TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 606

NEW YORK TIMES COMPANY, PETITIONER,

vs.

L. B. SULLIVAN.

No. 609

RALPH D. ABERNATHY, ET AL., PETITIONERS,

vs.

L. B. SULLIVAN.

ON WRITS OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF ALABAMA

PETITIONS FOR CERTIORARI FILED NOVEMBER 21, 1962
CERTIORARI GRANTED JANUARY 7, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 606

NEW YORK TIMES COMPANY, PETITIONER,

vs.

L. B. SULLIVAN.

No. 609

RALPH D. ABERNATHY, ET AL., PETITIONERS,

vs.

L. B. SULLIVAN.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

INDEX

VOLUME 3

[fol. 2081]
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 J. E. Lowery, 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.

[fol. 2082]
IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF DEFENDANT, S. S. SEAY, SR. FOR NEW TRIAL—
Filed December 2, 1960

Comes now the Defendant, S. S. Seay, Sr., 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, 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, S. S. Seay, Sr.

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, S. S. Seay, Sr. did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him.

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

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 this cause.

"Charge No. 5. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict for him."

[fol. 2083] No. 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, S. S. Seay,

Sr., did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of 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, S. S. Seay, Sr., was the author or the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant."

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

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, tha the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, S. S. Seay, Sr. directly or indirectly, or through some other person authorized to act for him, published or consented to the publication of the statements complained o [fol. 2084] 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 o through some other person authorized to act for him, published or consented to the publication of said statements then you must return a verdict for the Defendant, S. S. Seay Sr.

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

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 this cause:

"Charge No. 14. Gentlemen of the jury, if you believe from the evidence that the Defendant, S. S. Seay, Sr., did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant."

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

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 authorized any one to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the plaintiff wrote a letter to the defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, [fol. 2085] and if you further believe from the evidence that the defendant did not reply to the Plaintiff's letter, I charge you as a matter of law that the Defendant's failure to reply to plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the defendant, S. S. Seay, Sr."

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, S. S. Seay, Sr."

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

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 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 mis- [fol. 2086] conduct 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 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.

26. There existed an irregularity in the proceedings of [fol. 2087] 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, and said Act being unconstitutional, said selection of jurors thereunder by the Court being in violation of Article I, Section II 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 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 Constitu-

tion 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 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 [fol. 2088] 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.

(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 defendant is an unconstitutional use of the judicial [fol. 2089] machinery of the State of Alabama infringing upon defendant's freedom of speech and association, viola-

tive 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 this 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 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 the Court by which the defendant was prevented from having a fair trial.

[fol. 2090] 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 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 opinion as to other matters, which matters will more fully [fol. 2091] 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 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 No. Perry St., Montgomery, Alabama;

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

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

Attorneys for Defendant, By: Solomon S. Seay, Jr.

[fol. 2092]
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 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, 1960.

Walter B. Jones, Judge.

[File endorsement omitted]

[fol. 2093]
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, S. S. Seay, Sr., 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.

[fol. 2094]
IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF DEFENDANT, FRED L. SHUTTLESWORTH FOR NEW TRIAL—Filed December 2, 1960

Comes now the Defendant, Fred L. Shuttlesworth, 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, 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, Fred L. Shuttlesworth."

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, Fred L. Shuttlesworth did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him.

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

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, Fred L. Shuttlesworth did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict 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, Fred L. Shuttlesworth, did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict for him."

6. For that during the trial an error of law occurred [fol. 2095] 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, Fred L. Shuttlesworth, did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of 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, Fred L. Shuttlesworth was the author or the publisher of the advertisement which appeared in the New

York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said defendant."

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 this 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, Fred L. Shuttlesworth, 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, Fred L. Shuttlesworth, had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated Tuesday, March 29, 1960, you must return a verdict for the said defendant."

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, Fred L. Shuttlesworth, directly or indirectly, or through some other person authorized to act for him, published or consented to the publication of the statements [fol. 2096] complained of which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said defendant did directly or indirectly or through some other person authorized to act for him, published or consented to the publication of said

statements, then you must return a verdict for the defendant, Fred L. Shuttlesworth.

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, Fred L. Shuttlesworth, did not authorize the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said defendant."

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

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 authorized any one to affix his name to the advertisement which is the subject matter of this suit and if you further believe from the evidence that the plaintiff wrote a letter to the defendant demanding a retraction of certain [fol. 2097] alleged libelous matter contained in said advertisement, and if you further believe from the evidence that the defendant did not reply to the plaintiff's letter, I charge you as a matter of law that the defendant's failure to reply to plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the defendant to reply to plaintiff's letter, and you must return a verdict for the defendant, Fred L. Shuttlesworth."

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, Fred L. Shuttlesworth."

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

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 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 [fol. 2098] where he lives, as injure him in his public office, or impute misconduct to him in his office, or want or official integrity, or want of fidelity to a public trust or such as will subject the plaintiff to ridicule or public distrust. All those kind of charges are called, libelous per se."

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 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. 2099] 26. There existed an irregularity in the proceedings of the Court by which the part defendant was prevented from having a fair trial in that the Court is a member of the Board of Jury Supervisors 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 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 part 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 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 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 [fol. 2100] 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 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.

(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 govern-[fol. 2101] mental 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.

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 defendant.

43. For that the verdict of the jury is excessive and as 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. 2102] 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 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. 2103] 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 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 No. Perry Street, Montgomery, Alabama;

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

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

Attorneys for Defendant.

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

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 AM for hearing. Execution is hereby stayed by the Court during the pendency [fol. 2104] 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 AM. Jan. 14, 1961.

Walter B. Jones, Judge.

[File endorsement omitted]

[fol. 2105]
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, Fred L. Shuttlesworth, 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.

[fol. 2106]
IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

SUPERSEDEAS BOND FILED BY THE NEW YORK TIMES COMPANY AND APPROVED APRIL 13, 1961

Know All Men by These Presents, That we the New York Times Company, a Corporation of the State of New York, and St. Paul Fire and Marine Insurance Company, a Corporation organized under the laws of the State of Minnesota having its principal office in the City of St. Paul, State of Minnesota, and having an office and usual place of business in the Jackson Building, Birmingham 3, Alabama, are held and firmly bound unto L. B. Sullivan in the sum of One Million Five Hundred and No/100 ($1,000,500.00) Dollars, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our heirs, executors and administrators, jointly, severally and firmly by these presents, and as part of this undertaking we hereby waive all our rights under the Constitution and Laws of the State of Alabama, to have any of our property, real or personal, exempt from levy and sale in satisfaction hereof.

Sealed with our seals, and dated this 7th day of April, 1961.

Whereas, at the fall term, 1960, of the Circuit Court of Montgomery County, of and for said County, on, to-wit: the 3rd day of November, 1960, the said L. B. Sullivan recovered a judgment in said Court against the New York Times Company, et al. for the sum of Five Hundred Thousand and No/100 ($500,000.00) Dollars, debt and damages, and the further sum of Five Hundred and No/100 ($500.00) Dollars, the cost in that behalf expended; and whereas, on this day the said The New York Times Company as such defendant, has made application for an appeal from said judgment to the next term of the Supreme Court of Alabama to be holden of and for said State, to reverse said judgment, and also for a supersedeas of the execution of said judgment, which has been granted on entering into this bond.

Now, Therefore, the condition of the foregoing obligation is such, that if the said The New York Times Company shall prosecute its said appeal to effect, and satisfy such judgment as the Supreme Court may render in this case, then the said obligation to be null and void, otherwise to remain in full force and effect.

The New York Times Company, By: F. A. Cox, Treasurer;

St. Paul Fire and Marine Insurance Co., By: Gordon M. Earhuff, Attorney-in-fact;

A. B. Chapman, Alabama Resident Agent.

Approved: This 13th day of April, 1961.
John R. Matthews, Clerk.

[fol. 2107] [File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

NOTICE OF WRIT OF ERROR—April 13, 1961

To Any Sheriff of the State of Alabama—Greeting:

You are hereby commanded to summon Steiner, Crum and Baker and Calvin Whitesell, Attorneys of Record of L. B. Sullivan to appear at the next term of the Supreme Court of said State, then and there to defend an appeal which The New York Times Company, a corporation has this day sued out, returnable to said court to reverse a judgment which the said L. B. Sullivan at the November Term, 1960, of the Circuit Court of Montgomery County, recovered against the said The New York Times Company, a corporation, Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr. and Fred L. Shuttlesworth for the sum of $500,-000.00—Five Hundred Thousand and No/100 Dollars, and make immediate return of this Writ, etc.

Witness, John R. Matthews, Clerk of said Circuit Court, this 13 day of April, A. D., 1961.

John R. Matthews, Clerk.

We hereby accept service of a copy of the within notice of appeal and waive further service of the same by the Sheriff.

This 13 day of April, 1961.

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

Calvin Whitesell.

[fol. 2108]
IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

NOTICE OF JOINING IN APPEAL—Filed April 27, 1961

Come the defendant, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery, in the above styled cause and give notice that the above named individual defendants hereby join in the appeal heretofore filed on April 12, 1961, by the co-defendant, The New York Times Company, a Corporation, appealing from the judgment of the Circuit Court of Montgomery County, Alabama, rendered on November 3, 1960, and also from the ruling of said Court that the individual defendants' motion for a New Trial was no longer before the court because of the alleged failure to continue the motion for a new trial by attorneys for the individual defendants.

Charles S. Conley, 530 So. Union St., Montgomery 4, Alabama;

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

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

Attorneys for Defendants, By: Charles S. Conley.

[File endorsement omitted]

[fol. 2109]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

NOTICE TO UNITE IN APPEAL—Filed April 27, 1961

To Any Sheriff of the State of Alabama—Greetings:

Whereas, the Defendant, The New York Times Company, a corporation, on the 13th day of April, 1961, has taken an appeal to the Supreme Court of Alabama from the judgment rendered in this Court on, to-wit, the 3rd day of November, 1960, in favor of L. B. Sullivan against The New York Times Company, a corporation, Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr., and Fred L. Shuttlesworth; and

Whereas, said appeal has not been taken in the name of the Defendants, Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr., and Fred L. Shuttlesworth and the aforesaid four individual Defendants have not joined in the appeal;

Now, Therefore, you are commanded to summon the said Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr., and Fred L. Shuttlesworth to appear before the Supreme Court of Alabama at the time to which the said appeal is returnable and unite in said appeal if they see proper to do so.

Witness my hand this 27 day of April, 1961.

John R. Matthews, Clerk of the Circuit Court.

I hereby accept service of a copy of the above citation and waive further service by the Sheriff, this April 27, 1961.

Charles S. Conley, As Attorney for defendants, Abernathy, Seay, Lowery and Shuttlesworth.

[File endorsement omitted]

[fol. 2110]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

On Appeal to Supreme Court of Alabama

[Title omitted]

CERTIFICATE OF APPEAL—December 14, 1961

I, John R. Matthews, Clerk of the Circuit Court of Montgomery County, hereby certify that in said Court on the 3rd day of November, 1960, in a trial before a jury, a verdict was rendered in favor of L. B. Sullivan and against The New York Times Company, a corporation, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery, for the sum of $500,000.00, and that judgment was entered thereon against all of said parties for the sum of $500,000.00.

I further certify that The New York Times Company, a corporation, filed its motion to set aside the verdict of the jury and the judgment of the Court entered thereon and to grant it a new trial and that on the 17th day of March, 1961, said motion for a new trial was overruled and that on the 13th day of April, 1961, the said New York Times Company, a corporation, gave notice of appeal from the judgment of said Court to the Supreme Court of Alabama and did supersede said judgment by filing a Supersedeas Bond with St. Paul Fire & Marine Insurance Company as surety thereon, which said bond has been duly approved.

Witness my hand and the seal of said Court is hereto affixed, this 14 day of April, 1961.

John R. Matthews, Clerk, Circuit Court of Montgomery County.

[fol. 2110a]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

MOTION FOR EXTENSION OF TIME IN WHICH TO FILE TRANSCRIPT IN CIRCUIT COURT—Filed June 8, 1961

Comes now the defendant, The New York Times Company, and shows unto this Honorable Court as follows:

1. This defendant, The New York Times Company, has heretofore taken an appeal in the above styled cause and in accordance with the provisions of the Code of Alabama of 1940, the court reporter's transcript of the proceedings in said cause is due to be filed with the Clerk of the Circuit Court of Montgomery County on the 12th day of June, 1961.

2. The proceedings which the said transcript covers were lengthy and the transcript is voluminous and consists of approximately two thousand pages.

3. On the 26th day of May, 1961, the court reporter notified attorneys for this defendant that he had completed the said transcript and in accordance with that notification, attorneys for this defendant had delivered to them a copy of said transcript and since said transcript was delivered attorneys have been engaged in checking the transcript for accuracy and completeness but due to the size and length of said transcript and due to attorneys for this defendant being engaged in the trial of cases in various courts in the State of Alabama, and engaged in the preparation of briefs for the Appellate Courts for the State of Alabama, it will be impossible to check the transcript completely and thoroughly before the 12th day of June, 1961.

4. A complete and thorough check of the transcript before the date it is filed in this court will result in a saving of the time of this court in that it may prevent the necessity of filing exceptions to the transcript upon which this court must rule.

Wherefore Premises Considered this defendant moves this Honorable Court to extend the time for filing of said transcript with the Clerk of the Circuit Court of Montgomery County.

Roderick M. MacLeod, Jr., Beddow, Embry & Beddow, Attorneys for the defendant, The New York Times Company.

[File endorsement omitted]

[fol. 2110b]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

ORDER ON MOTION FOR EXTENSION OF TIME—June 8, 1961

The motion of the defendant, The New York Times Company, for extension of time in which to file the transcript in the above styled cause with the Clerk of the Circuit Court of Montgomery County, having been presented to the Court and good cause being shown, it is therefore,

Ordered, adjudged and decreed that the time for filing the transcript in the above styled cause with the Clerk of the Circuit Court of Montgomery County, Alabama, is hereby extended to and including the 26th day of June, 1961. It is understood that no further extension of time for filing the transcript in the Clerk's office will be moved for or granted. Plaintiff duly and legally excepts to this ruling of the court.

This 8 day of June, 1961.

Walter B. Jones, Circuit Judge.

[File endorsement omitted]

[fol. 2110c]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

At Law.

[Title omitted]

STIPULATION AS TO CHANGES, ETC. IN RECORD—June 23, 1961

Comes now the Appellant, The New York Times Company, and the Appellee by their respective Attorneys and stipulate that at any time after the Court Reporter's Transcript of the Proceedings in the above captioned cause is filed in the Office of the Circuit Clerk and before it is filed in the Office of the Clerk of the Supreme Court of Alabama, either party may have the Court Reporter make changes, corrections or additions to the transcript and that in the event the parties cannot agree as to what changes, additions or corrections should be made, either party may submit the matter to the Circuit Judge for determination just as if exceptions had been made to the transcript within the ten day period after it is filed as prescribed by the Code of Alabama.

This stipulation specifically applies but is not limited to the insertion in the transcript of copies of four registered mail return receipts introduced by the plaintiff-appellee on the trial on the merits and numbered as Plaintiff's Exhibits Nos. 359, 360, 361, and 362.

This the 23rd day of June, 1961.

Roderick M. MacLeod; Steiner, Crum & Baker.

[fol. 2111] Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 2113]

IN THE SUPREME COURT OF ALABAMA

No. .....

THIRD DIVISION

THE NEW YORK TIMES COMPANY, a Corporation, Appellant,

vs.

L. B. SULLIVAN, Appellee.

ASSIGNMENTS OF ERROR OF THE NEW YORK TIMES COMPANY

Comes the Appellant, The New York Times Company, a corporation in this cause and says there is manifest error in the trial of this cause and manifest error in the record of the trial of this cause and as grounds for such error sets down and assigns the following, separately and severally:

1. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying the Motion of this defendant, as amended, to quash service of process upon it in this case. (Tr. 40)

2. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon Don McKee as an alleged agent of this defendant. (Tr. 40)

3. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying the Motion as amended of this defendant to quash service of process upon it in holding in said order, judgment or decree that this defendant had made a general appearance in this cause. (Tr. 40)

4. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon it had under the provisions of Title 7, Section 199(1), Code

of Alabama of 1940, and holding therein that service of process on this defendant was valid under the provisions of said Title 7, Section 199(1), Code of Alabama, 1940. (Tr. 40)

5. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon it in holding in said order, judgment or decree that this defendant was "doing business" in the State of Alabama. [fol. 2114] (Tr. 40)

6. For that the trial court erred in its ruling that this defendant had the burden of going forward with the evidence on its Motion to quash service of process upon it, to which ruling this defendant duly and legally excepted. (Tr. 186)

7. For that the trial court erred in overruling this defendant's objection to the introduction in evidence of plaintiff's exhibit No. 78, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 184)

8. For that the trial court erred in overruling this defendant's demurrers and additional demurrers to plaintiff's complaint. (Tr. 86)

9. For that the trial court erred in overruling this defendant's demurrers as last amended to plaintiff's complaint. (Tr. 86)

10. For that the trial court erred in overruling this defendant's demurrers and additional demurrers to Count One of plaintiff's complaint. (Tr. 86)

11. For that the trial court erred in overruling this defendant's demurrers as last amended to Count One of plaintiff's complaint. (Tr. 86)

12. For that the trial court erred in overruling this defendant's demurrers and additional demurrers to Count Two of plaintiff's complaint. (Tr. 86)

13. For that the trial court erred in sustaining plaintiff's demurrers to this defendant's Plea Six. (Tr. 86)

14. For that the trial court erred in its ruling refusing to allow this defendant to propound the following question to the jury venire on voir dire:

> "1. 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?"

[fol. 2115] to which ruling this defendant duly and legally excepted. (Tr. 1694-95)

15. For that the trial court erred in its ruling refusing to allow this defendant to propound the following question to the jury venire on voir dire:

> "2. Have any of you gentlemen ever been a plaintiff in a lawsuit 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 ruling this defendant duly and legally excepted. (Tr. 1695)

16. For that the trial court erred in its ruling refusing to allow this defendant to propound the following question to the jury venire on voir dire:

> "3. 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?"

to which ruling this defendant duly and legally excepted. (Tr. 1695)

17. For that the trial court erred in its ruling refusing to allow this defendant to propound the following question to the jury venire on voir dire:

> "4. 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 ruling this defendant duly and legally excepted. (Tr. 1695)

18. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Grover C. Hall, Jr.:

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

to which ruling this defendant duly and legally excepted. (Tr. 1723)

19. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Grover C. Hall, Jr.:

> "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?"

to which ruling this defendant duly and legally excepted. (Tr. 1724)

20. For that the trial court erred in refusing to allow the [fol. 2116] defendant to inquire on voir dire into the competency of the witness, Arnold D. Blackwell, to testify, to which ruling this defendant duly and legally excepted. (Tr. 1733-34)

21. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Arnold D. Blackwell:

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

to which ruling this defendant duly and legally excepted. (Tr. 1734-35)

22. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Arnold D. Blackwell:

"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?"

to which ruling this defendant duly and legally excepted. (Tr. 1736)

23. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Arnold D. Blackwell:

"Q. . . . I ask you there whether those statements associate themselves in your mind with any person or persons."

to which ruling this defendant duly and legally excepted. (Tr. 1737)

24. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, William H. MacDonald:

"Q. Now, going back to March 6th of this year, 1960, Mr. MacDonald, did you have occasion to observe a demonstration or a near riot that took place on Dexter Avenue on Sunday, March 6th?"

to which ruling this defendant duly and legally excepted. (Tr. 1748-49)

25. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harry W. Kaminsky:

"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?"

to which ruling defendant duly and legally excepted. (Tr. 1755)

[fol. 2117] 26. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harry W. Kaminsky:

"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?"

to which ruling this defendant duly and legally excepted. (Tr. 1755)

27. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, H. M. Price, Sr.:

"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?"

to which ruling this defendant duly and legally excepted. (Tr. 1765-66)

28. For that the trial court erred in overruling this defendant's objection to the folowing question propounded by the plaintiff to the witness, H. M. Price:

"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—?"

to which ruling this defendant duly and legally execpted. (Tr. 1766)

29. For that the trial court erred in overruling this defendant's Motion to strike the following answer of plaintiff's witness, H. M. Price, Sr.:

"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."

to which ruling this defendant duly and legally excepted. (Tr. 1766)

30. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, William M. Parker, Jr.:

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

to which ruling this defendant duly and legally excepted. (Tr. 1770-71)

31. For that the trial court erred in overruling this defendant's objection to the following question propounded [fol. 2118] by the plaintiff to the witness, William M. Parker, Jr.:

"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."

to which ruling this defendant duly and legally excepted. (Tr. 1771)

32. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Horace W. White:

"Q. Did it mean any particular person or persons to you?"

to which ruling this defendant duly and legally excepted. (Tr. 1785)

33. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Horace W. White:

"Q. I will ask you this. If you believe—not saying that you believe or do not believe—but if you believed the material in those paragraphs in this ad, would that affect your opinion of Mr. L. B. Sullivan?"

to which ruling this defendant duly and legally excepted. (Tr. 1785)

34. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Horace W. White:

"Q. In what manner would it affect your opinion?"

to which ruling this defendant duly and legally excepted. (Tr. 1786)

35. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Horace W. White:

"Q. But if you believed the material stated in this ad, would that affect his re-employment?"

to which ruling this defendant duly and legally excepted. (Tr. 1786)

36. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, John R. Matthews:

"Q. Now, where is the first entry in your books which indicated a charge in connection with the incident on March 8th?"

to which ruling this defendant duly and legally excepted. (Tr. 1797-98)

[fol. 2119] 37. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, John R. Matthews:

"Q. Mr. Matthews, do you know of your own knowledge whether there were any other cases in this Court and by this Court I mean the Circuit Court of Montgomery County, Alabama, involving charges arising out of that demonstration on March 8th?"

to which ruling this defendant duly and legally excepted. (Tr. 1803)

38. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, John R. Matthews:

> "Q. Mr. Matthews, do you know of your own knowledge whether Martin Luther King, Jr., was acquitted by a jury in this County on a charge of falsifying his income tax return?"

to which ruling this defendant duly and legally excepted. (Tr. 1803)

39. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, E. Y. Lacy:

> "Q. In the course of your duties, Lt. Lacy, did you have occasion to investigate a bombing which took place in the home of Martin Luther King, Jr., in Montgomery, Alabama?"

to which ruling this defendant duly and legally excepted. (Tr. 1807)

40. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, O. M. Strickland:

> "Q. As connected with the arrest of Martin Luther King, Jr., and state what the circumstances were and what happened on that occasion in your own words."

to which ruling this defendant duly and legally excepted. (Tr. 1814)

41. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, O. M. Strickland:

> "Q. Officer, did you or anyone in your presence on this occasion assault the person of Martin Luther King, Jr.?"

to which ruling this defendant duly and legally excepted. (Tr. 1816)

42. For that the trial court erred in overruling this de- [fol. 2120] fendant's objection to the following question propounded by the plaintiff to the witness, Frank R. Stewart:

> "Q. Would you state the circumstances of the expulsion of nine students from Alabama State College by the State Board of Education?"

to which ruling this defendant duly and legally excepted. (Tr. 1819)

43. For that the trial court erred in overruling this defendant's objection to the admission into evidence of plaintiff's Exhibit No. 364, to which ruling this defendant duly and legally excepted. (Tr. 1820-23)

44. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Frank R. Stewart:

> "Q. Now, Doctor, I want to read one sentence to you and ask you whether it is true. 'In Montgomery, Alabama, after students sang "My Country Tis of Thee" on the State Capitol steps their leaders were expelled from school.' "

to which ruling this defendant duly and legally excepted. (Tr. 1823-24)

45. For that the trial court erred in overruling this defendant's objection to the admission into evidence of plaintiff's Exhibit No. 365, to which ruling this defendant duly and legally excepted. (Tr. 1825-26)

46. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

> "Q. I call your attention, Mr. Sullivan, to the third paragraph in the left hand column of this ad 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 truck loads of police armed with shotguns and tear gas ringed the Alabama State College campus.' I ask you if that statement is true or false."

to which ruling this defendant duly and legally excepted. (Tr. 1829)

47. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

> "Q. Now, Mr. Sullivan, I call your attention to the next sentence in that same paragraph which reads as follows: '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 [fol. 2121] into submission.' Is that statement true or false?"

to which ruling this defendant duly and legally excepted. (Tr. 1830)

48. For that the trial court erred in overruling this defendant's motion to strike the following testimony of the plaintiff, L. B. Sullivan:

> "False, in my opinion it has never happened here in the State of Alabama."

to which ruling this defendant duly and legally excepted. (Tr. 1830)

49. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

> "Q. Is that true or false?"

to which ruling this defendant duly and legally excepted.

50. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

> "Q. . . . I ask you whether the Police Department has, during your term of office, or at any other time

within your knowledge, bombed Dr. King's home or been a party to it or condoned such action?"

to which ruling this defendant duly and legally excepted. (Tr. 1831)

51. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

"Q. Now, I ask you, Mr. Sullivan, whether to your knowledge, it is accurate that they have arrested him seven times—for speeding, loitering and similar offenses?"

to which ruling this defendant duly and legally excepted. (Tr. 1832)

52. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

"Q. Mr. Sullivan, did you have anything at all to do with procuring the indictment of Martin Luther King on a charge of violating income tax laws of the State of Alabama?"

to which ruling this defendant duly and legally excepted. (Tr. 1833)

53. For that the trial court erred in overruling this defendant's objection to the following question propounded by [fol. 2122] the plaintiff to the witness, L. B. Sullivan:

"Q. Did you testify in that case either before the Grand Jury which indicted him, or before the petty jury which tried him?"

to which ruling this defendant duly and legally excepted. (Tr. 1833)

54. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

"Q. Did you testify with regard to the guilt or innocence of the defendant?"

to which ruling this defendant duly and legally excepted. (Tr. 1834)

55. For that the trial court erred in overruling this defendant's motion to strike the following testimony of the plaintiff, L. B. Sullivan:

> "My testimony during the trial was along the lines in response to the question as to whether or not Dr. King could receive a fair trial here in Montgomery."

to which ruling this defendant duly and legally excepted. (Tr. 1836)

56. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

> "Q. Mr. Sullivan, do you consider the statements that I have just read you from this ad, plaintiff's Exhibit No. 347, refer to you and are associated with you?"

to which ruling this defendant duly and legally excepted. (Tr. 1836)

57. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

> "Q. Do you feel that you have been damaged by these statements?"

to which ruling this defendant duly and legally excepted. (Tr. 1837)

58. For that the trial court erred in overruling this defendant's motion to strike the following testimony of the plaintiff, L. B. Sullivan:

> "As a part of the responsibility of the Police Commissioner and the Commissioner of Public Affairs it is our responsibility to maintain law and order here in Montgomery whether it is at the campus or elsewhere. As far as the expulsion of the students is concerned that responsibility rests with the State Department of Education."

[fol. 2123] to which ruling this defendant duly and legally excepted. (Tr. 1841)

59. For that the trial court erred in overruling this defendant's motion to exclude the plaintiff's evidence in this case and in the alternative, this defendant's motion for a directed verdict, to which ruling this defendant duly and legally excepted. (Tr. 1853)

60. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Gershon T. Aronson:

> "Q. On what basis did you satisfy yourself that he was giving you accurate information about the permission to use the names?"

to which ruling this defendant duly and legally excepted. (Tr. 1864)

61. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Gershon T. Aronson:

> "Q. Do you consider that the statement he has in this letter which is identified as Exhibit B attached to the interrogatories which Mr. Embry showed to you and I will quote from it, 'Please be assured that they have all given us permission to use their names in furthering the work of our Committee.' Do you consider that as being authorization to put their names on an ad which is to appear in a national publication?"

to which ruling this defendant duly and legally excepted. (Tr. 1864)

62. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Gershon T. Aronson:

> "Q. The sentence is '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.'

> Now, does your testimony, I take it as a man with over twenty years of experience in reading ads with ambiguous words that the word 'after' means only after in terms of time and has no cause and effect connotation at law."

to which ruling this defendant duly and legally excepted. (Tr. 1868-69)

63. For that the trial court erred in making the following statement with reference to the witness, Gershon T. Aronson, in the presence and hearing of the jury:

> "Well, of course, it probably 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 . . . "

[fol. 2124] to which statement of the Court this defendant duly and legally objected and excepted. (Tr. 1869)

64. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Gershon T. Aronson:

> "Q. And that the same people are 'they' throughout. Is that it?"

to which ruling this defendant duly and legally excepted. (Tr. 1870)

65. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Gershon T. Aronson:

> "Q. But it is sufficiently unclear so that you cannot today give a clear answer as to what it means, isn't it?"

to which ruling this defendant duly and legally excepted. (Tr. 1871)

66. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Gershon T. Aronson:

> "Q. I would like you to tell us if you can, Mr. Aronson, whether that ad—the ad was handed to you on March 23rd and which was published on March 29th,

contained superlative words or phrases as you have just used the term?"

to which ruling this defendant duly and legally excepted. (Tr. 1874)

67. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Gershon T. Aronson:

"Q. I call your attention now to this paragraph which I will read to you. 'If any advertiser makes inaccurate or misleading statements and refuses to correct them the advertising is declined. Further if The Times receives complaints from its readers which, upon investigation, convince the Advertising Acceptability Department that the business practices of the firm are unfair or open to question, the Times declines further announcements of that firm.' "

to which ruling this defendant duly and legally excepted. (Tr. 1875)

68. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, D. Vincent Redding:

"Q. Did you consider that those people were sufficiently familiar with the events in Montgomery, Alabama, purportedly described in that ad so that you [fol. 2125] could rely on what was contained in the ad about Montgomery?"

to which ruling this defendant duly and legally excepted. (Tr. 1889)

69. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harding Bancroft:

"Q. But no check was made into the statements contained in the ad prior to its publication. Is that correct?"

to which ruling this defendant duly and legally excepted. (Tr. 1907)

70. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harding Bancroft:

> "Q. Is it now the position of The New York Times that with the exception of the statement that 'the dining hall was padlocked in an attempt to starve them into submission' that the other statements in the ad that we complain about in this complaint are 'substantially correct' to use the phrase in this letter?"

to which ruling this defendant duly and legally excepted. (Tr. 1908)

71. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harding Bancroft:

> "Q. Now, referring to Exhibit C in the letter demanding a retraction, there are two paragraphs in the ad which are quoted and it is stated in the letter that those are false and defamatory. Then, referring to Exhibit D, your attorneys wrote back and they said that the statements following their investigation—that the statements 'are substantially correct with the sole exception that we find no justification for the statement that the dining hall of the State College was padlocked in an attempt to starve them into submission.' Now what I want to know, sir, is simply this, is it still the position of The New York Times that with one exception that the statements are substantially correct?"

to which ruling this defendant duly and legally excepted. (Tr. 1909)

72. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harding Bancroft:

> "Q. Then you would change it to that extent that you are now uncertain as to whether it is substantially correct. Is that your testimony?"

to which ruling this defendant duly and legally excepted. (Tr. 1910)

[fol. 2126] 73. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harding Bancroft:

> "Q. The question was that there has been a change in that the position of the Times since April 15, 1960, namely, that at that time they said these other statements are 'substantially correct' and now you say on behalf of the Times that the Times is uncertain whether those statements are substantially correct."

to which ruling this defendant duly and legally excepted. (Tr. 1910)

74. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harding Bancroft:

> "Q. What does the New York Times say? They are one of the defendants in this case. Does the Times say it is substantially correct or not?"

to which ruling this defendant duly and legally excepted. (Tr. 1911-12)

75. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harding Bancroft:

> "Q. The question is whether the New York Times says that these matters with the exception of the padlocking statement—does the Times say that they are true or does the Times say that they are false?"

to which ruling this defendant duly and legally excepted. (Tr. 1912)

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

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

to which portion of such oral charge of the Court this defendant duly and legally excepted. (Tr. 1951 and 1956)

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

> "We can say as part of the law in this case that a publication is libelous per se when they are such as to degrade the plaintiff in the estimation of his friends and the people of the place where he lives, as injure him in his public office, or impute misconduct 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."

[fol. 2127] to which portion of such oral charge of the Court this defendant duly and legally excepted. (Tr. 1952 and 1956)

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

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

to which portion of such oral charge of the Court this defendant duly and legally excepted. (Tr. 1953 and 1957)

79. For that the trial court erred in its order, judgment, or decree overruling this defendant's motion for a new trial. (Tr. 2057 D)

80. For that the trial court erred in denying this defendant's motion for a new trial. (Tr. 2057 D)

81. For that the trial court erred in entering its order, judgment or decree denying this defendant's motion for a new trial. (Tr. 2057D)

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

> "T.1. I charge you, gentlemen of the jury, that the advertisement complained of in plaintiff's complaint is not libelous per se, that is to say, the same is not libelous as a matter of law." Refused, Jones Judge (Tr. 1957K)

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

> "T.2. I charge you, gentlemen of the jury, that the advertisement complained of in plaintiff's complaint is not libelous as a matter of law, and if, after reading that advertisement, you find that it was not degrading and would not tend to injure the plaintiff's reputation, then I further charge you that such advertisement is not in fact libelous and in that event your verdict must be for the defendant, The New York Times Company, a corporation." Refused, Jones Judge. (Tr. 1957 K)

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

> [fol. 2128] "T.3. I charge you, gentlemen of the jury, that if you are reasonably satisfied from the evidence that the publication complained of by plaintiff in his complaint is false, then I further charge you that not every false publication is libelous as a matter of law, and that to make such publication libelous you must further find from the evidence that by reading such publication and giving to the words contained therein their natural and ordinary meaning, that the same is degrading, and would tend to injury the plaintiff's reputation by imputing to him some incapacity or lack of due qualification to fill the public office held by

plaintiff or by imputing to him some positive past misconduct which injuriously affects him in his public office or the holding of principles which are hostile to the maintenance of government." Refused, Jones Judge. (Tr. 1957 K)

85. For that the trial court erred in refusing to give the following written instruction 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. (Tr. 1957 K)

86. For that the trial court erred in refusing to give the following written instruction 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 from the evidence that damage to plaintiff's reputation would follow as a natural and probable result of the publication of said advertisement, and in this connection it must be kept in mind that the damage claimed and with which you, the jury, are primarily concerned is injury to the reputation; and I further charge you that in the absence of such injury, even if you find from the evidence that the advertisement caused plaintiff notoriety and

embarrassment, your verdict must be for the defendant, The New York Times Company, a corporation." Refused, Jones, Judge. (Tr. 1057 L)

87. For that the trial court erred in refusing to give the following written instruction 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, [fol. 2129] your verdict should be for nominal damages only." Refused, Jones Judge. (Tr. 1957 L)

88. For that the trial court erred in refusing to give the following written instruction 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 (Tr. 1957 L)

89. For that the trial court erred in refusing to give the following written instruction 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. (Tr. 1957 L)

90. For that the trial court erred in refusing to give the following written instruction to the jury in this cause 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. (Tr. 1957 L–1957 M)

91. For that the trial court erred in refusing to give the following written instruction 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 (Tr. 1957 M)

92. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at [fol. 2130] 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. (Tr. 1957 M)

93. For that the trial court erred in refusing to give the following written instruction 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 corporation, 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 (Tr. 1957 M)

94. For that the trial court erred in refusing to give the following written instruction 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. (Tr. 1957 M)

95. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the 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. (Tr. 1957 M–1957 N)

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

[fol. 2131] "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 York Times Company, a corporation, in this case under Count One of plaintiff's complaint as last amended." Refused, Jones Judge. (Tr. 1957 N)

97. For that the trial court erred in refusing to give the following written instruction 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 (Tr. 1957 N)

98. For that the trial court erred in refusing to give the following written instruction 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. (Tr. 1957 N)

99. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this 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. (Tr. 1957 N)

100. For that the trial court erred in refusing to give the following written instruction 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. (Tr. 1957 N)

101. For that the trial court erred in refusing to give the following written instruction 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. (Tr. 1957 N)

[fol. 2132] 102. For that the trial court erred in refusing to give the following written instruction 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. (Tr. 1957 N–1957 O)

103. For that the trial court erred in refusing to give the following written instruction 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. (Tr. 1957 O)

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

"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. (Tr. 1957 O)

105. For that the trial court erred in refusing to give the following written instruction 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. (Tr. 1957 O)

106. For that the trial court erred in refusing to give the following written instruction 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. (Tr. 1957 O)

107. For that the trial court erred in refusing to give the [fol. 2133] following written instruction 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, Judge Jones. (Tr. 1957 O)

108. For that the trial court erred in refusing to give the following written instruction to the jury in this cause 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 return a verdict in favor of all the defendants." Refused, Jones Judge. (Tr. 1957 O)

109. For that the trial court erred in entering its judgment in behalf of plaintiff in this cause. (Tr. 1958)

110. For that the trial court erred in entering its final judgment of November 3, 1960, in favor of plaintiff and against this defendant in this cause. (Tr. 1958)

111. For that the trial court erred in entering its judgment of November 3, 1960, based upon the verdict of the jury in this cause, in favor of plaintiff and against this defendant. (Tr. 1958)

112. For that the trial court erred in entering its final judgment against this defendant in this cause. (Tr. 1958)

113. For that the trial court erred in entering its final judgment of November 3, 1960, in favor of plaintiff and against this defendant in this cause. (Tr. 1958)

114. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 79, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 197)

115. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 80, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 197)

[fol. 2134] 116. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 81, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 197)

117. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 82, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 197)

118. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 83, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 197)

119. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 84, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 197)

120. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-

duction in evidence of, plaintiff's Exhibit No. 85, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 198)

121. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 86, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 198)

122. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 87, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 198)

123. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 88, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 198)

124. For that the trial court erred in overruling this defendant's objections to and thereby allowing the intro- [fol. 2135] duction in evidence of, plaintiff's Exhibit No. 89, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 198)

125. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 90, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 198)

126. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 91, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 201)

127. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 92, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 204)

128. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 93, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 205)

129. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 94, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 206)

130. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 136, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 248)

131. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 138, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 250)

132. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 174, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 264)

[fol. 2136] 133. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 175, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 265)

134. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 176, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 269)

135. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-

duction in evidence of, plaintiff's Exhibit No. 185, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

136. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 186, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

137. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 187, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

138. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 188, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

139. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 189, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

140. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 190, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

141. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 191, to which [fol. 2137] ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

142. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 192, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

143. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 193, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

144. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 194, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

145. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 195, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

146. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 196, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

147. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 197, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

148. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 198, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

149. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 199, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

150. For that the trial court erred in overruling this [fol. 2138] defendant's objections to, and thereby allowing

the introduction in evidence of, plaintiff's Exhibit No. 200, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

151. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 201, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

152. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 201, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

153. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 202, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

154. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 203, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

155. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 204, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

156. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 205, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

157. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 206, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

158. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 207, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

[fol. 2139] 159. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 208, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

160. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 209, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

161. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 210, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

162. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 211, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

163. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 212, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

164. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 213, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

165. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-

duction in evidence of, plaintiff's Exhibit No. 214, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

166. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 215, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

167. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 216, to which [fol. 2140] ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

168. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 217, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

169. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 218, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

170. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 219, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

171. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit 220, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

172. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 221, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

173. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 222, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

174. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 223, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

175. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 224, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

176. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro- [fol. 2141] duction in evidence of plaintiff's Exhibit No. 225, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

177. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 226, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

178. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 227, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

179. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 228, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

180. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-

duction in evidence of, plaintiff's Exhibit No. 229, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

181. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 230, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

182. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 231, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

183. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 232, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

184. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 237, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 289)

[fol. 2142] 185. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 239, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 291)

186. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 240, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

187. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 241, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

188. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 242, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

189. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 243, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

190. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 244, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

191. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 245, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

192. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 246, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

193. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-
[fol. 2143] duction in evidence of, plaintiff's Exhibit No. 247, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

194. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 248, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

195. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-

duction in evidence of, plaintiff's Exhibit No. 249, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

196. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 250, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

197. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 251, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

198. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 252, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

199. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 253, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

200. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 254, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

201. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 255, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

[fol. 2144] 202. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 256, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

203. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 257, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

204. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 258, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

205. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 259, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

206. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 260, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

207. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 261, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

208. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 262, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

209. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 263, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

210. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-

duction in evidence of, plaintiff's Exhibit No. 264, to which [fol. 2145] ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

211. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 265, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

212. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 310, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 487)

213. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 316, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

214. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 317, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

215. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 318, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

216. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 319, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

217. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 320, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

218. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 321, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

219. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro- [fol. 2146] duction in evidence of, plaintiff's Exhibit No. 322, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

220. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 323, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

221. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 324, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

222. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 325, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

223. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 326, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

224. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 327, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

225. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-

duction in evidence of, plaintiff's Exhibit No. 328, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

226. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 329, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

227. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 330, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

[fol. 2147] 228. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 331, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

229. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 332, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

230. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 333, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

231. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 334, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

232. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 335, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

233. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 336, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553).

234. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 337, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

235. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 338, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

236. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 339, to which [fol. 2148] ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

237. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 340, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

238. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 341, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

239. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 342, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

240. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-

duction in evidence of, plaintiff's Exhibit No. 343, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

241. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 344, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

242. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 345, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

243. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 346, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

244. For that the trial court erred in entering its order, judgment or decree of the 9th day of June, 1960, granting plaintiff's motion to produce. (Tr. 29)

245. For that the trial court erred in overruling this defendant's objections to being required to answer plaintiff's interrogatory No. 8 propounded to this defendant. (Tr. 20, 51, 53)

[fol. 2149] 246. For that the trial court erred in overruling this defendant's objections to being required to answer plaintiff's interrogatory No. 9 propounded to this defendant. (Tr. 21, 51, 53)

247. For that the trial court erred in overruling this defendant's objections to being required to answer plaintiff's interrogatory No. 12 propounded to this defendant (Tr. 21, 53, 52)

248. For that the trial court erred in overruling this defendant's objections to being required to answer plaintiff's interrogatory No. 18 propounded to this defendant. (Tr. 22, 23, 52, 53)

249. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

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

to which ruling this defendant duly and legally excepted. (Tr. 122)

250. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

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

to which ruling this defendant duly and legally excepted. (Tr. 123)

251. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

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

to which ruling this defendant duly and legally excepted. (Tr. 123)

252. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

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

to which ruling this defendant duly and legally excepted. (Tr. 124-125)

[fol. 2150] 253. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

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

to which ruling this defendant duly and legally excepted. (Tr. 126)

254. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

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

to which ruling this defendant duly and legally excepted. (Tr. 134)

255. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

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

to which ruling this defendant duly and legally excepted. (Tr. 137)

256. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

> "Q. Mr. Faber, have you now during the course of your cross examination and direct examination detailed all of the services performed by Alabama stringers for The New York Times?"

to which ruling this defendant duly and legally excepted. (Tr. 176)

257. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

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

to which ruling this defendant duly and legally excepted. (Tr. 190)

[fol. 2151] 258. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

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

to which ruling this defendant duly and legally excepted. (Tr. 191)

259. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

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

to which ruling this defendant duly and legally excepted. (Tr. 191)

260. For that the trial court erred in sustaining plaintiff's objections to this defendant's Exhibits 1 through 160 offered in support of this defendant's motion for new trial,

to which ruling this defendant duly and legally excepted. (Tr. 1966-1988)

261. For that the trial court erred in sustaining plaintiff's objections to this defendant's evidence offered in support of its motion for new trial, to which ruling this defendant duly and legally excepted. (Tr. 1960A)

262. For that the trial court erred in denying to this defendant the right to adduce evidence in support of grounds 182 and 183 of its motion for a new trial in this cause, to which ruling this defendant duly and legally excepted. (Tr. 1963, 1964, 1966)

263. For that the trial court erred in sustaining objections of the plaintiff to the introduction into evidence of defendant's Exhibits 1 through 160 to this defendant's motion for new trial, to which ruling this defendant duly and legally excepted. (Tr. 1966)

264. For that the trial court erred in sustaining plaintiff's objections to the following questions propounded by this defendant to the witness, John McCabe:

> "Q. And if an expense statement shows an overnight stop in a certain town, it would not necessarily mean that that person conducted any activity in the way of news gathering if he were a reporter for The New [fol. 2152] York Times in that place, would it?"

to which ruling this defendant duly and legally excepted. (Tr. 449)

265. For that the trial court erred in sustaining plaintiff's objections to the following questions propounded by this defendant to the witness, John McCabe:

> "Q. Would that expense account tell you whether or not he was gathering news in that place or is there an absence of a showing on there as to what he was doing?"

to which ruling this defendant duly and legally excepted. (Tr. 453, 454)

266. For that the trial court erred in sustaining plaintiff's objections to the following question propounded by this defendant to the witness, John McCabe:

> "Q. From your experience and your connection with and your familiarity with expense statements of The New York Times and looking at this whole document taken together with that item you have just read, would that indicate to you that John Popham was conducting any news gathering activities in Huntsville, Alabama?"

to which ruling this defendant duly and legally excepted. (Tr. 456, 457)

267. For that the trial court erred in sustaining plaintiff's objections to the following question propounded by this defendant to the witness, John McCabe:

> "Q. From your experience and your connection with and your familiarity with expense statements of The New York Times and looking at this whole document taken together with that item you have just read, would that indicate to you that John Popham was conducting any news gathering activities in Huntsville, Alabama, relating to plaintiff's Exhibits Nos. 93, 98, 99, 100 and 101?"

to which ruling this defendant duly and legally excepted. (Tr. 457)

268. For that the trial court erred in sustaining plaintiff's objections to this defendant's Exhibit No. 156 offered in support of this defendant's motion for new trial, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 1966, 1997)

269. For that the trial court erred in sustaining plaintiff's objections to this defendant's Exhibit No. 157 offered in support of this defendant's motion for new trial, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 1966, 1998)

270. For that the trial court erred in sustaining plaintiff's objections to this defendant's Exhibit No. 158 offered

[fol. 2153] in support of this defendant's motion for new trial, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 1966, 1998)

271. For that the trial court erred in sustaining plaintiff's objections to this defendant's Exhibit No. 159 offered in support of this defendant's motion for new trial, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 1966, 1998)

272. For that the trial court erred in sustaining plaintiff's objections to this defendant's Exhibit No. 160 offered in support of this defendant's motion for new trial, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 1966, 1998)

273. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying the motion of this defendant as amended to quash service of process upon it in this case, and in so doing deprived this defendant of its property without due process of law contrary to the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 40)

274. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon Don McKee as an alleged agent of this defendant, and in so doing deprived this defendant of its property without due process of law contrary to the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 40)

275. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying the Motion as amended of this defendant to quash service of process upon it in holding in said order, judgment or decree that this defendant had made a general appearance in this cause, and in so doing deprived this defendant of its property without due process of law contrary to the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 40)

276. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defen-

dant's Motion as amended to quash service of process upon it had under the provisions of Title 7, Section 199(1) Code of Alabama, of 1940, and holding therein that service of process on this defendant was valid under the provisions of said Title 7, Section 199(1) Code of Alabama, 1940, and in [fol. 2154] so doing deprived this defendant of its property without due process of law contrary to the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 40)

277. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon it in holding in said order, judgment or decree that this defendant was "doing business" in the State of Alabama, and in so doing deprived this defendant of its property without due process of law contrary to the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 40)

278. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying the Motion of this defendant as amended, to quash service of process upon it in this case, and in so doing denied this defendant the equal protection of the law as guaranteed to it by Amendment Fourteen to the Constitution of the United States. (Tr. 40)

279. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon Don McKee as an alleged agent of this defendant, and in so doing denied this defendant the equal protection of the law as guaranteed to it by Amendment Fourteen to the Constitution of the United States. (Tr. 40)

280. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying the Motion as amended of this defendant to quash service of process upon it in holding in said order, judgment or decree that this defendant had made a general appearance in this cause, and in so doing denied this defendant the equal protection

of the law as guaranteed to it by Amendment Fourteen to the Constitution of the United States. (Tr. 40)

281. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon it had under the provisions of Title 7, Section 199(1), Code of Alabama of 1940, and holding therein that service of process on this defendant was valid under the provisions of said Title 7, Section 199(1) Code of Alabama, 1940, and [fol. 2155] in so doing denied this defendant the equal protection of the law as guaranteed to it by Amendment Fourteen to the Constitution of the United States. (Tr. 40)

282. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon it in holding in said order, judgment or decree that this defendant was "doing business" in the State of Alabama, and in so doing denied this defendant the equal protection of the law as guaranteed to it by Amendment Fourteen to the Constitution of the United States. (Tr. 40)

283. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying the Motion of this defendant, as amended, to quash service of process upon it in this case, and in so doing placed an improper restraint on freedom of the press in violation of the First and Fourteenth Amendments to the Constitution of the United States. (Tr. 40)

284. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon Don McKee as an alleged agent of this defendant, and in so doing placed an improper restraint on freedom of the press in violation of the First and Fourteenth Amendments to the Constitution of the United States. (Tr. 40)

285. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying the Motion as amended of this defendant to quash service of process upon it in holding in said order, judgment or decree that

this defendant had made a general appearance in this cause, and in so doing placed an improper restraint on freedom of the press in violation of the First and Fourteenth Amendments to the Constitution of the United States. (Tr. 40)

286. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon it had under the provisions of Title 7, Section 199(1), Code of Alabama of 1940, and holding therein that service of process on this defendant was valid under the provisions of said Title 7, Section 199(1) Code of Alabama, 1940, and [fol. 2156] in so doing placed an improper restraint on freedom of the press in violation of the First and Fourteenth Amendments to the Constitution of the United States. (Tr. 40)

287. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon it in holding in said order, judgment or decree that this defendant was "doing business" in the State of Alabama, and in so doing placed an improper restraint on freedom of the press in violation of the First and Fourteenth Amendments to the Constitution of the United States. (Tr. 40)

288. For that the trial court erred in overruling this defendant's demurrers as last amended to plaintiff's complaint and in thereby holding that said complaint stated a cause of action deprived this defendant of its property without due process of law in contravention of the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 86)

289. For that the trial court erred in overruling this defendant's demurrers as last amended to plaintiff's complaint and in thereby holding that said complaint stated a cause of action abridged freedom of the press in contravention of the provisions of the First and Fourteenth Amendments to the Constitution of the United States. (Tr. 86)

290. For that the trial court erred in overruling this defendant's demurrers as last amended to Count One of

plaintiff's complaint and in thereby holding that said Count One stated a cause of action abridged freedom of the press in contravention of the provisions of the First and Fourteenth Amendments to the Constitution of the United States. (Tr. 86)

291. For that the trial court erred in overruling this defendant's demurrers as last amended to Count Two of plaintiff's complaint and in thereby holding that said Count Two stated a cause of action abridged freedom of the press in contravention of the provisions of the First and Fourteenth Amendments to the Constitution of the United States. (Tr. 86)

292. For that the trial court erred in overruling this defendant's demurrers as last amended to Count One of [fol. 2157] plaintiff's complaint and in thereby holding that said Count One stated a cause of action deprived this defendant of its property without due process of law in contravention of the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 86)

293. For that the trial court erred in overruling this defendant's demurrers as last amended to Count Two of plaintiff's complaint and in thereby holding that said Count Two stated a cause of action deprived this defendant of its property without due process of law in contravention of the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 86)

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

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

and in so instructing the jury the trial court deprived this defendant of its property without due process of law in contravention of the provisions of Amendment Fourteen to the Constitution of the United States, to which portion of such oral charge of the Court this defendant duly and legally excepted. (Tr. 1953, 1957)

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

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

and in so instructing the jury the trial court denied to this defendant the equal protection of the law as guaranteed to it by the provisions of Amendment Fourteen to the Constitution of the United States, to which portion of such oral charge of the Court this defendant duly and legally excepted. (Tr. 1953, 1957)

[fol. 2158] 296. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

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

and in so instructing the jury the trial court imposed an improper restraint or abridged freedom of the press contrary to the provisions of Amendments One and Fourteen to the Constitution of the United States, to which portion of such oral charge of the Court this defendant duly and legally excepted. (Tr. 1953, 1957)

297. For that the trial court erred in denying this defendant's motion for new trial on those grounds of said motion numbered 150 and 151 stating that said verdict was so excessive that the same was the result of bias, passion or prejudice against this defendant and in so denying said motion the trial court deprived this defendant of its property without due process of law in contravention of the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 2057D)

298. For that the trial court erred in denying this defendant's motion for new trial on those grounds of said motion numbered 150 and 151 stating that said verdict was so excessive that the same was the result of bias, passion or prejudice against this defendant and in so denying said motion the trial court abridged or placed an improper restraint on freedom of the press contrary to the provisions of Amendments One and Fourteen to the Constitution of the United States. (Tr. 2057 D)

299. For that the trial court erred in denying this defendant's motion for new trial on those grounds of said motion numbered 150 and 151 stating that said verdict was so excessive that the same was the result of bias, passion or prejudice against this defendant and in so denying said motion the trial court denied this defendant equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States. (Tr. 2057 D)

[fol. 2159] 300. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

> "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

and in so refusing deprived this defendant of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States. (Tr. 1957 M)

301. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"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.

and in so refusing deprived this defendant of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States. (Tr. 1957 N)

302. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"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.

and in so refusing deprived this defendant of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States. (Tr. 1957 N)

303. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"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.

and in so refusing denied this defendant the equal pro-[fol. 2160] tection of the law as guaranteed to it by the Fourteenth Amendment to the Constitution of the United States. (Tr. 1957M)

304. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"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.

and in so refusing denied this defendant the equal protection of the law as guaranteed to it by the Fourteenth Amendment to the Constitution of the United States. (Tr. 1957N)

305. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"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.

and in so refusing denied this defendant the equal protection of the law as guaranteed to it by the Fourteenth Amendment to the Constitution of the United States. (Tr. 1957 N)

306. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"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.

and in so refusing abridged or imposed an improper restraint of the freedom of the press in contravention of Amendments One and Fourteen to the Constitution of the United States. (Tr. 1957 M)

307. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"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 de- [fol. 2161] fendant, The New York Times Company, a corporation, in this case under Count One of plaintiff's complaint." Refused, Jones Judge.

and in so refusing abridged or imposed an improper restraint of the freedom of the press in contravention of Amendments One and Fourteen to the Constitution of the United States. (Tr. 1957 M)

308. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"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.

and in so refusing abridged or imposed an improper restraint of the freedom of the press in contravention of Amendments One and Fourteen to the Constitution of the United States. (Tr. 1957 N)

309. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

> "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.

and in so refusing denied this defendant the equal protection of the law as guaranteed to it by the Fourteenth Amendment to the Constitution of the United States. (Tr. 1957 N)

310. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

> "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

and in so refusing abridged or imposed an improper restraint of the freedom of the press in contravention of Amendments One and Fourteen to the Constitution of the United States. (Tr. 1957 N)

[fol. 2162] 311. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

> "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.

and in so refusing deprived this defendant of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States. (Tr. 1957 N)

312. For that the trial court erred in overruling this defendant's demurrers as last amended to plaintiff's complaint and in thereby holding that said complaint stated a cause of action denied to this defendant equal protection of the laws in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States. (Tr. 86)

313. For that the trial court erred in overruling this defendant's demurrers as last amended to Count One of plaintiff's complaint and in thereby holding that said Count One stated a cause of action denied to this defendant equal protection of the laws in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States. (Tr. 86)

314. For that the trial court erred in overruling this defendant's demurrers as last amended to Count Two of plaintiff's complaint and in thereby holding that said Count Two stated a cause of action denied to this defendant equal protection of the laws in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States. (Tr. 86)

Beddow, Embry & Beddow, T. Eric Embry, Attorneys for Appellant, The New York Times Company, a Corporation.

[fol. 2163] Certificate of Service (omitted in printing).

[fol. 2165]

IN THE SUPREME COURT OF ALABAMA

No. .....

THIRD DIVISION

THE NEW YORK TIMES COMPANY, A Corporation, RALPH D. ABERNATHY, FRED L. SHUTTLESWORTH, S. S. SEAY, SR., AND J. E. LOWERY, Appellants,

VS.

L. B. SULLIVAN, Appellee.

ASSIGNMENTS OF ERROR OF RALPH D. ABERNATHY, ET AL.

Come the Appellants, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery in this cause and say there is manifest error in the trial of this cause and manifest error in the record of the trial of this cause and as grounds for such error set down and assign the following, separately and severally:

1. For that the trial court erred in overruling these defendants' demurrers and amended demurrers to plaintiff's Complaint. (Tr. 86)

2. For that the trial court erred in its ruling refusing to allow these defendants to propound the following question to the jury venire on voir dire:

> "1. 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 their cause of action are not accurate or correct but the evidence discloses that the advertisement did not refer to the plaintiffs, do you entertain any conviction, opinion, or predisposition of mind which would compel you to return a verdict in favor of the plaintiffs, or would prevent your returning a verdict in favor of the defendant, the New York Times Company, a corporation?"