant did not publish nor cause to be published the advertisement which is the basis of this suit.

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(b) The evidence showed clearly that defendant did not give his consent for his name to be placed on the advertisement, which advertisement is the basis of this suit.

(c) The evidence showed clearly that defendant had no prior knowledge that said advertisement was going to be published.

(d) The plaintiff's evidence failed to show any causal connection between the defendant and the alleged libelous matter stated in the complaint.

(e) There is no evidence in the record to show that the defendant ratified the alleged libelous matter contained in the complaint.

35. That the verdict of the jury and the decision of the court is contrary to law in that plaintiff is an official of the government of Alabama, and that the institution of this libel action for alleged defamation of plaintiff governmental official and the consequent imposition of damages upon de-
[fol. 2077] fendant is an unconstitutional use of the judicial machinery of the State of Alabama infringing upon defendant's freedom of speech and association, violative of defendant's constitutional right under the First Amendment as incorporated into the Fourteenth Amendment to the Federal Constitution, in that said judgment of the court was imposed on defendant because of his well known past and present activities and views on civil rights, said view being diametrically opposed to those of plaintiff; said decision of the court having the practical effect of deterring and/or discouraging defendant's exercise of his constitutionally protected political rights of speech, press and association.

36. For that the verdict of the jury is contrary to the law and evidence in the case.

37. For that the verdict of the jury is not sustained by the great preponderance of the evidence and is contrary to both the law and the facts in the case.

38. For that the verdict of the jury is contrary to the law in the case.

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39. For that the verdict of the jury is contrary to the facts in the case.

40. For that the verdict of the jury and the judgment entered thereon are contrary to the great weight and preponderance of the evidence in the case.

41. For that the verdict of the jury is excessive in that it is reported to have been the largest verdict ever rendered by a jury in the State of Alabama.

42. For that the verdict of the jury is so excessive as to shock the conscience of the court and was a result of bias, passion and prejudice against the defendants.

43. For that the verdict of the jury is excessive and as result of bias, passion, and prejudice against the defendants.

44. There existed an irregularity in the proceedings of the Court by which the party defendant was prevented from having a fair trial.

45. There existed an irregularity in the proceedings of the jury by which the party defendant was prevented from having a fair trial.

46. There existed an irregularity in the proceedings by the prevailing party, by which the defendant was prohibited from having a fair trial.

47. There existed an irregularity in an order of the Court by which the defendant was prevented from having a fair trial.

48. There existed in the case an abuse of discretion of the Court by which the defendant was prevented from having a fair trial.

49. The jury in the cause was guilty of a misconduct [fol. 2078] during the trial of the case.

50. The prevailing party was guilty of misconduct in the trial of the case.

51. For that during the trial an error of law occurred which was excepted to by the defendant.

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52. For that during the trial an error of law occurred which was excepted to by the defendant, that is the failure of the Court to make special findings of the issues of the cause in the case after being asked to do so by the defendant in the cause.

53. For that the Court abused its discretion in denying the defendant's request for special findings of the issues in this cause in that the defendant requested that compensatory damages and punitive damages be assessed separately in the cause and the Court refused Defendant's request for such separate findings and the defendant was thereby prevented from having a fair trial of this cause.

54. For that the Court abused its discretion in denying the defendant's request for special findings of the issues in this cause.

55. For that all of the evidence produced at the trial relating to damages indicated that the plaintiff suffered no damage as a result of any action on the part of this defendant.

56. For that the trial Court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Grover Hall as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

57. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Arnold Blackwell as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

58. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. William McDonald as to his opinion

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that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

[fol. 2079] 59. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. Harry Kaminsky as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

60. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. H. M. Price, Sr., as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record which record has not been completed by the court reporter as of this date.

61. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. William Parker as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

62. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. Horace D. White as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

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Respectfully submitted,

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

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

Solomon S. Seay, Jr., 29 N. McDonough St., Montgomery, Alabama,

Attorneys for defendant, By: Solomon S. Seay, Jr., Attorney for Named defendant.

[File endorsement omitted]

[fol. 2080]

In Circuit Court of Montgomery County, Alabama

Continuance of Motion—December 2, 1960

The foregoing motion was presented to me on this the 2nd day of December, 1960, and it is hereby continued to the 16 day of December, 1960, at 11:00 A.M. for hearing. Execution is hereby stayed by the Court during the pendency of this motion.

Walter B. Jones, Circuit Judge, 15th Judicial Circuit of Alabama.

Certificate of Service (omitted in printing).

December 16, 1960. Motion continued for hearing at 10:00 A. M. January 14, 1961.

Walter B. Jones, Judge Presiding.

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