

medical authorities do not exercise censorship over The New York Times columns. The Times applies its judgment to the information and makes its own decisions. The Times does not accept the advertising of any preparation which might lead to self-diagnosis or self-medication of any serious condition or illness. The advertising, even of acceptable preparations, is carefully scrutinized. The Times does not accept medical advertising which contains testimonials, questionable "before and after" illustrations, or any copy which goes too far in indicating that doctors "prescribe" or recommend any preparation for a stated illness or condition. The Times does not accept the advertising of radio programs or broadcasts of non-acceptable medical preparations. The Times does not accept the advertising of preparations which may be harmless in themselves but which either in their newspaper advertising copy or on their labels or in their descriptive pamphlets make grossly unwarranted claims. As a general policy, The Times does not permit racial or religious discrimination in its advertising col [fol. 1720] umns." The New York Times. "All The News That's Fit to Print." April 1, 1960.

Mr. Nachman: If you maintain that the advertisement which is the basis of this suit was "proffered to the Times by responsible persons," give the name and address of each such person.

Mr. Steiner: See answer to preceding interrogatory numbered 2.

Mr. Nachman: Please state the number of issues of the March 29, 1960, edition of The New York Times which were sold and distributed and give the geographical extent of such sale or distribution. Did The New York Times initiate, by mailing or otherwise arranging for shipment, the distribution of issues of the March 29, 1960, New York Times in the City of Montgomery and State of Alabama?

Mr. Steiner: The number of issues of March 29, 1960 were approximately 650,000 and were given national distribution. Those issues sold or distributed in the City of Montgomery, State of Alabama, were sold or distributed pursuant to orders placed with The New York Times by wholesale or retail dealers or mailed to subscribers who had ordered subscriptions from The New York Times Company and the same were either mailed or otherwise shipped

from New York City pursuant to said orders or orders for subscriptions. The issues distributed in Alabama totaled approximately 394 copies. Of these approximately 35 copies went to Montgomery County.

Mr. Nachman: Has The New York Times accepted for publication any other advertisements from the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South," other than the advertisement which appeared in the March 29, 1960, issue of The New York Times? If so, attach to your answer to this interrogatory such issue or issues of the New York Times.

Mr. Steiner: No.

Mr. Nachman: Give all of the facts in your possession which tend in any manner to substantiate the matter quoted in Interrogatory No. 12, and include with this answer the names of persons, and if documentary substantiation is claimed, true and correct copies of such documents.

[fol. 1721] Mr. Steiner: See answers to interrogatories 4 and 12 herein. I read that from the supplemental answers.

Mr. Nachman: For the Record, that would be the McKee telegram and the Sitton memoranda. We offer these in evidence, if the Court please.

(Interrogatories to Defendant, The New York Times Company and Answers and Supplemental Answers to the Interrogatories in the Case of L. B. Sullivan, Plaintiff, versus The New York Times Company, a Corporation, et al., Defendants, in the Circuit Court of Montgomery County, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 348.)

[fol. 1722] GROVER C. HALL, JR., having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

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

Q. Will you state your name, please?

A. Grover C. Hall, Jr.

Q. You are the editor of the Montgomery Advertiser?

A. Yes, sir.

Q. How long have you occupied that position?

A. Since 1947.

Q. Mr. Hall, have you read the advertisement which has been introduced into evidence and identified as Plaintiff's Exhibit No. 347 which I am now showing you?

A. Yes, sir.

Q. I direct your attention to the third paragraph in the left hand column of that exhibit which is the paragraph beginning, "In Montgomery, Alabama, after students sang "My Country, 'Tis of Thee" on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College campus. When the entire student body protested to State authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission." I ask you to look at that paragraph if you will.

A. Yes, sir.

Q. You are familiar with it?

A. Yes.

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

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

Mr. Nachman: I am through.

Mr. Embry: Your Honor, we object to that question on the grounds that it invades the province of the jury and it [fol. 1723] calls for an ultimate inquiry into fact that the jury is to inquire into in this case and it is incompetent, irrelevant and immaterial and it calls for an undisclosed mental operation of this witness and it calls for an unauthorized mental conclusion on the part of this witness. The fact that he is asking about is a fact that is addressed entirely to the jury in this case. It is a fact for the jury to decide, Your Honor. We object to it on these grounds.

Lawyer Crawford: We make the same objection.

The Court: You join in the objection?

Lawyer Crawford: Yes, Your Honor. We join in the

same objection with the same grounds as to these other defendants.

Mr. Nachman: Your Honor, may I be heard on that question?

The Court: Well, I was about to rule with you and I might change my mind—

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

The Court: Go ahead.

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

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

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

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

Mr. Embry: We except, Your Honor.

Lawyer Crawford: We also would like to except to the [fol. 1724] Court's ruling in behalf of the other defendants, Your Honor.

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

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

A. Please re-state the question.

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

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

The Court: Same ruling.

Mr. Embry: We except.

Lawyer Crawford: We except.

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

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

Q. The Commissioners of the City.

A. Yes, sir.

Q. Is that the City of Montgomery, Alabama?

A. Yes, sir.

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

Mr. Embry: We object to that question, Your Honor. It invades the province of the jury and it calls for an unauthorized conclusion on the part of this witness and for an undisclosed mental operation. It is speculative, it invades the province of the jury and the question addressed to the witness is the question of ultimate inquiry of fact to be addressed to the jury in the case, if the Court please, and not the opinion of a person brought in here to testify what his impression is or what he thinks or what he speculates or how it might affect him if he believed it is pure speculation, if the Court please. It is a question of fact adduced from that witness stand as to what it may [fol. 1725] or may not have done—

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

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

Mr. Embry: We except, Your Honor.

Lawyer Crawford: We except, Your Honor.

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

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

The Court: Motion denied.

Mr. Embry: We except.

Lawyer Crawford: We except.

Mr. Nachman: No further questions, if the Court please.

Cross examination.

By Mr. T. Eric Embry:

Q. Mr. Hall, where did you first read this ad?

A. In The New York Times.

Q. On what date and on what occasion, sir?

A. Well, I am unable to say on that. I am unable to say precisely how it came to be on my desk but the full page ad was brought to me by some source.

Q. Did you have the issue of the March 29th newspaper before you when you read this ad or was this ad physically detached from the balance of the newspaper?

A. My recollection is that it was detached. A single sheet.

Q. Did Mr. Nachman leave it there on your desk?

A. Well, no. I have no recollection of that whatsoever.

Q. Do you know who brought it?

[fol. 1726] A. No. I do not know who brought it.

Q. Is it not a fact that Mr. Nachman's firm of Steiner, Crum and Baker represents your newspaper over there?

A. That is correct, sir.

Q. And they have so represented your paper for a good long while?

A. That's correct, sir.

Q. And it was just found on your desk and you—

A. Oh, I am not saying that it was left there like a baby on a door step. I just don't remember what person brought it to me. It didn't come through the mail but it was brought by hand.

Q. You don't know the identity of the person who brought it there?

A. I don't recall that. No, sir.

Q. It could have been Mr. Nachman or it could have

been Mr. Baker or someone else. You don't actually know.

A. It is possible but I have no recollection of that.

Q. Mr. Nachman talked to you about it after you read it, did he not?

A. I have no recollection when my first conversation with Mr. Nachman was about this case.

Q. And you, I believe, gave it quite some considerable publicity by news writing or editorial writings in your newspaper, did you not?

A. Yes, sir. I wrote an editorial about the ad within a few days after receiving it.

Q. In The Montgomery Advertiser.

A. Yes.

Q. Do you know the date or about when you wrote that editorial?

A. Well, it so happens that I got it out of the files today and for that reason I am able to tell you.

Q. All right, sir. Please tell me.

A. It was April 7th.

Q. After the 29th day of March. They were both in 1960.

A. Yes.

Q. Now, you say that when you read this recitation in the advertisement and I quote, "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, [fol. 1727] and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission," and I believe Mr. Nachman referred you to another paragraph which I will take up separately—you say that you tell these gentlemen of the jury that that called to your mind or associated to you in your mind the City Government of the City of Montgomery?

A. Yes, with reference to the phrase about starvation. The other didn't hit me with any particular force.

Q. In other words, this part—I will ask you if this is what you are saying—"When the entire student body protested to state authorities by refusing to re-register, their

dining hall was padlocked in an attempt to starve them into submission," and that associated in your mind, the statement that I just quoted, with the City Government of the City of Montgomery. Is that correct?

A. That's correct because—

Q. I didn't ask you why, Mr. Hall. I just asked you if that's what it did to you in your mind.

A. Well, I indicated—

Mr. Nachman: Your Honor, we object to that. We think the witness has a right to answer the question—

Mr. Embry: And I think I have a right to question him too on cross examination, Your Honor, and—

The Court: Well, you may go into it on re-direct examination. Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Now, Mr. Hall, I believe you stated on direct examination that in turn that associated in your mind by that reference—that caused your mind—that associated in your mind or called to your mind the City Government and that in turn called to your mind the Commissioners and that in turn called your mind to Mr. Sullivan. Is that correct, sir?

A. Well, I haven't made any reference to Mr. Sullivan. [fol. 1728] Q. Did it associate in your mind this statement that we have just read—

A. I associated it with the City Government since they are responsible for good order in this community and now that you ask it I would naturally think a little more about the police Commissioner because his responsibility is exclusively with the constabulary.

Q. That's what came to your mind when you read, "When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

A. That's right.

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

Cross examination.

By Lawyer Crawford:

Q. Mr. Hall, you are a publisher of The Montgomery Advertiser. Is that correct?

A. No.

Q. What are your duties?

A. I am editor and Vice-President.

Q. As an editor and Vice-President of a newspaper you would have occasion to do more reading than the average man. Isn't that right?

A. You mean newspapers?

Q. Any matter. Particularly newspapers.

A. I have the responsibility to do it.

Q. You do quite a bit of reading, do you not?

A. Yes.

Q. Would you say in your opinion that the reading you do is more than the average layman within the City of Montgomery?

A. Yes.

Q. Then, of course, your opinion as to the ad is an expert opinion. Is that correct, sir?

A. Well, I would hesitate to claim that distinction for myself.

Q. Well, Mr. Hall, you say—

A. I am a professional newspaper man.

Q. But you do more reading than the average layman, do you not?

[fol. 1729] A. Yes.

Q. Because your job calls upon you to do so.

A. Yes.

Q. And, of course, interpretation of articles in other newspapers also. Isn't that right, sir?

A. Yes.

Q. Then, you pose yourself as an expert then.

A. (No answer from the witness.)

Q. Sir?

A. I suppose one would say that I have had more experience with written matter than non-newspaper people.

Q. Well, then, your opinion as an editor of The Mont-

gomery Advertiser does not necessarily reflect the opinion of other newspapers. Is that correct, sir?

A. Emphatically not.

Q. And it does not that of The New York Times either.

A. Emphatically not.

Q. And all of the other newspapers in the City of Montgomery or the State of Alabama?

A. That is correct. There is quite a diversity.

Q. Now, you mentioned that this was called to your attention on or about April 7th.

A. No. The editorial that I wrote in response to it was printed April 7th.

Q. Well, about how many days prior to April 7th did you see or read this advertisement?

A. Well, I am unable to answer that precisely. The ad was published on March 29th.

Q. As a custom in your business, Mr. Hall, as an editorial writer, do you write immediately on subjects which you intend to print?

A. Well, there is a great variation on that. Some subjects you are able to shoot from the hip on, others you have to do a little research first and then there are interruptions in the daily routine and, for example, this afternoon I am not writing.

[fol. 1730] Q. Now, Mr. Hall, did you shoot from the hip on this New York Times article?

A. I can't answer that with entire precision because it has been some time—

Q. Well, now—I think you have answered the question, Mr. Hall. Now, Mr. Hall, did you do any research on this article?

A. Oh, I didn't have to do any research on this.

Q. Then, you just shot from the hip, then?

A. Well, on this it is possible to do it just like it is possible to testify what week this is.

Q. Now, Mr. Hall, at the time that you went into this ad and started to shoot from the hip, how many days did it take you to do that?

A. You mean, how many days did it take me to compose the editorial?

Q. Yes.

A. I don't suppose it took me more than forty minutes to write the editorial. I don't have any recollection of that.

Q. You would say that you wrote this editorial about April 6th then.

A. Well, it is possible—oh, yes. It didn't lie around any. It went down to the printing room—

Q. Did you call your lawyers regarding that?

A. We never call a lawyer except on very rare occasions.

Q. Did you call him on this occasion?

A. No. No consultation.

Q. Did you call the City Commissioner?

A. I have been on bad terms with Commissioner Sullivan. I couldn't very well call him.

Q. How do you get along with him now then, Mr. Hall?

A. Conditions have been somewhat restored amicably. And are cooperative.

Q. And you are cooperating this afternoon, aren't you?

A. No.

Q. I say, you are cooperating this afternoon—

A. The answer is no.

Q. No?

A. No.

[fol. 1731] Q. May I ask you, Mr. Hall, how did these bad terms develop? How did you get on bad terms with Commissioner Sullivan?

A. Due to the—

Mr. Embry: Your Honor, we object to that. That is getting quite far afield as to the materiality of issues in this case.

The Court: Offhand, I don't see the materiality of that line of questioning.

Lawyer Crawford: Your Honor, I am only trying to show the interest this witness has in the plaintiff for editorializing in his paper or his statement here on the Stand and he has posed himself as an expert and I want to find out whether he is or not—

The Court: He didn't say he was an expert. He said he had a little more experience than other people.

Lawyer Crawford: Your Honor, he is a witness for the

plaintiff and I would like to know what interest does he have here. The witness has testified that at one time he was on bad terms and now he is on good terms and I am wondering what caused those terms to come about and why this opinion is being expressed here today. I realize it may be somewhat unusual and I realize that the Court's time and the time of these gentlemen of the jury is valuable but so is the time of these defendants valuable too—

The Court: I think it is a little far-fetched. I sustain the objection and give you an exception.

Lawyer Crawford: We except. I would like to ask Mr. Hall though, Your Honor, about this phase of starvation he referred to and I would like to ask him what he meant by that when he said that hit him most when the other portion of the ad did not phase him.

Mr. Embry: We object to that, if the Court please. We object to it for the same reasons we objected to Mr. Nachman's question along that line. It is a mental operation of the witness and permits him to state a conclusion of his own mind and invades the province of the jury as it is up to them to say as to what is meant by taking the ordinary import of the words in the article and—

Lawyer Crawford: We withdraw our question, if the Court please.

[fol. 1732] The Court: All right. The question has been withdrawn. Go ahead.

Lawyer Crawford: No further questions.

Re-direct examination.

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

Q. Mr. Hall, reference has been made to your editorial of April 7th by counsel for The New York Times and by counsel for one of the defendants here, other than the New York Times. Do you have a copy of that editorial with you?

A. Yes, sir.

Mr. Nachman: I would like to introduce it into evidence at this time, Your Honor.

Mr. Embry: Your Honor, we object to that, if the Court please. His editorial about the advertisement has nothing to do with this suit.

The Court: Let me see what the editorial says.

Mr. Embry: He claims he has been libeled by a publication appearing in The New York Times issue of March 29th and not by a libel committed by the editorial writing of The Montgomery Advertiser.

Lawyer Gray: We join in that objection, Your Honor.

Mr. Embry: I might add also, Your Honor, that it is hearsay and not the best evidence.

Mr. Nachman: We only offered it, Your Honor, because it has been gone into by both counsel with the not too heavily veiled insinuation that either myself or some member of my law firm, Mr. Steiner or Mr. Baker, had something to do with procuring this editorial.

The Court: I don't believe this is admissible. Let me exclude it and give you an exception.

Mr. Nachman: We have no further questions.

[fol. 1733] ARNOLD D. BLACKWELL, Having been duly sworn, was called as a witness for the plaintiff and testified as follows:

Direct examination.

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

Q. Will you state your name to the Court and jury, please, sir?

A. Arnold D. Blackwell.

Q. Do you live in Montgomery, Alabama, Mr. Blackwell?

A. Yes, sir.

Q. What is your business here in town?

A. Real estate and insurance.

Q. How long have you been engaged in that business?

A. Approximately two years in real estate and about four years in insurance.

Q. Do you know the plaintiff, Mr. Sullivan here?

A. I do. Yes, sir.

Q. Mr. Blackwell, I show you Plaintiff's Exhibit No. 347

which is an advertisement which appeared in The New York Times under the date shown there and I ask you whether you have ever seen that advertisement before?

A. Yes, sir. I have.

Q. Was one of the occasions on which you saw it in my office?

A. Yes, sir. I did.

Q. I direct your attention to the third paragraph on the left hand side of the article which reads as follows, "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee,' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission." I ask you to look at that paragraph and read it and familiarize yourself with it.

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

Mr. Nachman: We think that is a matter for cross-[fol: 1734] examination, Your Honor.

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

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

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

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

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

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

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

The Court: Yes.

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

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

The Court: You may have an exception.

Mr. Embry: We except.

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

Q. Have you looked at it, sir?

A. Yes, sir.

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

Mr. Embry: Don't answer that question until we have an opportunity to object, please. We object, Your Honor, on the grounds that it invades the province of the jury and [fol. 1735] it calls for an undisclosed mental operation of the witness, it calls for an unauthorized conclusion on his part, and it goes to the question of the ultimate inquiry of fact before the jury, that is to say, whether the advertisement complained of identifies any person or identifies the plaintiff in this cause which is a question of fact for these gentlemen sitting on the jury to determine and it is an attempt to substitute the judgment of the witness or his opinion for that of the jury and that there has been no proper predicate laid or foundation laid for the asking of that question.

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

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

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

The Court: Oh, yes. We have a rule here although I can never get the attorneys to adhere to it—that if you don't

name any grounds, then the whole world is yours but if you do so, then you are restricted to the grounds you name.

Mr. Nachman: We will stipulate with Mr. Embry that he may make any objections later and all that he can think of.

Mr. Baker: Well, we don't want them repeated in Open Court each time the question is asked.

Lawyer Gray: Let the Record show that we take a similar objection to this line of questioning and note an exception to the Court's ruling.

The Witness: Would you re-state your question, please?

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

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

[fol. 1736] A. Yes, sir.

Q. With whom?

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

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

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

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

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

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

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

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

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

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

Q. You may answer that question too, Mr. Blackwell. If you believed the statements contained in that paragraph [fol. 1737] to be true and correct, would that belief affect your opinion of the plaintiff in any way?

A. Yes, sir. It would.

Q. In what way, sir?

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

Q. Now, Mr. Blackwell, I call your attention to this paragraph in the second column which reads as follows, "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for "speeding," "loitering" and similar "offenses." And now they have charged him with "perjury"—a felony under which they could imprison him for ten years." I ask you there whether those statements associate themselves in your mind with any person or persons?

Mr. Embry: Don't answer the question yet. We have the same objections and grounds, Your Honor?

The Court: Yes.

Lawyer Crawford: We have the same grounds of objection and exception also, for the Record.

The Witness: Which statements particularly?

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

Q. I am referring to, "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years." I refer to those statements, sir.

A. The last of the statements, "They have arrested him [fol. 1738] seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years," I associate those with the Police Department and with the Police Commissioner, assuming they are referring there to the Police Commissioner and the Police Department. Does that answer your question?

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

A. Yes, sir. They definitely would.

Q. The same way that you previously testified?

A. Yes. The same way I previously testified.

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

Cross examination.

By Mr. T. Eric Embry:

Q. Mr. Blackwell, were you subpoenaed by the plaintiff in this cause?

A. No, sir, I was not.

Q. When did Mr. Nachman talk to you and ask you to come up here and testify in this case?

A. I believe it was about three weeks ago.

Q. Was the first time in which you had seen the advertisement that you are holding there in your hand when Mr. Nachman brought it to you or else when you went to his office and saw it there?

A. That's right, sir.

Q. Was that a result of a contact he made with you? Did he call you or did you call him and tell him you would testify in this case and that then he showed you that ad and you said you would give him an opinion about the content of it or what you associated in your mind—

A. He called me into his office and showed me this ad and at that time I indicated that I had seen the ad before but I don't remember just where and under what circumstances and that it had been discussed several times with different people and at this time I told him that I could only testify to the things that I thought were truthful in the ad.

Q. Well, you are, of course, giving an opinion about it?
[fol. 1739] A. That's right.

Q. You readily concede that, don't you?

A. Yes, that's right.

Q. Now, you said you don't recall when you first saw this but you do recall that you heard it talked about.

A. Yes, sir.

Q. Had you heard it talked about in connection with this litigation—this law suit?

A. There has been a considerable amount of discussion in reference to this.

Q. To the litigation.

A. To the litigation. Yes, sir.

Q. Then, did Mr. Nachman call you about this matter?

A. Yes, sir. He called me on the phone and asked me to come to his office and talk to him.

Q. Had you previously indicated to him that you had seen this ad or had heard it talked about or heard this litigation talked about—

A. No, sir.

Q. So you would have some indication as to why he called you. That's what I am talking about.

A. No, sir.

Q. He called you with reference to coming to his office for the purpose of showing you that ad and asking you what you thought at the time he showed you the ad and as to what the statements contained therein associated in your mind or what was associated in your mind by these statements and I will ask you if he told you at that time why

he was calling you or what occasioned him calling you as opposed to calling me or somebody else. That's what I am trying to find out.

A. At the time he called he called me and asked me if I was familiar with the ad and I told him I had heard of it and had discussed it and he asked me if I would come to his office and discuss it with him.

Q. Do you know where he got the information? Had you told any others that you may have seen this ad? Did you discuss the matter—

A. No, sir.

[fol. 1740] Q. Did you discuss the matter so that the information that you had seen it became known to Mr. Nachman or someone else?

A. No, sir. Not to my knowledge.

Q. You don't recall ever having mentioned that you had seen this ad to anyone?

A. I recall that I discussed the case but I don't recall the individuals that I discussed it with. It was just a conversation and it was a surprise to me, I might say, when he called me and asked me to come down to his office about it.

Q. Do you recall whether you ever discussed it with Mr. Sullivan?

A. No, sir, I know I had not. I know I had not discussed it with Mr. Sullivan.

Q. Do you know him?

A. Mr. Sullivan?

Q. Yes.

A. Yes, sir. I know him just from personal contact with him and the fact that he ran for Commissioner and was elected Commissioner.

Q. What sort of personal contact have you had with him, Mr. Blackwell?

A. Only in reference to his running for office as Commissioner of Police.

Q. Is your real estate and insurance business located down town?

A. Yes, sir. It is located at 422 South Court Street.

Q. That's down town, isn't it?

A. Yes, sir. That's right behind the Walter Bragg Smith Apartments.

Q. Do you do any business with the city?

A. I am on the Water Board of the City.

Q. You are a member of the Water Works Board?

A. Yes, sir.

Q. How long have you been a member of the Water Works Board?

A. Since about February of this year.

Q. Do you have occasion to come into contact with the City Commissioners and the city government—the members of the city government, as a member of the Water Works Board?

A. Yes, sir. On frequent occasions.

[fol. 1741] Q. How did you get on the Water Works Board? Is that an elective office?

A. No, sir. It is an appointive office.

Q. By whom is the appointment made?

A. I believe it is an appointment made by the Commissioners and the Mayor. All three are the ones who—

Q. All three of them including Mr. Sullivan.

A. Yes.

Q. They make the appointment by which you become a member of the Water Works Board.

A. That's right.

Q. Is that position controlled by tenure? Does it have some sort of definite term of office?

A. Yes, sir. I go off in 1961, I believe.

Q. Can you be removed at any time?

A. Yes, sir. You can be.

Q. By the Commissioners?

A. I assume so. They appoint you and I assume they can take you off.

Q. You assume that they can fire you.

A. That's right.

Q. By the same people that hire you.

A. That's right.

Q. Now, have you been fortunate enough to sell the city any insurance?

A. Not yet.

Q. Have you made an effort to?

A. No, sir. I haven't.

Q. Do you hope to in the future?

A. No, sir.

Q. All right, sir. Now, Mr. Blackwell, would you say—I direct your attention to the ad once again, please, sir. Now, after Mr. Nachman called you—I believe you said you went over to his office.

A. That's right.

Q. Did he sit down with you and did he have this in his possession?

A. He had the copy. I am not sure whether this was it or not.

[fol. 1742] Q. It could have been though.

A. Yes, but I don't remember.

Q. Did he tell you why he wanted to talk to you about this ad?

A. Yes, sir.

Q. Did he tell you on that occasion that he wanted to try to prove that the words that are recited in that ad identified the Police Commissioner, Mr. Sullivan, the Plaintiff in this case, and that his purpose was to attempt to show that the words contained in the ad attempted to identify Mr. Sullivan with the statements contained in the ad? Did he say something like that or something like that in substance?

A. I believe it was something to that effect in substance. He asked practically the same questions that he asked today.

Q. Did he direct your attention specifically to these two paragraphs that I am pointing to, this paragraph here and this one, about which he questioned you about on direct examination?

A. Yes, sir, he did. He had excerpts of these two paragraphs that he showed me.

Q. On some typewritten paper?

A. I believe it was, sir. And he showed me this ad and he had me look at the other one and these were taken from that ad.

Q. They were taken from the ad?

A. Yes, sir.

Q. He said they were taken from the ad.

A. Yes, sir.

Q. And when you discussed that proposition of what became associated in your mind with these statements in the

ad it was having before you a typewritten excerpt from the ad and not the ad as a whole. Is that correct?

A. Well, not exactly, sir. I had the ad and these excerpts. Actually at the time I didn't look too much at the detail. We just discussed mainly the questions of my opinion on it.

Q. Now, you told us, I believe, that when your attention was directed—first, let me ask you this. Am I correct in [fol. 1743] assuming from your previous testimony on direct examination and on cross examination that you are under the impression or that your best recollection is that you may have seen this ad at a time before Mr. Nachman showed it to you? Am I correct in that assumption?

A. Sir, I can't say whether I saw the ad or saw a write-up about it in The Advertiser or just what.

Q. Well, that's just what I want to ask you. Could it have been that what you saw was some comment about this ad in another newspaper, for example, let us say, The Montgomery Advertiser?

A. That's possible. Yes, sir.

Q. That's possible?

A. Yes, sir.

Q. Did you form any judgment or opinion at the time you saw or do you have any recollection that you formed any judgment and opinion at the time you saw the comment or whatever it was you saw in the article about this ad?

A. No, sir.

Q. You didn't form any judgment about it at all?

A. No, sir.

Q. When you were shown this ad and your attention was directed to these statements in it you say that the statements wherein "When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission," that that was associated in your mind with Commissioner Sullivan and the City Government?

A. No, sir. If that were true—if that statement were true, then I would assume that the Commissioner and the police of the city government was acting without jurisdiction but under my present opinion, knowing the facts as I do, I certainly could not believe that to be true.

Q. Well, I don't maintain that it is true.

A. Well, my opinion is based on the fact—

Q. What?

A. My opinion is based on the fact that if that were true—

[fol. 1744] Q. Well, maybe you misunderstood my question. I am not contending that that is true. I am simply asking you that when you read that ad that you tell us there is associated in your mind with it the City Government and Commissioner Sullivan?

A. The Police force and the Commissioners. Yes, sir.

Q. And that—

A. I would assume that the Commissioner had ordered the police force to do that and therefore it would be his responsibility.

Q. And that's by reading this section "When the entire student body—"

A. Yes, sir. Very much.

Q. That's by reading this section "When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission," and that is what associated itself in your mind with Commissioner Sullivan and the City Government.

A. Yes, sir.

Q. Let me ask you this. Did he ask you anything about this other section here?

A. Yes, sir. He asked about this whole paragraph here and my statement was as to "They have arrested him seven times for 'speeding,' 'loitering' and similar 'offenses,'" and in my opinion here, this refers to the police force but the sentences above that I cannot associate with the police force at all.

Q. Well, as a matter of fact, that man has been arrested here for some of these offenses, hasn't he?

A. Well, I would assume so. I have heard of him being arrested but whether he has been arrested seven times or not—I am sure he has been arrested though.

Q. Well, I think the facts are as we have had them disclosed that he has been arrested four times but he has been

arrested and that's your understanding, isn't it? Isn't that right?

A. Yes, sir. That's right.

Q. Now, let's take this statement, "And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years," that that associated in [fol. 1745] your mind—that statement with Commissioner Sullivan?

A. No, sir. If I did I was incorrect in that because that doesn't imply the police force to me.

Q. I believe those were the two sections that you were asked about on direct examination.

A. Yes, sir. That's right.

Q. Mr. Blackwell, you are not testifying to this jury that you think any less of Mr. Sullivan from what you read in that advertisement, are you?

A. No, sir. I certainly did not.

Q. Now, in connection with your business, how long have you been engaged in the real estate insurance business in Montgomery?

A. I went into the real estate business in September of 1957 and I have been in the insurance business in the capacity of a general agent since about June of 1958 and prior to that time I was an agent with Mutual of New York for two years and prior to that time two years with the Farm Bureau.

Q. Has either Mr. Nachman's firm or Mr. Whitesell's firm ever represented you on any business?

A. No, sir.

Q. They have had no connection with any of your business—

A. No, sir.

Q. Was that the first time you had ever been in Mr. Nachman's office?

A. Yes, sir. It was. Not long ago, he spoke to our P.T.O. organization and I believe that is the first time I had seen him other than just passing on the street or something like that.

Q. As a matter of fact, Mr. Blackwell, while you were talking about what was set out in this ad, isn't it a matter of common knowledge in and around Montgomery that what

we have been reading from this ad is not true and don't most people know that it is not true?

A. Yes, sir. They know it is not true.

Q. No one around here assumes that any of that is true, do they?

A. Now, you are speaking of all of it or—

[fol. 1746] Q. I am talking about parts of it.

A. Parts of it could be true. Yes, sir.

Q. In other words, it is a little bit of an exaggeration of the truth, isn't it? That's about what it amounts to, doesn't it?

A. Some parts I think are and some parts I think are true.

Q. Everybody knows that, don't they, as a matter of common knowledge—as a matter of common public knowledge?

A. I assume so. Yes, sir.

Q. All right, sir. Thank you very much. No further questions.

Lawyer Gray: No questions.

Re-direct examination.

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

Q. Mr. Blackwell, you get no pay as a member of the Water and Sewer Board of Montgomery, do you?

A. Yes, sir. They pay us for the day that we meet with the Board.

Q. How much is that, sir?

A. Twenty dollars or something like that.

Q. Twenty dollars a day on the day that you meet with the Board?

A. One day a month. Yes, sir.

Q. One day a month.

A. Right.

Q. You get no pay other than that?

A. No, sir.

Q. In other words, it is not a regular job?

A. Oh, no, sir.

Q. In that paragraph that I showed you beginning with

the singing on the Capitol steps and so forth, did you mean to exclude from your association with police activity the matter of "ringing the campus with truckloads of police armed with shotguns and tear-gas?"

Lawyer Crawford: We object to that as being a leading question, Your Honor.

The Court: It may be leading. You may re-phrase the question.

[fol. 1747] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do you associate that phrase with anybody?

A. Which phrase is that?

Q. The phrase, "truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus."

A. Yes, sir. I associate that with the police force and the Police Commissioner as I mentioned before.

Mr. Embry: All right. That's going to bring on more talk.

Re-cross examination.

By Mr. T. Eric Embry:

Q. Mr. Blackwell, now, we are talking about the shotguns and the tear-gas.

A. Yes, sir.

Q. Now, you say you associate that with the police. That's correct, isn't it?

A. That's right.

Q. And that's who it refers to in the words of the article — the police.

A. That's right, sir. It says, "Truckloads of police armed with shotguns and tear-gas."

Q. You don't see anything about the Commissioner being out there with them, do you?

A. No, sir.

Q. You are familiar enough with the City Government, being on the Water and Sewer Board, to know that we have a Chief of Police in Montgomery too, haven't we?

A. Yes, sir. We have.

Q. And if you see the police operating in and around the City of Montgomery, the Chief send them around and tells them what to do, doesn't he?

A. Well, I am not too familiar with that but I assume it would be his responsibility also.

Q. That's all. Thank you very much, sir.

[fol. 1748] WILLIAM H. MACDONALD, having been duly sworn, was called as a witness for the plaintiff and testified as follows:

Direct examination.

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

Q. State your name to the Court and jury, sir.

A. William H. MacDonald.

Q. Do you live in Montgomery, Alabama, Mr. MacDonald?

A. Yes, sir.

Q. I believe you have an editorial position with the Montgomery Advertiser. Is that correct, sir?

A. Assistant Editor of The Montgomery Advertiser.

Q. Assistant Editor?

A. Yes, sir.

Q. How long have you been there? How long have you been with the Montgomery Advertiser?

A. For about twelve years.

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?

Mr. Embry: Your Honor, we object to that question. That brings an issue into the case that is not an issue in this case. We will have to spend a couple of days on that sort of thing if we go into what happened or what is supposed to have happened at these various other spots and it is not an issue in the case—

Mr. Nachman: Your Honor, if this defendant—I don't know how the other defendants feel about it—but if this

defendant is prepared to concede that all of the matters we quoted in the complaint are false then we will be—

Mr. Embry: Well, Your Honor, Mr. Nachman knows that is not a proper statement to make—

The Court: Well, let me go on and hold that the question is admissible and give you an exception.

Mr. Embry: Sir?

[fol. 1749] The Court: Let me hold that the question is admissible and give you an exception.

Mr. Embry: Well, I had better state my grounds of objection then, Your Honor.

The Court: Go ahead.

Mr. Embry: We object to the question because there has been no issue made on the plea of truth as to the recitation of facts set out in the advertisement complained of and therefore there is no occasion for the testimony of this witness as to what may or may not have occurred at any one of these places of times that has been mentioned in the advertisement.

Mr. Beddow: Your Honor, I don't think this lawyer has any right to ask this witness something in connection with a near riot. That there was a near riot is probably a figment of his imagination and—

Mr. Nachman: Your Honor, if Mr. Beddow will read the interrogatories he will see—

The Court: Well, I was about to rule with you—

Mr. Nachman: They said that a near riot was averted—

Mr. Embry: So it was averted. So what? Your Honor, we also want to object on the further grounds that we have not made the issue by putting on testimony as to the affirmative truth of these statements and until that is done they have no right to call a witness to show that it is presumably false under the allegation.

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

Lawyer Gray: We adopt the same objections and let the Record so indicate, Your Honor.

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

Q. You may answer the question. Were you present—

A. I was present.

Q. Am I correct in stating that that was on a Sunday?

A. It was on a Sunday, yes.

Q. In early March?

A. In early March. March 6th.

[fol. 1750] Q. I show you two photographs and ask you to look at these and ask you whether they correctly portray the events that took place there and conditions as you observed it on that day, March 6th, 1960?

Mr. Embry: Your Honor, we want to object to this line of testimony on the grounds previously assigned and on the additional ground that that is not an occasion referred to in the ad anyway.

Mr. Nachman: Your Honor, it is mentioned specifically in their answers to the interrogatories and Mr. Sitton's memorandum. The memorandum discusses the activities that took place there on that date. Now, presumably, when The New York Times answered these interrogatories they thought that it was relevant to discuss what happened on the 6th of March and so we—

Mr. Embry: Now, Your Honor, that offends my sense of fair play and justice. That is unfair and I want to make a reply to that.

Mr. Nachman: We simply feel that we have a right and we think the Alabama cases give us a right to develop fully matters that they have gone into on the answers to the interrogatories and they filed this memorandum by Mr. Sitton and it goes into what happened on the 6th of March and we want to ask him about it.

Mr. Embry: As Your Honor will recall, the answer to that particular interrogatory—before any plea was filed there was an objection stated in the case and Your Honor required us to answer that question on the theory that it might become relevant evidence under a plea of truth. We were required to answer that under the law. The statute required us to answer the interrogatory but when he said we made an issue by answering—we did what the law required us to do and in those answers we gave every bit of information that we had gotten from others about those events but this case is concerned with something recited in this advertisement, if the Court please, about the Capitol

steps or the singing of the song, "My Country, 'Tis of Thee" on the Capitol steps and the evidence that has already been introduced shows that didn't occur and he is asking this witness to testify about things that didn't occur and we object to it for that reason.

[fol. 1751] Mr. Nachman: Your Honor, this interrogatory —this memorandum was introduced in response to Interrogatory No. 8. Interrogatory No. 8 asked whether investigations were made of the correctness of the statements contained in said advertisement. Now, presumably, when this memorandum was attached which went into the activities on March 6th—the people who prepared the answers felt that they had some bearing on the matters contained in this advertisement because that is all the interrogatory asked about—

Mr. Embry: We didn't feel a thing, Your Honor. Your Honor made us answer them. That's all we are saying.

Mr. Nachman: Nowhere in these interrogatories was it specified that we wanted answers specifically about March 6th. That was volunteered by the Times and was attached to this memorandum. We asked about matters and statements contained in the advertisement.

Mr. Embry: We didn't introduce these interrogatories, if the Court please.

The Court: How do you connect these purported photographs up with the ad?

Mr. Nachman: We connect them up, Your Honor, with matters that they went into in answering the interrogatories. They attached in answer to three interrogatories, I believe, Mr. Sitton's memorandum and one of the items in this memorandum reads this way: "March 6th. Authorities narrowly averted a riot when adult Negroes and a few students sought to march on the Dexter Avenue Baptist Church to the Capitol two blocks away to hold a prayer meeting on the Capitol steps. The demonstration was designed to protest the expulsion of nine student leaders." All in the world we propose to do by this testimony, Your Honor, is to present an eye-witness account of what took place on that date that they had brought in in answering these interrogatories.

Mr. Embry: We haven't denied that any such event took place. Your Honor, there is no issue about that—

The Court: How do you connect up this near riot with this?

Mr. Nachman: Only, Your Honor, in that they seemed to [fol. 1752] feel that the events on March 6th had something to do with the matters contained in the ad because we asked in 8 and 9 and 12, I believe, and we even quoted the portions of the ad we were suing on and they attached this. For example, No. 12: "All the knowledge of the defendant with respect to the truth or falsity of the statements contained in the advertisement referred to and contained in documents attached hereto as Exhibits 'A' and 'B' and so forth."

The Court: Well, let's get away from the ad and let's get back to the pleadings. That's the basis of everything—

Mr. Nachman: Well, as I said a few minutes ago, Your Honor, I don't know what they mean by this matter of our not being able to go into the falsity of these matters. I don't know whether they mean that they admit that they are false or what. He jumped all over me when I—

The Court: How do you connect this alleged near-riot up with your pleadings and the ad here?

Mr. Baker: I think we might call on counsel for The Times for a stipulation as to the specific fact—

Mr. Embry: You can call on us for anything you want to call on us for.

Mr. Baker: Well, I think that's exactly what we are doing. We are calling on you—

The Court: I rather believe the pictures would not be admissible.

Mr. Nachman: Your Honor, I don't want to burden the Court but is it also Your Honor's ruling that it is not proper to go into the events—

The Court: The near-riot up at the Capitol, yes.

Mr. Nachman: That was the purpose of Mr. MacDonald's testimony, Your Honor. I will ask him another question or two though.

The Court: Go ahead.

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

Q. I show you two other photographs and ask you what [fol. 1753] they portray and if they portray accurately what you say they portray?

Mr. Beddow: Just a minute! Don't answer that. We object to that question on the grounds that it calls for incompetent, illegal, irrelevant and immaterial testimony and it would have no probative value nor does it throw any light on any of the issues embraced within the Complaint and it deals with a different and separate matter other than the matters involved in the Complaint—

The Court: This question relates to what?

Mr. Nachman: The singing.

Mr. Beddow: And furthermore, we would like you to be courteous enough to us to let us see these photographs before you hand them to the witness.

Mr. Nachman: Here they are, sir.

Mr. Beddow: You don't have them marked and we don't know what you are referring to and we would at least want to see them first.

Mr. Nachman: Here they are, sir. Your Honor, I just asked Mr. MacDonald what they referred to and I will state that we are offering them or that we propose to offer them as pictures of the singing on the 1st of March on the 29th of February—

The Court: Was that singing at the Capitol?

Mr. Nachman: That's correct.

The Court: I have the idea that they are not admissible.

Mr. Beddow: Sir?

The Court: I say, I think they are not admissible. You may have the Court Reporter mark them.

Mr. Nachman: Your Honor, we offer these and we make an offer of proof of these as portraying the singing on the Capitol steps which is described in the ad.

Lawyer Crawford: We will object to his making an offer of proof in front of the jury and in the presence of the jury, if the Court please.

The Court: I will let him make the offer and give you an exception.

Lawyer Gray: It has the same effect, if the jury hears it, [fol. 1754] Your Honor—

Mr. Nachman: Well, we can make the offer later then when the jury is not present at the next break.

The Court: All right. Go ahead. Any further questions for this witness?

Mr. Nachman: No further questions, Your Honor.

HARRY W. KAMINSKY, having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

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

Q. This is Mr. H. W. Kaminsky?

A. Yes, sir.

Q. Do you live in Montgomery, Alabama, Mr. Kaminsky?

A. Yes, sir.

Q. How long have you lived here in Montgomery, Mr. Kaminsky?

A. For about forty years, sir.

Q. What is your occupation and business here in Montgomery, Mr. Kaminsky?

A. Sales Manager at the Hub Clothing Store here in Montgomery.

Q. You have been there for some little time, have you not?

A. Yes, sir.

Q. Are you acquainted with Mr. Sullivan, the plaintiff in this case?

A. Yes, sir.

Q. Now, Mr. Kaminsky, I show you this ad which is in evidence as Plaintiff's Exhibit No. 347 and I ask you whether you have seen this before and specifically whether one of the occasions was in my office?

A. That's where I saw it. Yes, sir.

Q. I call your attention to the third paragraph in the left hand column which begins, "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas

[fol. 1755] ringed the Alabama State College Campus. When the entire student body protested to State authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

A. Yes, sir.

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

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

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

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

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

Mr. Embry: We except.

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

Mr. Nachman: And anything that you may want to dictate later into the Record.

The Court: Go ahead.

Mr. Nachman: You may answer.

The Witness: Yes, sir.

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

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

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

Q. Would you include Mr. Sullivan?

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

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

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

[fol. 1756] The Court: Yes. Go ahead.

Lawyer Crawford: Same objection and exception.

The Witness: Yes, sir.

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

Q. In what way would it affect it?

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

Q. Now, I call your attention to the last paragraph in the second column of this ad which begins, "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years," and I ask you to look at that and tell us whether you are familiar with the statements contained there? Just look at it.

A. Yes, sir.

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

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

Q. The Commissioners?

A. Yes, sir.

Q. Including Mr. Sullivan?

A. Yes, sir.

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

A. My answer would be the same.

Q. Your answer would be the same?

A. Yes, sir.

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

[fol. 1757] Cross examination.

By Mr. T. Eric Embry:

Q. You never did believe the statements were true, did you, Mr. Kaminsky?

A. No, sir.

Q. When was the first occasion you saw this ad, Mr. Kaminsky?

A. I saw it in Mr. Nachman's office.

Q. About three or four weeks ago?

A. Approximately that. Yes, sir.

Q. Did he call you and ask you to step up to his office?

A. Yes, sir.

Q. Did he tell you when he called you what he wanted to see you about?

A. He said he would like to talk to me about it.

Q. About the ad?

A. Yes, sir.

Q. And I guess that's what he did talk about, isn't it?

A. Yes, sir.

Q. Did he have the ad before him that he showed you on that occasion?

A. Yes, sir.

Q. Now, as I understand your testimony, you did not read this advertisement when it appeared in the newspaper, did you?

A. No, sir.

Q. Sir?

A. No, sir.

Q. When you went to his office he had asked you if you would be willing to testify in Mr. Sullivan's behalf about the matters he has asked you about here today.

A. That's right.

Q. And your testimony is that this language, "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was [fol. 1758] padlocked in an attempt to starve them into submission." In your mind you associated that statement about starving somebody into submission and padlocking the dining hall with Commissioner Sullivan.

A. The question he asked me was about the whole paragraph we read and that was my answer that I did.

Q. You thought it—

A. Did implicate Commissioner Sullivan and the other Commissioners.

Q. And the other Commissioners and the populace of the City of Montgomery?

A. I didn't say that. No, sir.

Q. Well, I am asking you.

A. No, sir.

Q. You don't think so?

A. No, sir.

Q. What statement—

Mr. Nachman: I didn't get that now. What? Was that his answer? Did he say no?

Mr. Embry: He said that he didn't say that he thought it associated in his mind the entire populace of the City and that he associated in his mind—he associated it in his mind with the City Commissioners.

By Mr. T. Eric Embry: (Continuing)

Q. What statements in there led you to form that conclusion, Mr. Kaminsky?

A. Well, the whole thing there. "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear gas ringed the Alabama State College Campus." I didn't believe those statements.

Q. You didn't believe it to be true when you read it, did you, Mr. Kaminsky? After Mr. Nachman showed it to you—

A. No. I don't think Commissioner Sullivan would do that. I didn't think that.

[fol. 1759] Q. You don't think any the less of him by virtue of the fact that this appeared in this advertisement, do you?

A. I don't think the less of who?

Q. Of Mr. Sullivan. Excuse me.

A. No.

Q. Sir?

A. No, sir.

Q. Do you associate in your mind by association that

this refers to Mr. Sullivan when the language is "After students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school"? Does that call to your mind—does Commissioner Sullivan become associated with that in your mind when somebody is expelled from school? The City Commissioner of the City of Montgomery—

A. No, I can't say I do.

Q. And when it says "Truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus" do you associate that statement in your mind—do you associate that statement or event with Commissioner Sullivan which you knew was not true?

A. Well, that part does associate Commissioner Sullivan with the police because he is the Police Commissioner.

Q. Does it associate in your mind Commissioner Sullivan there with the police when it says "Police armed with shot-guns and tear-gas ringed the Alabama State College Campus," that associated Commissioner Sullivan with that statement about the police?

A. That's right.

Q. Do you know whether or not the City of Montgomery has a Chief of Police?

A. Yes, sir.

Q. Do you know whether or not the City of Montgomery has Captains and Lieutenants of Police?

A. Yes, sir.

Q. Have you ever seen Commissioner Sullivan dispatch any of the police anywhere?

A. I can't say I have. No, sir.

[fol. 1760] Q. He has other duties than those connected with the operation of the police force, does he not?

A. Yes, sir.

Q. Is that same thing true with the paragraph that was called to your attention by Mr. Nachman that says, "Again and again the Southern violators have answered Dr. King's peaceful protest with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with 'perjury'—a felony

under which they could imprison him for ten years." Do you associate in your mind or did you—

A. I can't say that I did. No, sir.

Q. That Mr. Sullivan was a Southern violator? You didn't believe that, did you?

A. No, sir.

Q. Or that he ever had anything to do with bombing anybody's home if that were true or not true.

A. No, sir.

Q. How about the phrase "They have assaulted his person. They have arrested him seven times—for 'speeding', 'loitering' and similar 'offenses'". Does that call to your mind Commissioner Sullivan?

A. Well, it implicates the Police Department, I think, or the authorities that would do that—arrest folks for speeding and loitering and such as that.

Q. Do you know whether this man King has ever been arrested or has ever been arrested in Montgomery?

A. No, sir. I won't say that I do.

Q. Have you ever read a newspaper or a magazine that the police had assaulted some person or beat them up on the streets of Montgomery and would you immediately associate that statement if it was made in a publication or a newspaper with Commissioner Sullivan? Do you think that he is responsible for the police having beat somebody up or assaulted them on the streets of Montgomery?

A. I still say he is the Police Commissioner and those [fol. 1761] men are working directly under him and therefore I would think that he would have something to do with it.

Q. Well, of course, sir, his job is being the Commissioner of Police of the City of Montgomery.

What I am asking you now is if in your mind if you read a statement that a police officer of the City of Montgomery had beaten somebody on the street or had assaulted them and that statement appearing in print, would that statement call to your mind and associate Commissioner Sullivan in your mind with the fact that a policeman had been charged with committing a wrong act by assaulting somebody on the streets of Montgomery?

A. I don't know whether I—

Q. If you read of a policeman committing a crime in the City of Montgomery, would you associate that with Commissioner Sullivan as in your mind referring to Commissioner Sullivan as being responsible for the commission of a wrongful act by a policeman or the commission of a crime by a policeman in the City of Montgomery because he is the Police Commissioner?

A. I think you would have to look at him to a certain extent. Yes, sir.

Q. Well, if a statement is made about misconduct on the part of a policeman, whether it is true or false, in your mind that's associated with the charge that he is responsible for it and he is a miscreant in the discharge of his duties and is not conducting his office properly if a policeman commits a wrong in the City of Montgomery?

A. Well, I—

Q. Is that a fair statement of what you—

A. Well, I kind of put myself on that spot. If anything goes wrong in the establishment where I am the sales manager they look at me for the acts of the men under me.

Q. I don't believe you understand me correctly. You are ultimately responsible for the operation of your business.

A. Yes.

Q. That's what you are now speaking of.

[fol. 1762] A. Yes.

Q. And Commissioner Sullivan is ultimately responsible under the law for the operation of the Police Department—

A. Yes, sir.

Q. And for the operation of the Cemetery Department and something else—the Fire Department. Is that right? He is responsible for the operation of the Jail in the City of Montgomery—

A. I think he said Scales.

Q. That's right. Not the Jail. Scales. In the City of Montgomery.

A. That's right.

Q. And that is the type of thing that is called to your mind when you read about police activity—his ultimate job in the City of Montgomery. Isn't that correct? Is that a fair comparison?

A. I look at Mr. Sullivan when I see the Police Department. Yes, sir.

Q. Is that a good comparison? Am I drawing you a fair comparison between the type of association in your mind that you associate with your responsibility in your business to your employers with Mr. Sullivan's responsibility in his conduct in the operation of the affairs of the City of Montgomery in the affairs of the operation of the Police Department, the Fire Department, the Department of Cemeteries and Scales? Is that similar in your mind?

A. I would think so.

Q. All right. If you read a statement in a newspaper that one of your employees was guilty of rape on the streets of Montgomery and had been arrested and indicted for raping someone on the streets of Montgomery, would it seem to import to you that you were being charged with misconduct and that you were somehow responsible for the conduct of your employee for raping someone on the streets of Montgomery?

Mr. Nachman: If the Court please, that is pure argument and he has been arguing with Mr. Kaminsky for the last four or five minutes. He has been going over and over this testimony trying to get him to say that he doesn't hold Police Commissioner Sullivan responsible for the activities of policemen and he is just arguing with Mr. Kaminsky—

The Court: Well, it is Cross Examination and he has [fol. 1763] leeway there. I will give you an exception. Go ahead.

Mr. Embry: Did you answer the last question, Mr. Kaminsky?

The Witness: I didn't answer it.

Mr. Embry: Read the question, Mr. Reporter.

The Reporter: Question: "All right. If you read a statement in a newspaper that one of your employees was guilty of rape on the streets of Montgomery and had been arrested and indicted for raping someone on the streets of Montgomery, would it seem to import to you that you were being charged with misconduct and that you were somehow responsible for the conduct of your employee for raping someone on the streets of Montgomery?"

Mr. Embry: Would that to your mind associate the charge of an employee of yours having committed a crime

with charging you with misconduct?

The Witness: It probably wouldn't concern me myself but I can't say what it would cause somebody else to think.

By Mr. T. Eric Embry: (Continuing)

Q. Well, of course, we have been only inquiring about what you were caused to think or what your mental associations were. Now, did Mr. Nachman discuss this proposition we are now talking about and discuss with you and suggest to you that the Commissioner's responsibility for the overall operation of the police affairs of the city would indicate a reference to him in this ad when it discusses the activities of the police?

A. I don't think Mr. Nachman did. No, sir.

Q. Did you discuss that with him at that time in his office?

A. As best I can remember, we didn't do it.

Q. You did not discuss that.

A. No, sir.

Q. I believe you did not see this advertisement before that occasion in Mr. Nachman's office. Am I correct in that statement?

A. You are right. Yes, sir.

Q. And you have not read it in The New York Times?

[fol. 1764] A. That's right.

Q. Do you subscribe to The New York Times?

A. No, sir.

Q. Do you buy it on the news stand?

A. No, sir.

Q. Have you ever seen it offered for sale on the news stands?

A. No, sir. I don't believe I have.

Q. How long have you been acquainted with Mr. Sullivan, Mr. Kaminsky?

A. I would say since 1950 or around that time.

Q. Was that when he was connected with the State administration under Governor Persons?

A. Yes, sir.

Q. You did not know him when he first came to Montgomery, I presume.

A. No.

Q. As a matter of fact, you were one of his supporters in his race for the City Commission job, were you not?

A. Yes, sir.

Q. And you are rather close friends, are you not?

A. Yes.

Q. I believe you have had occasion to be in contact with him socially on frequent occasions or from time to time, have you not?

A. Well, I—

Q. At parties and gatherings?

A. Yes.

Q. Now, you didn't believe anything in there referring to Mr. Sullivan charging him with—first of all, you didn't believe anything in that ad when Mr. Nachman showed it to you, did you, or that it was true—

A. I didn't believe it about him. No, sir.

Q. And you think just as much of him now as you did before you saw that in Mr. Nachman's office, do you not?

A. Yes, sir.

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

Lawyer Crawford: No questions.

[fol. 1765] H. M. PRICE, SR., having been duly sworn, was called as a witness of the Plaintiff and testified as follows:

Direct examination.

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

Q. Will you state your name, please?

A. H. M. Price, Sr.

Q. Do you live in Montgomery, Alabama, Mr. Price?

A. Yes, sir.

Q. What is your business here in town?

A. Well, we have a little business—the food equipment business.

Q. Are you acquainted with the plaintiff in this case, Mr. Sullivan?

A. Yes, sir.

Q. Mr. Price, I show you Plaintiff's Exhibit No. 347

which is an advertisement and I call your attention to the third paragraph down on the left hand column where it says "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission." I also call your attention to this paragraph: "Again and again, the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with perjury—a felony under which they could imprison him for ten years." Now, having looked at the ad, are you familiar with those?

A. I am familiar with them. Yes, sir.

Mr. Embry: For the Record, Your Honor, we have our same objections and exceptions?

The Court: Yes.

Lawyer Crawford: Same objection and exception.
[fol. 1766] The Court: Yes. Go ahead.

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

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

A. Certainly.

Q. With whom?

A. I would say the head of the Police Department.

Q. Who is that?

A. Mr. L. B. Sullivan.

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

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

The Court: Yes. Same ruling.

Mr. Embry: We except.

Lawyer Crawford: We except, Your Honor.

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

Mr. Nachman: That's all.

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

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

Mr. Embry: We except.

Lawyer Gray: Same exception.

Cross examination.

By Mr. T. Eric Embry:

Q. Mr. Price, were you subpoenaed to appear here today?

A. No, sir.

[fol. 1767] Q. Who asked you to come up here and testify?

A. Mr. Sullivan's lawyers.

Q. Mr. Nachman?

A. Yes, sir. Mr. Nachman.

Q. Do you know Mr. Sullivan personally?

A. Yes, sir.

Q. How long have you known him?

A. Oh, I have known Mr. Sullivan for several years.

Q. Do you live near him?

A. Well, not too close.

Q. Have you known him ever since he has been a resident of Montgomery?

A. I don't think I have known him ever since he has been a resident and frankly I don't know how long he has been a resident here in Montgomery.

Q. Did you know him when he was connected with the Persons Administration?

A. That's right. I believe he was with the State.

Q. He was the State Safety Director, was he not?

A. That's right and later he was with some of the transportation companies or some association with freight lines.

Q. What in this ad that your attention was directed to by Mr. Nachman made you think of Mr. Sullivan? What words in it made you think of him when you read it and when you went over it with him?

A. Well, may I read this to you in order to qualify what I think about it?

Q. Yes, surely. Go ahead.

A. It says here, "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, I would just automatically consider that the Police Commissioner in Montgomery would have to put his approval on those kind of things as an individual.

Q. You didn't believe that statement you just read that Mr. Nachman showed you—you didn't believe that it was true, did you?

[fol. 1768] A. I knew it wasn't true. I satisfied myself about that.

Q. You never thought it was true or had any idea that it was true, did you?

A. No, sir, but if I had known it was true—

Q. I assume and I will ask you if I am correct in my assumption—you think a lot of Mr. Sullivan, don't you?

A. Oh, yes. I do.

Q. And you have thought a lot of him for a long time, have you not?

A. That's right.

Q. You don't think any less of him now after having that article shown to you by Mr. Nachman, do you?

A. Certainly I do not because it is not correct.

Q. And you still think so, do you not?

A. Yes, sir.

Q. When you first saw this advertisement—when was that? Was that in Mr. Nachman's office?

A. Yes. That is right.

Q. Do you recall about when?

A. Oh, possibly three or four weeks ago. Is that approximately right, Mr. Nachman?

Mr. Nachman: I'm sorry, I can't answer you.

Mr. Embry: Well, I wouldn't object to that.

The Witness: Well, I want to give you as correct an answer as possible.

Mr. Embry: Well, I am sure of that, sir.

By Mr. T. Eric Embry: (Continuing)

Q. Was that after he asked you to come up to his office or did he see you on the street and ask you to come by?

A. Frankly, I don't recall.

Q. But it was at his office then.

A. Yes. In fact, I had taken quite a bit of interest in this thing and actually had talked to some other people who had seen it and I saw copies of the two paragraphs myself prior to that time.

[fol. 1769] Q. Prior to then?

A. Yes, sir.

Q. Do you recall who showed them to you?

A. Some friend of mine. I discussed it quite at some length with people in Montgomery but I don't recall the man's name.

Q. Well, the first time you saw this was when it apparently appeared in the newspaper and was that at Mr. Nachman's office?

A. The first time I saw this ad was in Mr. Nachman's office. The ad in the paper was in Mr. Nachman's office. Yes, sir.

Q. Did you discuss with him at that time the question of testifying in this case about the matters you have testified about?

A. Sure.

Q. That was the purpose of looking at the ad, wasn't it?

A. Sure.

Q. And had you discussed it before this time—you told me that you had talked about these matters. Had you talked about this litigation—this law suit?

A. No. No. I haven't discussed the law suit in particular.

Q. Mr. Sullivan's law suit I am talking about.

A. No, sir. I haven't discussed it particularly.

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

Lawyer Crawford: No questions.

WILLIAM M. PARKER, JR., having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

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

Q. State your name, please.

A. William M. Parker, Jr.

Q. Do you live in Montgomery, Mr. Parker?

A. Yes, sir.

[fol. 1770] Q. What is your business here?

A. Service Station.

Q. In Montgomery, Alabama?

A. Yes, sir.

Q. How long have you lived here, Mr. Parker?

A. All of my life.

Q. Are you acquainted with Mr. Sullivan, the plaintiff in this case?

A. Yes, sir.

Q. Mr. Parker, I show you here this advertisement in The New York Times identified as Plaintiff's Exhibit No. 347. Am I correct, sir, in stating that you have seen this before in my office?

A. Yes, sir.

Q. I will ask you to look at these paragraphs and I will read them as follows: "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission," and now this paragraph, "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' They have charged him with perjury—a felony under which they could imprison him for ten

years." Look at the contents of those paragraphs and refresh your recollection about them, if you will, sir.

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

The Court: Yes.

Mr. Embry: The same objections and exceptions.

Lawyer Crawford: Same objection and same exception.

The Court: Yes. Go ahead.

[fol. 1771] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Have you looked at them?

A. Yes, sir.

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

A. Yes, sir.

Q. With whom?

A. All persons or just one person?

Q. Well, name a particular person.

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

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

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

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

A. Yes, it would.

Q. In what way?

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

Q. Mr. Parker, did I or any of my partners, Mr. Baker or Mr. Steiner, represent you in any legal matters?

A. No, sir.

Q. You have talked to me about the case, have you not?

A. Yes, sir.

Q. You have also talked to Mr. MacLeod about the case, have you not?

A. That gentleman there. Yes, sir. I had forgotten his name. Yes, sir.

Q. You have talked to both of us?

A. Yes, sir.

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

[fol. 1772] Cross examination.

By Mr. T. Eric Embry:

Q. You didn't believe anything in that ad, did you?

A. No, sir. I don't.

Q. You didn't think and you don't think any less of Mr. Sullivan on account of what you saw in that ad, do you?

A. I personally, no, sir.

Q. When you saw it, did you immediately think of Mr. Sullivan when you read that?

A. Well, yes, sir. I would think that he and Mr. James and Mr. Parks were working together but since he was the Police Commissioner I thought of him first. Yes, sir.

Q. When you read that did you immediately think of him or is what you are saying is that you associated it with him because you know that he is one of the City Commissioners and that his legal responsibility is the operation of the Fire, Police, Cemetery and Department of Scales.

A. I think if you were the Police Commissioner I would have thought it was speaking of you.

Q. You think that language in there refers to the Police Commissioner.

A. Yes, sir.

Q. I believe you are a friend of Mr. James, the Mayor, are you not?

A. Yes, sir.

Q. Are you a friend of Mr. Sullivan's?

A. Yes, sir.

Q. Do you have a business that sells services or goods such as gasoline and oil products and tires to the city from time to time?

A. I have sold some tires to the city on a State contract basis.

Q. You have had contact with these gentlemen from time to time, have you not?

A. I had before they were elected. Yes, sir.

Q. And since?

A. Yes, sir.

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

Lawyer Crawford: No questions.

[fol. 1773]

COLLOQUY RE INTRODUCTION OF EVIDENCE

Mr. Nachman: Your Honor, these news stories which have been referred to in the interrogatories and especially interrogatory No. 4—they are identified as having been introduced previously which is correct and the pictures have been cut off of some of them—

The Court: What do they relate to?

Mr. Nachman: They are in amplification, Your Honor, of the answer to interrogatories, Interrogatory No. 4, I believe, and it refers to certain newspaper stories by date—

Mr. Embry: Do you have the right one?

Mr. Nachman: We have got some of them. We couldn't find all of them but we do want to introduce the ones that are here and the picture is in the Record already as I understand it.

Mr. Embry: Well, we want to see it and are you going to read it into the Record?

Mr. Nachman: Yes. I am going to read them into the Record and state what they are.

Lawyer Gray: If it please the Court, we want to object to the introduction of this as evidence against these defendants on the grounds that these newspaper articles, as I see them, are not matters that are specifically alleged in the Complaint. Neither are they matters that are specifically referred to—

Mr. Nachman: We will restrict them to The New York Times only, Your Honor.

The Court: All right. They are restricted to the corporate defendant, The New York Times.

Lawyer Gray: All right, sir.

The Court: They are out as to the individual defendants.

Lawyer Seay: Will Your Honor give special instructions to the jury so they will understand that?

The Court: Yes.

Lawyer Crawford: We would like to have each one of those exhibits numbered—

Mr. Embry: They are already numbered.

[fol. 1774] Mr. Nachman: Gentlemen of the jury, this exhibit is already in evidence as Plaintiff's Exhibit No. 168. It is a news story by Claude Sitton which appears in the March 7th, 1960 issue of The New York Times on pages 1 and 14.

Mr. Embry: Your Honor, we are going to have to handle these one by one. This one that he has just identified we object to because it purports to be a story about the demonstration which I will refer to as the "near-riot" that was inquired of the witness, MacDonald, I believe his name was and would not be pertinent to the issues as framed in this case.

Mr. Nachman: Your Honor, this news story is referred to in Interrogatory No. 4. It is referred to in the answers of the defendant, The New York Times, in Interrogatory No. 4. The question was "Please state whether or not The New York Times prior to the publication of the advertisement involved in this suit carried any news stories in its paper or received in its files any news coverage or reports from its reporters, news services or other news gathering media concerning any events or occurrences referred to in said advertisement, and if you answer affirmatively, please attach to your answer to this interrogatory the original or a true and correct copy of each and every said news story" and so on. The answer was, "The New York Times prior to the publication of the advertisement referred to and insofar as this defendant is able to determine from its records had received from its reporters, string correspondents and the news services to which it subscribes news stories relating to certain of the events and occurrences referred to in the advertisement and these stories appeared in defendant's newspapers on the dates of February 18, 1960, March 2, 3, 5, 6, 7, 8,

9, 10, 11, 12, 13, 23, 27, 30 and April 1, 1960. The actual news stories are equally within the knowledge of the plaintiff inasmuch as the same were produced by this defendant in response to this plaintiff's Motion to Produce and were introduced into evidence in this cause on a hearing on this defendant's Motion to Quash service of process herein." So, all we are trying to do, Your Honor, is to introduce the papers which they said were already in evidence and they said that therefore they were excused from [fol. 1775] attaching them to these interrogatories and now they say that they are objectionable.

Mr. Embry: May I be heard, Your Honor?

The Court: Go ahead.

Mr. Embry: Of course, Your Honor, they were admissible under Your Honor's ruling and at the time they were produced it was on a different matter that addressed itself to the Court without a jury. The fact that they were called for by interrogatories and the fact that under the law we were required to give them everything that appeared in our paper about any of these events that had taken place before the pleadings were settled in this case and the issues were framed doesn't make them admissible. I am sure Your Honor is thinking along the same lines I am in this regard. They introduced these answers to the interrogatories but that doesn't make the exhibits admissible unless they are pertinent to the issues.

Mr. Nachman: Your Honor, I don't see how the reference to these news stories could possibly be meaningful without the news stories and in addition to that they clearly show what knowledge and information was at hand to the defendant, The New York Times, on the 7th day of March which it could have consulted or the 29th day of March or the 28th of March or whenever this ad was presented and prepared for publication.

Mr. Embry: Your Honor, there may be some of these in there that are pertinent to these issues on the theory that Mr. Nachman is talking about.

The Court: I believe under Alabama law under Act 375 you have to answer whether the evidence may or may not be admissible. I am sort of judicially skeptical of this No. 168 here.

Mr. Nachman: These were not taken under Act 375, Your Honor.

The Court: I don't believe No. 168 is good. Let me give you an exception to that.

Mr. Nachman: May we make an offer of that or a showing, Your Honor?

The Court: Yes.

[fol. 1776] Mr. Nachman: We make an offer of Plaintiff's Exhibit No. 168 for identification, Mr. Reporter.

(Plaintiff's Exhibit 168, a newspaper article in the Monday, March 7th, 1960 issue of The New York Times captioned "Negroes Dispersed in Alabama March, Special to The New York Times" offered in evidence but disallowed and not received by the Court.)

Mr. Nachman: Now, Your Honor, we would like to offer into evidence next a document which is already in evidence and identified as Plaintiff's Exhibit No. 229 and it is page 23 of the March 8, 1960 issue of The New York Times.

Mr. Embry: Now, Your Honor, we don't object to this one identified as Plaintiff's Exhibit No. 169 as it has to do with some allegation in the Complaint.

(Plaintiff's Exhibit No. 229 being an article in the Tuesday, March 8th, 1960 issue of The New York Times, offered in evidence but disallowed and not received by the Court.)

Mr. Nachman: We will offer as our next exhibit then an article in the March 2nd, 1960 issue of The New York Times, pages 1 and 29 which is already in evidence identified as Plaintiff's Exhibit No. 169.

(Newspaper article appearing in the March 2nd, 1960 issue of The New York Times at pages 1 and 29, captioned "1,000 Negroes Join in March in Alabama" Special to the New York Times, by Claude Sitton, offered and received in evidence and identified as Plaintiff's Exhibit No. 349.)

[fol. 1777] Mr. Embry: Before you read that can we take up the objections to No. 229 and that's on the same basis that it doesn't relate to the allegations—

The Court: Let me see it.

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

Mr. Nachman: Your Honor, would you prefer to hear me on this?

The Court: Well, briefly.

Mr. Nachman: By saying this, Your Honor, I am referring to the story dated March 8th, 1960. This involves the same question as Your Honor has just ruled on.

The Court: Well, I will let the judicial axe fall on that too then. I sustain the objection.

Mr. Nachman: Well, we will offer to make an offer of that then too, Your Honor.

The Court: Very well.

Mr. Nachman: May I read this story to the jury now?

Lawyer Gray: If the Court please, they are only offering that as to The New York Times?

Mr. Nachman: It is limited to The New York Times, yes.

Lawyer Gray: Will your Honor so instruct the jury?

The Court: I will make a note of that.

Mr. Nachman: We offer this strictly as limited to The New York Times and we do not offer it in regard to any of the other defendants.

The Court: Go ahead.

Mr. Nachman: I will read this article aloud to the jury, if the Court please. It is Exhibit No. 349 and is captioned and reads as follows: "1,000 Negroes Join March in Alabama. By Claude Sitton. Special to The New York Times. Montgomery, Alabama. March 1. A thousand Negro stu-[fol. 1778] dents played and sang the National Anthem today on the steps of the first Capitol of the old Confederacy in a peaceful protest against segregation. Neither the police nor white hoodlums, one of whom attacked a Negro woman with a miniature baseball bat last week-end, attempted to interfere. High State officials watched from the entrance to the building which now serves as Alabama Capitol, with an occasional muttered comment. The likelihood remained that at least some of the demonstrators would be punished. Governor John Patterson has strongly implied that their leaders should be expelled from Alabama State College, and all Negro institutions. He had called initially for the expulsion of all involved. Today marked

the one month anniversary of the passive resistance movement, which began with the lunch counter "sit-in" in Greensboro, North Carolina, and later spread into Virginia, Florida, South Carolina, Tennessee and Alabama. Orderly March Urged. The students gathered at 8:45 A.M. on the Alabama State College Campus. One of their leaders, Elroy Embry warned that "If anyone thinks that they cannot be orderly they can help us better by staying here." Then they set out on the march of more than a mile to the stately colonial building on a hilltop overlooking downtown Montgomery. The students came silently by twos and white helmeted motorcycle policemen roared ahead of the column or sat watchfully along the way. It was Mardi Gras day in Alabama and capitol offices were closed. The students lined up thirty-five abreast on the white marble steps of the front entrance just below the spot where Jefferson Davis took the oath of office as President of the Confederacy ninety-nine years ago. At a word from one youth they bowed their heads and said the Lord's Prayer in unison. Then the students sang "The Star Spangled Banner." The students re-formed into a column of twos and marched back to the campus where they were dismissed by a leader. The demonstration had lasted for twenty-five minutes."

Mr. Nachman: And—

The Court: All right. Call the next witness.

Mr. Nachman: If the Court please, as our next exhibit we would like to introduce another document that is already in evidence identified as Defendant's Exhibit No. 3 which [fol. 1779] we would like to introduce into evidence and have marked by the Court Reporter as our Plaintiff's Exhibit No. 350, which as I understand it is a copy of the Union Advertising Service—

Mr. Embry: We have no objection to it, Your Honor.

Mr. Nachman: This is also limited to the defendant, The New York Times only.

Lawyer Gray: This is being solely as against The New York Times and not against these other defendants.

Mr. Nachman: That's just what I said. That's limited to The New York Times only.

(Order blank for publication of the Union Advertising Service, 302 Fifth Avenue, New York 1, New York, Re: New York Times, dated March 28, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 350.)

The Court: All right. Proceed. What is next?

Mr. Nachman: At this time, we want to offer into evidence, if the Court please, as Plaintiff's Exhibit 351 a newspaper article of the Monday, May 16th, 1960 issue of The New York Times at page 22 captioned "Times Retracts Statements in Ad"—

Lawyer Gray: This too is being admitted solely against The New York Times and not against these other defendants?

Mr. Nachman: That's correct. It is limited to The New York Times only. Now, gentlemen of the jury, this next exhibit is a page from The New York Times dated May 16th, 1960 which contained the retraction by The New York Times insofar as Governor Patterson is concerned and we will not read the entire story because it has already been introduced.

(Newspaper article, Monday, May 16th, 1960 of The New York Times, page 22, captioned "Times Retracts Statement in Ad" offered and received in evidence and identified as Plaintiff's Exhibit No. 351.)

Mr. Embry: Your Honor, we are going to object to this one.

The Court: Let me see it. Now, to be consistent, I think we will have to do the same thing with this one.

Mr. Nachman: Your Honor, in reference to admissibility on this one, it shows—

[fol. 1780] Mr. Beddow: If the Court please, we object to that statement in the presence of the jury—

Mr. Nachman: All right. I will not make any statement in the presence of the jury but I would like to be heard on this—

The Court: We are going to stop at this time anyway and then we can go into that after I have dismissed the jury for the night. Gentlemen of the jury, bear in mind

what I have said here today. While you are out tonight, we don't keep you together or furnish you with any meals or anything like that, but don't discuss the case and don't try to make up your mind about it one way or the other. One side has only presented part of its case and the other side hasn't been heard from yet at all and the best thing to do is to just get your mind off of it and forget all about it until tomorrow and be back in the jury box promptly at nine-thirty.

(Entire jury panel leaves Court Room.)

The Court: All right. Go ahead.

Mr. Nachman: Now, Your Honor, we are addressing ourselves to the document identified as Plaintiff's Exhibit No. 352 for identification. Now, we feel, Your Honor, that this reached The Times certainly no later than April 8th, the issue in which it admittedly appeared and it is possible in view of the dateline there that it might have reached the Times on the 7th of April. At any rate, it reached the Times before demand for retraction and we must assume that The Times knows what appears in its newspaper and therefore The Times was aware for at least a week before it answered our demand for a retraction and that sources in Alabama were saying that falsehoods were contained in this advertisement and we introduce this on the grounds that The Times had knowledge of the contention of these people—I believe Mr. McKee's purported investigation—the report of that investigation is dated on the 14th and that all of this information was before The Times and the only thing they said was incorrect was this padlocking when they wrote on the 14th or the 15th or whatever date it was. This is also relevant in terms of what they now will contend or may not contend at this trial regarding the other [fol. 1781] matters which are contained in this ad because when they wrote the ad—when they wrote us rather in April they said that the other matters were substantially correct and this indicates knowledge that they had or could be assumed to have had because of this column which appeared in their newspaper that people down here were contending that other things were incorrect too. We don't offer it for the truth of the matter contained in this thing

but we only offer it as proof that The Times had knowledge that people were contending that these matters were false and that they had that knowledge when they declined to make a retraction. We think it is relevant on the question of malice and knowledge and recklessness.

Mr. Embry: Now, Your Honor, that might put somebody on notice that Mr. Hall was writing something. I think a news story is admissible that purports to be a news story in our paper that purported to cover events that were embraced within the complained of portions of the advertisements. This part here is merely Mr. Hall's argument or a point of view expressed by Mr. Hall.

Mr. Nachman: We think that the fact that a responsible person in Montgomery thought that the ad was false is just as relevant as the fact that a person they contend to be a responsible person in New York thought that it was true. As I said, we don't offer it for the truth of the matter asserted but merely for the fact that they had knowledge that people in Montgomery and responsible people in Montgomery were saying that this matter was false.

Mr. Embry: It goes to our knowledge, Your Honor, and not what Mr. Hall thought.

The Court: What is U P I? Is that the United Press International?

Mr. Nachman: The United Press International; yes, Your Honor.

The Court: I believe I will turn this one down and give you an exception.

Mr. Nachman: Mr. Reporter, for the Record, we make an offer of Plaintiff's Exhibit 352 marked for identification. Now, Your Honor, we were going to have identified by Mr. MacDonald, the witness, as accurate portrayals of these scenes shown here in these photographs, the demonstrations of singing or however they could be characterized on the 1st of March which is precisely mentioned in this ad. We would offer to show by Mr. MacDonald that these photographs portray scenes on the capitol steps that day and they are very much in the ad—

The Court: Well, Mr. Embry objects and the Court sustains the objection.

Mr. Nachman: On his other oral testimony, Your Honor, we were going to amplify the circumstances and facts on March 6th which event is mentioned in their Answers to the Interrogatories.

Mr. Baker: That being the march from the Dexter Avenue Baptist Church to the Capitol which was stopped by the intervention of the police.

Mr. Nachman: Mr. Reporter, for the Record, we make an offer of these two photographs. They are marked for identification as Plaintiff's Exhibit No. 353 and No. 354.

(Newspaper article, The New York Times, dated April 8th, 1960, captioned "Alabamians Assail Ad Backing Dr. King," datelined Montgomery, Alabama, April 7th, 1960, offered and not received in evidence but disallowed by the Court.)

[fol. 1783] (One photograph, offered but not received in evidence and disallowed by the Court, marked and identified as Plaintiff's Exhibit No. 353 for identification.)

(One photograph, offered but not received in evidence and disallowed by the Court, marked and identified as Plaintiff's Exhibit No. 354 for identification.)

Mr. Embry: Mr. Reporter, I want to add this additional ground to my general grounds to the line of questioning asked of the witness by Mr. Nachman. Also the question calls for—the questions do not call for facts or circumstances of an identifying nature as a predicate to the witness in asking his opinion with reference to the application of the words of the advertisement complained of as applied to the plaintiff.

(At this point Court was recessed and reconvened at 9:30 o'clock A. M., Wednesday, November 2, 1960.)

[fol. 1784] HORACE W. WHITE, having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

By Mr. Calvin Whitesell:

Q. What is your name, sir?

A. Horace W. White.

Q. What is your occupation, Mr. White?

A. Transportation. The P. C. White Truck Line.

Q. Do you know the Plaintiff in this case, Mr. L. B. Sullivan?

A. Yes, sir. I do.

Q. How long have you known him?

A. For approximately five years.

Q. Now, Mr. White, I show you an ad from The New York Times identified as Plaintiff's Exhibit No. 347 and I will ask you if you have seen that ad before?

A. Yes, sir. I have.

Q. Do you recall when you first saw the ad? Approximately?

A. I don't recall the date, no, sir. It was some few days after it first came out in the paper.

Q. Do you recall how you happened to see the ad?

A. I believe somebody cut it out of the paper and mailed it to me but I don't remember and I am not sure of that but I believe that is right.

Q. Let me ask you this, then. Did I or Mr. Nachman or Mr. Steiner or Mr. Baker or Mr. Sullivan send you this ad?

A. No, sir.

Q. I will ask you if you have read the ad?

A. Yes, sir. I have.

Q. In particular I want to show you this paragraph headed here, "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." Have you read that paragraph?

A. Yes, sir. I have.

[fol. 1785] Q. Now, in reading that paragraph—

Mr. Embry: We—

Mr. Whitesell: We have the same agreement about objections, Mr. Embry.

Mr. Embry: Thank you, sir.

By Mr. Calvin Whitesell: (Continuing)

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

A. Yes, it did.

Q. Who did it mean?

A. Mr. L. B. Sullivan.

Q. All right, sir. Now, I want to show you this second paragraph here on which this complaint is based. It reads, "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and children. They have assaulted his person. They have arrested him seven times—for "speeding," "loitering" and similar "offenses." And now they have charged him with "perjury"—a felony under which they could imprison him for ten years." Did you read that?

A. Yes, I have.

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

A. Yes, sir.

Q. Who was that person or persons, sir?

A. Mr. L. B. Sullivan.

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?

A. Yes, it would.

Mr. Embry: We have the same understanding as to our objection—

Mr. Whitesell: Yes, sir. The same understanding and same objection.

Lawyer Crawford: The objections are being also noted for the Record that the other defendants have their objections also—

[fol. 1786] Mr. Whitesell: Yes. You have the same objections.

The Witness: Yes, it would.

By Mr. Calvin Whitesell: (Continuing)

Q. In what manner would it affect your opinion?

Mr. Embry: If the Court please, we object to that on the grounds that it is an unauthorized conclusion and also all of our other grounds previously stated.

The Court: All right. Same ruling.

Mr. Embry: We except.

Lawyer Crawford: Exception.

Mr. Whitesell: You may answer.

The Witness: Well, it would affect it to the extent that I don't know whether I would want to be associated with anybody who would be a party to such things that are stated in that ad.

By Mr. Calvin Whitesell: (Continuing)

Q. I will ask you if Mr. L. B. Sullivan has ever worked for the P. C. White Truck Lines?

A. Yes, he has.

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

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

The Court: Well, it is part of the Res Gestae and I will give you an exception. Go ahead.

Mr. Embry: We except.

The Witness: Yes, it would.

Mr. Embry: We would like to raise the further objection to this on the grounds that it has not properly been shown that the witness who is on the stand would have anything whatsoever to do with the rehiring of Mr. Sullivan.

Mr. Whitesell: All right. I will ask him about that. Just a minute.

[fol. 1787] By Mr. Calvin Whitesell: (Continuing)

Q. Would you have anything to do with the reemployment of Mr. Sullivan with the P. C. White Truck Lines?

A. Yes, I would.

Q. Would that affect his reemployment with the P. C. White Truck Lines?

A. Yes, it would.

Q. Let me ask you this. Have I or has any member of the firm of Steiner, Crum and Baker, Mr. Nachman, Mr. Steiner or Mr. Baker, ever represented you?

A. No, sir.

Q. Have any one of us ever represented the P. C. White Truck Lines?

A. Not to my knowledge. No, sir.

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

Cross examination.

By Mr. T. Eric Embry:

Q. Mr. White, did someone send this ad to you through the mail?

A. I am not sure if it was sent through the mail or just cut out and left on my desk in the office, sir. I just don't remember. I do remember that it showed up and I saw it.

Q. Is it your recollection that it was some short time after the 29th of March?

A. I just don't remember the date, sir.

Q. You found it on your desk in your office and that was at your place of business?

A. I don't remember exactly where I found it, sir. I just remember somebody showed it to me and it didn't mean much to me at that time but I did read the ad and I have read it several times since then.

Q. You say you didn't pay any particular attention to it at the time?

A. I paid some attention to it. Yes, sir.

Q. You said that you thought the ad meant Commissioner Sullivan. What statement contained in the ad that you read called to your mind or indicated to you that the statements

[fol. 1788] contained and the material contained in that ad referred to or meant Commissioner Sullivan?

A. Well, it says that "Truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus." Naturally, Mr. Sullivan is the head of the Police Department here.

Q. When you read that statement, did you think that Mr. Sullivan was a member of the Police Department or had participated in what that purported and set-out as having happened?

A. Well, I thought of Mr. Sullivan as being the head of the Police Department.

Q. But you didn't think of him as being charged with doing any of these things that is set out in the ad about ringing the campus or having shotguns and tear-gas, did you?

A. Well, I thought of his department being charged with it, yes, sir. He is the head of the Police Department as I understand it.

Q. Well, I say, you thought of the police as having been charged with doing what was set out in the language in that ad, didn't you?

A. Well, I thought of the police and I thought of Mr. Sullivan also as being the head of the Police Department.

Q. You thought well of Mr. Sullivan when he was employed with your firm, did you not?

A. Yes, sir. I did.

Q. And he enjoyed a good reputation not only in the community but with your company and you considered him one of your valuable employees, did you not?

A. Yes, sir.

Q. And you have continued to maintain your acquaintance with him since the time he was with your concern, have you not?

A. Yes, sir.

Q. And you have known that his reputation has remained good, have you not?

A. Yes, sir.

Q. And you still think as much of him now as before this ad was published, do you not?

A. Yes, sir. I do.

[fol. 1789] Q. You didn't believe anything in that ad that you referred to referred to his reputation and—

A. No, sir. I didn't believe that.

Q. You didn't believe that was true, did you?

A. No, sir.

Q. You didn't believe that Commissioner Sullivan ordered any of the police to do anything wrong, did you?

A. No, sir. I didn't.

Q. Or to intimidate anybody?

A. No, sir.

Q. You didn't believe that Commissioner Sullivan had ordered any of the police or anyone else to assault the person of any other person, did you?

A. No, sir. I didn't.

Q. Now, what was his job or classification or in what capacity did he work with your concern?

A. His title was Safety Director and since that wasn't full time work he worked partly in sales.

Q. What in that ad would cause you to not reemploy Mr. Sullivan in the event that he applied for reemployment with your concern?

A. Well, the fact that he allowed the Police Department to do the things that the paper say he did.

Q. Which you didn't believe.

A. No, sir, I didn't.

Q. And you don't now believe.

A. No, sir.

Q. As a matter of fact, if he were to seek reemployment with you, all the facts being equal, you would reemploy him if you had a place for him, wouldn't you?

A. Yes, sir.

Q. Do you know whether or not and I will ask you for this as a conclusion on your part—do you know whether or not his earnings with your concern at the time he was employed with you was greater or less than the compensation he receives as a member of the Board of Commissioners [fol. 1790] of the City of Montgomery?

A. I—

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

The Court: Yes, I sustain the objection.

By Mr. T. Eric Embry: (Continuing)

Q. Mr. White, then did you first inform either of these attorneys or Mr. Sullivan that you had seen this ad at the time you did see it there when it was left on your desk?

A. I don't remember the date. I talked with Mr. Sullivan about it some time later but I don't remember the date.

Q. Did you talk with him sometime about the time you had seen this or some day recently?

A. I talked to him recently about it also but I talked to him about it a few days after I saw it too.

Q. Was it before this litigation began?

A. Yes, sir.

Q. As I understand it, you did not see this ad as a result of purchasing an issue of The New York Times or as being a subscriber to The New York Times but the ad was left on your desk detached from the paper proper, you might say.

A. I didn't purchase The New York Times. No, sir.

Q. I see. This was not read by you in the newspaper. It was left on your desk as a separate—like it exists there now.

A. Yes, sir, but it was in newspaper form the same as this is in.

Q. Well, I mean it was a single cut-out. It was a single sheet of paper, wasn't it?

A. Yes, sir.

Q. In other words, you didn't have the paper—

A. I didn't have the full paper. No, sir.

Q. You don't know where this came from—

A. I don't recall at the time. No, sir.

Q. You don't know whether The New York Times placed it there or Commissioner Sullivan or who placed it there in your view, do you?

[fol. 1791] A. Well, I am sure that The New York Times nor Mr. Sullivan didn't.

Q. Did not.

A. Yes, sir.

Q. The one you are holding there—is that the copy you had on your desk?

A. No, sir.

Q. Do you know what became of it?

A. No, sir. I don't.

Q. Did you retain it or destroy it or give it to someone else?

A. I really don't know what happened to it, sir.

Q. All right, that's all. Thank you, sir.

Lawyer Gray: No questions.

Re-direct examination.

By Mr. Calvin Whitesell:

Q. Where is your office, sir?

A. Our home office is located in Dothan, Alabama.

Q. Where do you live?

A. I live in Dothan.

Q. Now, I want to ask you again—Mr. Embry brought this up—I want to ask you about affecting his reemployment with the P. C. White Truck Lines. If you had believed what was in that ad, would you have reemployed Mr. Sullivan?

A. No, sir.

Mr. Embry: We object to that, Your Honor. He has testified to that already.

The Court: Yes, it is repetitious.

Mr. Embry: We move to exclude—

The Court: Keeping repetition out of a law suit is like getting the snakes out of Ireland. We need St. Patrick on the Bench. Anything further for this witness?

Mr. Embry: Yes, Your Honor. I have one more question.

Re-cross examination.

By Mr. T. Eric Embry:

[fol. 1792] Q. Mr. White, were you subpoenaed here or were you asked to come up here by Mr. Nachman?

A. I was asked to come.

Q. You were not subpoenaed.

A. No, sir.

Q. All right, sir. Thank you.

Mr. Nachman: If the Court please, at this time we would like to offer into evidence the originals of the demand for retraction sent to the four individual defendants by Commissioner Sullivan.

Mr. Embry: Of course, Mr. Nachman, you are not offering that except in regard to the four individual defendants, are you?

Mr. Nachman: Just as to the four individual defendants. That's right.

Lawyer Gray: You are offering those into evidence for the purpose of showing that they were sent but not necessarily showing that they were received. Is that right?

Mr. Nachman: Well, is there any question about whether or not they were received? We have the return receipts too, if there is any question about it. I didn't think from listening to your opening statement that there was any question that a demand for retraction had been sent but if there is we will prove that later.

Lawyer Gray: We have no objection to them if they are properly shown to have been sent—

Mr. Nachman: Well, I am calling on you now to state—there is no point in putting on witnesses at this point if there is no question about it. Is there any question but that these letters were received by these four defendants or addresses? If there is, then we will prove it.

Lawyer Gray: May we have a moment, Your Honor?

The Court: Yes.

(Consultation between counsel.)

Mr. Nachman: The only thing I am asking for—we can take the time of the Court and jury to do it if necessary.

[fol. 1793] The Court: Well, why not go on and do it. It will probably save time in the end.

Mr. Nachman: Well, I thought that there had been no doubt that these had been received but if there is we can go ahead and prove it.

Lawyer Gray: Well, we are willing to stipulate that the defendants received copies of these.

Mr. Nachman: Well, I understand then that there is no question—

Lawyer Crawford: Yes, there is a question as to the date of receipt of the supposed letters of retraction.

Mr. Nachman: Well, without going into the question of the date of receipt, we can stipulate that these four duplicate originals were received by the addressees thereon. Can we stipulate that for the Record?

Lawyer Gray: Yes, we can stipulate that.

Mr. Nachman: All right. With that understanding, we will offer these four letters into evidence to be identified as our next four exhibits.

(Letter from Commissioner L. B. Sullivan, Montgomery, Alabama, dated March 8, 1960 to Ralph D. Abernathy, Montgomery, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 355.)

(Letter from Commissioner L. B. Sullivan, Montgomery, Alabama, dated March 8, 1960, to S. Seay, Montgomery, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 356.)

(Letter from Commissioner L. B. Sullivan, Montgomery, Alabama, dated March 8, 1960, to J. E. Lowery, Mobile, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 357.)

[fol. 1794] (Letter from Commissioner L. B. Sullivan, Montgomery, Alabama, dated March 8, 1960, to Fred L. Shuttlesworth, Birmingham, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 358.)

Mr. Nachman: Now, there is no question about the return receipt to S. S. Seay and we offer this in evidence and I take it that the Times is not interested in this now. We offer into evidence as our next exhibit return receipt from the Post Office Department for J. E. Lowery. We offer into evidence the return receipt for Ralph D. Abernathy as our next exhibit. We offer into evidence the return receipt for Fred L. Shuttlesworth to be marked and identified as our next exhibit.

(Post Office Department return receipt for Ralph D. Abernathy offered and received in evidence and identified as Plaintiff's Exhibit No. 359.)

(Post Office Department Return Receipt for S. S. Seay, offered and received in evidence and identified as Plaintiff's Exhibit No. 360.)

(Post Office Department Return Receipt for J. E. Lowery, offered and received in evidence and identified as Plaintiff's Exhibit No. 361.)

[fol. 1795] (Post Office Department Return Receipt for Fred L. Shuttlesworth, offered and received in evidence and identified as Plaintiff's Exhibit No. 362.)

Mr. Nachman: Am I correct in stating that the Return Receipts which are now in evidence as Plaintiff's Exhibits No. 359, 360, 361, and 362 accompanied the letters for retraction which are now in evidence and identified as Plaintiff's Exhibits 355 through and including Plaintiff's Exhibit 358 and that the signatures on the Return Receipts are the genuine signatures that they purport to be and there is no question about that? Exhibit No. 359 is Seay—no. No. 356 is Seay, 358 is Shuttlesworth, 357 is Lowery's, 356 is Seay and 355 is Abernathy. Am I correct about that?

Lawyer Gray: Yes.

Mr. Nachman: Your answer is yes. Now, Your Honor, we would like to introduce into evidence the original of the reply that The New York Times made to this demand for a retraction in this case.

Mr. Embry: Is this the one that we sent you?

Mr. Nachman: Yes.

Mr. Embry: We have no objection to that, Your Honor.

Lawyer Gray: That is admitted as only against The Times.

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

(Letter from Lord, Day and Lord, 25 Broadway, New York 4, New York, dated April 15, 1960, to Commissioner L. B. Sullivan, Montgomery, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 363.)

[fol. 1796] Mr. Embry: Would you read that letter, Mr. Nachman?

Mr. Nachman: All right, sir. I will be glad to read it out loud. Gentlemen of the jury, what I am now going to read to you is identified as Plaintiff's Exhibit No. 363. This is a letter, from Lord, Day and Lord, 25 Broadway, New York 4, and it is dated April 15th, 1960. It is addressed to Commissioner Sullivan, City of Montgomery, Montgomery, Alabama. It reads as follows: "Dear Mr. Commissioner: Your letter of April 8, sent by Registered Mail to The New York Times Company has been referred for attention to us as general counsel. You will appreciate, we feel sure, that the statements to which you object were not made by The New York Times but were contained in an advertisement proffered to the Times by responsible persons. We have been investigating the matter and are somewhat puzzled as to how you think the statements in any way reflect on you. So far, our investigation would seem to indicate that the statements are substantially correct with the sole exception that we find no justification for the statement that the dining hall in the State college was "padlocked in an attempt to starve them into submission." We shall continue to look into the subject matter because our client, The New York Times, is always desirous of correcting any statements which appear in its paper and which turn out to be erroneous. In the meanwhile you might, if you desire, let us know in what respect you claim that the statements in the advertisement reflect on you. Yours very truly, Lord, Day and Lord."

Mr. Embry: Mr. Nachman, could we stipulate that no reply was made by Mr. Sullivan to that letter?

Mr. Nachman: Yes, we may. No reply was made. The law suit was filed. That was the reply. We would like to call Mr. John Matthews, the Clerk of the Circuit Court as our next witness, if the Court please.

The Court: All right. Proceed.

[fol. 1797] JOHN R. MATTHEWS, having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

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

Q. Mr. Matthews, do you have with you the records of the Circuit Court of this county in connection with the arrest and charges against some thirty odd individuals growing out of disorderly conduct charges in connection with the demonstration on the 8th of March at the Alabama State College?

A. I do.

Q. Will you read off the names of the—

Mr. Embry: Mr. Matthews, don't answer until I get a chance to state my objections. All I want you to do is not to answer until I—

The Witness: No, I won't answer.

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

Q. Will you refer to the records you have there with you, sir.

A. Yes, sir.

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

Mr. Embry: If the Court please, we object to that on the ground that the question calls for evidence that is not relevant and competent and not within the issues of this cause and that the arrest of these people is incompetent, irrelevant and immaterial to the issues embraced in this case.

The Court: What is your theory, Mr. Nachman?

Mr. Nachman: My theory, Your Honor, is this. This ad charges what we consider indefensible police action in connection with the demonstration which the interrogatories—the answers to the interrogatories state took place on March 8th. Now, there were thirty odd individuals who were arrested by the Police Department in connection with that

demonstration. We think it is important for the Court and [fol. 1798] the jury to know that all of the persons who were arrested in connection with that pleaded guilty to the offense with which they were charged.

The Court: Let me see the ad. How does this appear in the ad?

Mr. Beddow: Now, if Your Honor please, if Mr. Nachman is going to testify and make statements that we are objecting to when we feel that the questions call for incompetent, irrelevant and immaterial testimony—

The Court: Well, let me see the ad. If it is legal and competent evidence, I will let it in.

Mr. Nachman: Here is the ad, Your Honor. It is the third column on the left, Your Honor.

The Court: What particular part here?

Mr. Nachman: It has to do with the part about ringing the campus—that portion of that—the answers to the Interrogatories which contained the Sitton memorandum. The Sitton memorandum states that there were arrests and that they were later—

Mr. Embry: Your Honor, can't he just show that to you without making a statement here in front of the jury—

The Court: Yes.

Mr. Nachman: Well, I thought the Court wanted to hear from me orally as well as from you, Eric.

Mr. Embry: Well, you are just trying to argue the case.

Mr. Nachman: No, I'm not. I'm trying to present to the Court our theory of admissibility.

The Court: Well, I think it is material and I will give you an exception to each party and record and everything.

Mr. Embry: You think it is material, Your Honor?

The Court: Admissible, yes.

Mr. Embry: We except, Your Honor.

Lawyer Gray: I take it this is being admitted solely against the Times and not as against the other defendants.

Mr. Nachman: It is being admitted as against everybody.

Lawyer Gray: Well, under a previous ruling of the [fol. 1799] Court—now there is nothing in this ad and there is nothing in the Complaint, as I read this complaint and this ad, which says anything at all about what they are about to go into at this time.

The Court: Well, I will let it in and give you an exception to each question and each part of the record referred to.

Lawyer Gray: All right, Your Honor. We except.

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

Q. Mr. Matthews, would you read the names—

Mr. Embry: Your Honor, do we have an agreement about all of our grounds of objection as to its being incompetent, irrelevant and immaterial before this first question is asked and throughout the following series of questions—

The Court: Oh, yes.

Mr. Embry: I might add this, Your Honor, without admitting its relevancy and materiality, we can stipulate that a certain number of people were arrested and whatever happened to them and that they paid fines, if they did so—

The Court: Well, will that save any time?

Mr. Nachman: Well, can we stipulate on the part of counsel that all persons charged in connection with this incident pleaded guilty, and if so, and if we can't—

Lawyer Crawford: I don't believe that stipulation can be made—

The Court: Well, I don't think you can stipulate. You had better go ahead.

Mr. Nachman: All right, Your Honor.

Lawyer Crawford: I don't believe that stipulation can be made. Now, I want to object to the inference that counsel intentionally keeps expressing relevant to the matter of the Plea that was entered in this case. May I discuss this with the Court outside the presence of the jury?

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

[fol. 1800] Lawyer Crawford: May I approach the Bench, Your Honor?

The Court: Yes.

Lawyer Seay: Your Honor, Mr. Nachman keeps talking about the fact that these people pleaded guilty and is attempting to draw some inference from that. Now, it is our contention that no inference can be drawn from that and that that fact should be made clear to this jury. As far as

we are concerned, the Plea that was entered by those students was simply a matter of tactics and was a position that was arrived at by the attorneys in this case and I was one of the attorneys and it is our contention that they should not be allowed to draw inferences from that in the presence of the jury.

The Court: Well, I will let it in and you may argue that point to the jury if you want to. Go ahead.

Lawyer Seay: We except.

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

Q. Mr. Matthews, would you read the names of each one of these individuals as they appear on your records and state the disposition of each case as it appears from your records.

A. The first case is the case of the City of Montgomery versus Kenneth McMillan, charged with refusing to obey an officer. Kenneth McMillan was convicted on May 10th, 1960 and fined \$100. He appealed his case and was sentenced to hard labor for one hundred days or the fine and four additional days for the Recorder's fee and that was on July 11 and that conviction was set aside and he thereupon pleaded guilty and paid a fine of \$1.00. And that was case No. 7968. In case No. 7969, Edward Jefferson, disorderly conduct, was fined \$100 which was paid in that. In 7970, Julian E. Relf, disorderly conduct, pleaded guilty and paid \$100 fine on July 11th. On July 11th, Eugene McAllister Morgan pleaded guilty and paid \$100 fine for refusing to obey an officer. The next one is Walker, refusing to obey an officer and on July 11th, pleaded guilty and was fined \$100. On July 11th, Irvin Clarence Williams, refusing to obey an officer, fined \$1.00. Pitts Edward Jefferson, second case, he was convicted on May 11th and was fined \$100 [fol. 1801] and was sentenced to hard labor for one hundred days for the fine and \$4.00 for the Recorder's fee—four days for the Recorder's fee—and that was set aside and on July 11th, 1960, he pleaded guilty and paid \$1.00, for refusing to obey an officer. Julian Relf, refusing to obey an officer, pleaded guilty and was fined \$1.00. Case No. 7976, another case against McMillan, he was convicted

for disorderly conduct and was fined \$100 which was paid. In Case No. 7977, Eugene McAllister Morgan, pleaded guilty and was fined \$100. On July 11th again Carroll Ray Walters pleaded guilty and paid \$100 fine for disorderly conduct. On July 11th Irvin Clarence Williams pleaded guilty to disorderly conduct and was fined \$100. Raymond Reynolds, charged with refusing to obey an officer, pleaded guilty and was fined \$1.00. Raymond Reynolds, another case, disorderly conduct, pleaded guilty on July 11th and was fined \$100. Willard Edward Waters, refusing to obey an officer, pleaded guilty on July 11th and was fined \$1.00. Another case against Willard Edward Waters for disorderly conduct and on July 11th he pleaded guilty and was fined \$100. On July 11th, Marion J. Whitehurst pleaded guilty to refusing to obey an officer and was fined \$1.00. On the same date, the same defendant pleaded guilty to disorderly conduct and was fined \$100. On the same date, July 11th, Frank Edsal Hawkins pleaded guilty to refusing to obey an officer and was fined \$1.00 and on the same date, the same man, for disorderly conduct, paid \$100. Milton R. Ivery, for refusing to obey an officer, July 11th, pleaded guilty and paid \$1.00 and on the same day the same man pleaded guilty to disorderly conduct and was fined \$100. On July 11th, James Rickerson, Jr., pleaded guilty to refusing to obey an officer and was fined \$1.00 and on the same date the same man pleaded guilty to disorderly conduct and paid a hundred dollar fine. Elbert L. Dennis, for refusing to obey an officer, paid a \$1.00 fine July 11th. The same date the same man paid a \$100 fine for disorderly conduct. Carl A. Moore, July 11th, \$1.00 fine for refusing to obey an officer and the same defendant paid a fine for disorderly conduct of \$100. That was on the same date. Richard Sanders, Jr. pleaded guilty and was fined \$1.00 which was paid on July 11th and on the same date he pleaded guilty to disorderly conduct and paid a one [fol. 1802] hundred dollar fine. Arrington pleaded guilty for refusing to obey an officer and paid a fine of \$1.00 and on the same date he pleaded guilty to disorderly conduct and was fined \$100. Rebecca Dixon, refusing to obey an officer, July 11th, pleaded guilty and paid a fine of \$1.00.

The same date on another charge of disorderly conduct was fined \$100 which was paid.

Q. A plea of guilty?

A. Yes, pleaded guilty. Next is Augusta Edward Grace pleaded guilty for refusing to obey an officer and was fined \$100 and on the same date pleaded guilty again to disorderly conduct and was fined \$100 which was paid. James Stanley Haskins, refusing to obey an officer, July 11th, pleaded guilty and was fined \$100 which was paid. The same man on the same date was fined \$100 for disorderly conduct which was paid. Emmet M. Harne, refusing to obey an officer, pleaded guilty and was fined \$1.00. On the same date for disorderly conduct he pleaded guilty again and paid a \$100 fine. Barley, refusing to obey an officer, paid a \$1.00 fine and on the same date for disorderly conduct pleaded guilty and paid a \$100 fine. Thomas Lee Calhoun, refusing to obey an officer, paid a \$1.00 fine on July 11th and on the same date pleaded guilty to disorderly conduct and was fined \$100. Duslin C. Hayes, refusing to obey an officer pleaded guilty and paid a \$1.00 fine and on the same date pleaded guilty to disorderly conduct and paid a \$100 fine. Franklin Delano Riley, refusing to obey an officer, pleaded guilty and paid a \$1.00 fine and on the same date he pleaded guilty again and paid a \$100 fine. Paul Joseph Adams, refusing to obey an officer, pleaded guilty and paid a \$1.00 fine and on the same date pleaded guilty again and paid a \$100 fine for disorderly conduct. Samuel Floyd, refusing to obey an officer, \$1.00 fine and on the same date pleaded guilty to disorderly conduct and paid a \$100 fine. Dolphus Hendrix, refusing to obey an officer, \$1.00 fine and on the same date pleaded guilty and paid a \$100 fine for disorderly conduct. Sylvester Walters pleaded guilty to refusing to obey an officer and paid \$1.00 fine and on the same date, disorderly conduct, pleaded guilty and paid a \$100 fine. Joanna E. Davidson, refusing to obey an officer, pleaded guilty and paid a \$1.00 fine and on the same date [fol. 1803] pleaded guilty to disorderly conduct and paid a \$100 fine. Dorothy Henderson, refusing to obey an officer, \$1.00 fine and on the same date pleaded guilty to disorderly conduct and paid a \$100 fine. Theresa Maddox, refusing to obey an officer, pleaded guilty and was fined

\$1.00 and then pleaded guilty to disorderly conduct and was fined \$100. Rosetta White, refusing to obey an officer, paid a \$1.00 fine on a plea of guilty and Rosetta White again, disorderly conduct, pleaded guilty and paid a \$100 fine. I think that's all of them.

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?

Mr. Embry: If the Court please, we object to that on the grounds that it is incompetent, irrelevant and immaterial and doesn't tend to shed any light on the issues embraced in this case.

The Court: Well, he might answer that he doesn't know. Let's see what he says. Let us see whether he knows or whether he doesn't.

Mr. Embry: We except.

The Witness: You mean from the demonstrations at the colored school out there?

Mr. Nachman: Yes, sir.

The Witness: I don't know of any other charges. I don't believe there were any more. Now, there might have been.

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

Q. Your records show that there were no more.

A. No. I don't think there was any more. I think that's all.

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 returns?

A. Yes, he was.

Mr. Embry: Your Honor, that is incompetent, irrelevant and immaterial.

[fol. 1804] The Court: I will let it in but the Court takes judicial notice of its own record.

Mr. Nachman: No further questions.

Mr. Embry: John, I want to congratulate you.

The Witness: No questions?

Mr. Embry: You are the only witness who has recited facts and who hasn't drawn on his imagination.

The Witness: Thank you, so much—

The Court: Go ahead, gentlemen.

Lawyer Gray: I have a question, Your Honor.

The Court: Go ahead.

Cross examination.

By Lawyer Gray:

Q. Mr. Matthews, in the student cases that were tried, who served as Judge in those cases?

A. What cases were they now?

Q. The cases you just referred to. Who served as Judge in those cases?

A. Well, Judge Carter entered these pleas.

Q. What about the original case that was tried?

A. Well, now, wait a minute. Well, Mr. Baker acted as Judge.

Q. Is that the same Mr. Baker who is one of counsel for the plaintiff?

A. There he sits right over there across from the Bench.

Q. Now, one other thing, Mr. Matthews—

Mr. Baker: Now, Your Honor, I don't want to object to this—

Lawyer Gray: Your Honor—

The Court: Let's see what his objection is.

Mr. Baker: It puts me in the position of either having to call counsel to the Stand or else take the witness stand myself and testify that my connection with this case was made well known to counsel and was waived.

The Court: All right. Any more questions?

Lawyer Gray: Yes, sir.

[fol. 1805] The Court: Go ahead.

By Lawyer Gray: (Continuing)

Q. These were appeals from the City Court. Is that correct?

A. That's right.

Q. Do you recall after the original case was tried before Mr. Baker and after we had filed an appeal that I had a discussion with you about the possibility of appealing all of these cases?

A. I think you did.

Q. Do you remember giving me an estimate of the cost of preparing the transcript if we had appealed those cases?

A. Well, I couldn't have given you an estimate on the transcript because I did not know what the Court Reporter's fee would be in those cases and that would be the major part of the transcript.

Q. Well, we did discuss that generally, did we not?

A. Yes. I think we did, yes.

Q. Will you tell the Court whether or not in your opinion that if all of those cases had been appealed that the Court costs of the Record would have been over ten thousand dollars?

A. Well, I wouldn't want to say that. I don't know that it would run to ten thousand dollars. No. I wouldn't think that it would run to that much.

Q. But it was—

A. It would have been a sizeable amount.

Q. And it would have been preparing separate transcripts for each offense.

A. That's right.

Q. And there were thirty-two defendants approximately.

A. That's right.

Q. Which would have meant some sixty-four separate transcripts.

A. That's right.

Q. And wasn't it after that matter had been discussed that these persons entered pleas of guilty?

A. Yes, they entered pleas of guilty after there was some [fol. 1806] discussion about the cost of preparing the transcripts.

Q. All right. That's all.

Redirect examination.

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

Q. Mr. Matthews, Fred Gray was the attorney for all of these people who pleaded guilty, was he not?

A. He was.

Q. It was done in open Court before Judge Carter?

A. Oh, yes.

Q. Was Solomon Seay also in the case?

A. Yes, he was there.

Q. Were they present when their clients pleaded guilty?

A. Yes.

Lawyer Gray: We pleaded them guilty, Mr. Nachman.

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

Q. They didn't do it without advice of counsel, did they?

A. No.

Lawyer Gray: Because of the cost involved.

Mr. Nachman: That's all.

The Court: Any more questions?

Lawyer Gray: That's all, Your Honor.

E. Y. Lacy, having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

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

Q. Will you state your name to the Court and jury, please?

A. E. Y. Lacy.

Q. What is your present occupation, Mr. Lacy?

A. Lieutenant of Detectives of the Montgomery Police Department.

[fol. 1807] Q. Were you employed by the Montgomery Police Department—how long have you been employed by the Montgomery Police Department, Mr. Lacy?

A. For thirty-two years.

Q. Since 1955 or early 1956 in what capacity have you worked there with the Police Department? What was your job down there?

A. Lieutenant of Detectives, sir.

Q. What are the general scope of those duties?

A. Supervision.

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?

Mr. Embry: We object to that, Your Honor. There is no issue in this case claimed about the occurrence or not of any events—

The Court: I believe the ad mentioned something about a bombing, didn't it?

Mr. Embry: Well, the ad mentions that, yes, but—

Mr. Baker: Let's have a stipulation in Open Court if there is any controversy about it—

The Court: Let me see the Complaint.

Mr. Embry: Your Honor, may I get my grounds of objection in?

The Court: Yes. Go ahead.

Mr. Embry: It is incompetent, irrelevant and immaterial and not relevant to any of the issues embraced in this case and is not relevant to any of the issues in this case by the pleading as framed by the Complaint or the Plea of defendant, The New York Times. It doesn't shed any light on issues and doesn't have any probative value.

Lawyer Gray: The other defendants wish to join in the objection on the same grounds, if the Court please.

The Court: Overruled.

Mr. Embry: We except.

Lawyer Crawford: We except.

[fol. 1808] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer the question. Did you have anything to do with the investigation of that bombing in the course of your official duties with the Montgomery Police Department?

A. Well, which bombing? There was more than one.

Q. Well, as many as occurred in relation to Martin Luther King's house.

A. On two occasions, I did.

Q. Were there any other occasions where any bombs were used at his home?

A. I don't remember how many. If there were any other, I don't remember.

Q. The two occasions you have mentioned were the only ones you remember. Is that correct, sir?

A. Yes, sir.

Q. In the course of your duties you were in on the investigation of those two bombings. Is that correct?

A. Yes, sir.

Q. Did the bombs go off on both occasions?

A. No, sir.

Q. On how many occasions?

A. One.

Q. What happened on the second occasion?

A. It failed to go off. It was thrown on the front porch. There was one fuse—there were nine sticks of dynamite wrapped around a pipe with adhesive tape and in lighting the fuse, one of them lit and one didn't, and the one fuse that did light burnt into the sticks of dynamite but did not go into the cap and the cap did not go off.

Q. Did you or anyone else in your detail, so to speak, have anything whatsoever to do with dismantling that bomb?

A. Yes, sir.

Q. You did?

A. Yes.

Q. You and who else?

A. Dr. Pruitt, Bill Lyerly and myself.

Q. At that time, what was Mr. Lyerly's job?

[fol. 1809] A. He was the Director of Public Safety for the State of Alabama.

Q. What was Dr. Pruitt's job?

A. He was with the State Toxicology Department.

Mr. Embry: May I inquire if we have the same understanding that we have our objections to this entire series of questions with a Motion to Exclude and an exception.

Mr. Nachman: Yes, that's—

The Court: Yes. Go ahead.

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

Q. Lieutenant, did the Police Department actively engage in an investigation to determine who were the persons responsible for this bombing?

A. Yes, sir.

Lawyer Gray: We have the same objection and exception.

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

Q. Did the Police Department have anything to do with the actual bombing? Did the Police Department arrange for the bombing or have anything to do with the bombings?

A. You mean of throwing the bomb?

Q. Yes, sir.

A. No, sir.

Q. Did the Police Department do everything they could to apprehend the persons who might be responsible for the bombings?

A. Yes, sir.

Mr. Embry: If the Court please, we object to that. It is not relevant—

The Court: I think it is relevant under the Pleadings here. Overruled.

Mr. Embry: We except.

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

Q. Did the Police Department condone or approve of the bombings in any way?

[fol. 1810] A. No, sir.

Q. Was the investigation undertaken by the Police Department an ordinary routine investigation or was it an extraordinary investigation in terms of personnel and time and expense?

Mr. Embry: We object to that, Your Honor, as to whether it was an extraordinary effort or little effort or—

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

Lawyer Crawford: Your Honor, we would like to interpose an objection at this point on the ground that this is highly prejudicial. Mr. Nachman is trying to turn the clock back to 1955 when all this turmoil was going on here in Montgomery—

The Court: Overruled and you have an exception.

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

Q. You may answer the question, Lieutenant.

A. The Police Department did extensive research work with overtime and extra personnel and we did everything that we knew including inviting and working with other departments throughout the country.

Q. All right. That's all.

Cross examination.

By Mr. T. Eric Embry:

Q. Lieutenant, the police aren't in the habit of going around and throwing bombs, are they?

A. No, sir.

Q. And nobody around here ever believed that they did, did they?

A. Well, we were told we were.

Q. Your job was to investigate in an attempt to determine to find out who had done that, wasn't it?

A. That is correct.

Q. And your job, Lieutenant, was to apprehend them and prosecute them for that, wasn't it?

[fol. 1811] A. Right.

Q. All right. That's all.

The Court: The Police Department doesn't throw bombs, do they?

The Witness: Never heard of it.

Mr. Embry: That's all.

Cross examination.

By Lawyer Crawford:

Q. Mr. Lacy, was Mr. Sullivan in office at that time? Was he in office at the time you just spoke of? At the time of the bombings?

A. I don't believe so.

Q. When did he take office?

A. I couldn't say.

Q. Then, obviously, this article or the matter that you just talked about didn't apply to him, did it?

Mr. Nachman: If the Court please, we object to the form of that question. He is asking this witness to draw a conclusion—

The Court: Yes.

Lawyer Crawford: This is Cross Examination, Your Honor, and it certainly was brought out—

The Court: Well, he can't draw any conclusion. That's for the jury from the evidence—

Lawyer Crawford: It appears, Your Honor, that the other witnesses have been giving their conclusions and opinions and you allowed us to have an objection and an automatic exception to it and that's all we are asking is the same as the others—

The Court: I sustain the objection.

Lawyer Crawford: Sir?

The Court: I sustain the objection to the form of the question.

Lawyer Crawford: I am sorry. I didn't understand you, Your Honor.

The Court: I sustain the objection to the form of the question and the question itself.

[fol. 1812] Lawyer Crawford: We except, Your Honor.

By Lawyer Crawford: (Continuing)

Q. Mr. Lacy, did you read the ad?

A. Which ad?

Q. The ad you were talking about. Weren't you talking about an ad?

A. I haven't talked about one yet.

Q. You weren't talking about anything then, were you?

A. I was talking about the bombings.

Q. That's all.

Mr. Nachman: No further questions.

O. M. STRICKLAND, having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

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

Q. Will you state your name to the Court and jury, please?

A. O. M. Strickland.

Q. What is your present employment, Mr. Strickland?

A. The Police Department of the City of Montgomery.

Q. Do you live in the City of Montgomery?

A. No, sir, I don't.

Q. Where do you live, sir?

A. At Route 1, Ramer.

Q. How long have you been employed by the Police Department of the City of Montgomery, sir?

A. For a little over seven years.

Q. Mr. Strickland, I will ask you to go back in your memory to a time when a man named Edward Davis was being charged with assault with intent to murder by Rev. Abernathy. Am I correct in stating that that was early in 1958?

Mr. Embry: If the Court please, we are going to have to [fol. 1813] object to that as being incompetent, irrelevant and immaterial.

The Court: How would that connect up with this ad here, Mr. Nachman?

Mr. Nachman: In the ad it says that Martin Luther King, Your Honor, was arrested for "Speeding," "loitering" and similar "offenses." The answers to the interrogatories say that King's statement to Sitton—that the only time he was assaulted was when he was arrested and that is a circumstance that we now propose to go into by this witness.

Mr. Embry: Now, Your Honor, I want to make this clear. I want to remind the Court that he introduced these answers to the interrogatories and now he is trying to contradict his own evidence. First of all—

Mr. Nachman: If the Court please—

Mr. Embry: Just a minute, please, Mr. Nachman. Let me finish.

Mr. Nachman: Go ahead, sir.

Mr. Embry: It is the undisputed evidence that these events he is now attempting to bring before us occurred before Mr. Sullivan took office and they occurred before the publication of this advertisement and before this plaintiff could have complained about it—

Mr. Nachman: The law is entirely clear, Your Honor, that when we introduced the Interrogatories in evidence that that does not deprive us of the opportunity of contradicting if we so desire—

The Court: Well, on the question of materiality—that's what you need—

Mr. Nachman: On the question of materiality, Your Honor, they used the words, "They have assaulted his person." They said, "They have arrested him seven times—for "speeding," "loitering" and similar "offenses."

The Court: Well, you are not asking him about Rev. King.

Mr. Nachman: Well, Your Honor, the explanation which they gave in the answers to the interrogatories—

[fol. 1814] Lawyer Crawford: Your Honor, we would like to interpose an objection here. While Mr. Nachman is waiting for your ruling he is bringing before this jury the things he intends to prove and thereby putting it before the jury in the event you sustain the objection.

The Court: Well, let me try to save a little time here. I don't believe this evidence is admissible.

Mr. Nachman: Your Honor, may I call your attention to this?

Mr. Steiner: Will you look at this ad, Your Honor?

(Off the Record discussion between Court and counsel.)

Mr. Nachman: I will re-phrase my question, Your Honor, and perhaps that will eliminate some of the objections.

The Court: All right. Go ahead.

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

Q. Officer, did you have occasion at any time to arrest Martin Luther King, Jr.?

A. Yes, sir. I did.

Q. Will you state to the Court and the jury what the circumstances were on that occasion as fully as—

The Court: Connect it with King.

Mr. Nachman: 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.

Mr. Embry: We object to that, if the Court please, on the grounds that it is incompetent, irrelevant and immaterial and not evidence pertinent to the issues framed within this case and doesn't shed any light on those issues and doesn't tend to prove or disprove any of the allegations of the Complaint or defensive pleas of the defendant in this case, Your Honor.

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

Mr. Embry: We except, Your Honor.

Lawyer Gray: We interpose a similar objection, if the Court please.

[fol. 1815] The Court: Same ruling.

Lawyer Gray: We except, Your Honor.

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

Q. You may answer, sir.

A. I was one of the officers that assisted in the arrest and it was made outside of the Court Room at the City Hall. On this particular morning the sidewalk had been blocked with a lot of people and we were stationed on the steps at the Court Room door. Now, we were told that we were to admit no one since the aisles were already full in the Court Room unless that they had a subpoena. Rev. King approached the steps and tried to gain admittance to the Court Room and we refused to let him in.

He insisted that he had a right to go in and we asked him if he had a subpoena. He didn't produce one. I couldn't say that he didn't have one but if he did have one, he didn't produce it. We arrested him at that time for loitering and he was carried up to the front door and carried back to a detention cell at headquarters.

Q. How long did he stay there, sir?

A. Well, really, the door wasn't hardly locked on him because he was allowed to make his own bond and that bond was carried back there by the Sergeant and he signed it right there at the detention room and he was released.

Mr. Embry: If the Court please, we object to going into some transactions between third persons—

The Court: Your objection was sort of ex post facto and a little late. I will let it in and give you an exception.

Mr. Embry: We except. We move that these answers be stricken, if the Court please.

The Court: Overruled and you may have an exception.

Mr. Embry: We except, Your Honor.

Mr. Beddow: What is this witness' name? You never have identified him—

Mr. Nachman: He stated his name for the Record when he began to testify, Mr. Beddow. His name is O. M. Strickland.

[fol. 1816] The Court: Go ahead, gentlemen.

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

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

Mr. Embry: Just a minute! Don't answer that, please, sir! That calls for a conclusion of law, if the Court please.

The Court: Well, assault is a shorthand rendition of fact, isn't it?

Mr. Embry: Ordinarily it would be but if he was reciting what happened—

The Court: Well, I think the Court knows what assault and battery is. Let me sweetly disagree with you and give you an exception.

Mr. Embry: His testimony is incompetent, irrelevant and immaterial in that regard and we except, Your Honor.

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

Q. You may answer the question.

A. No, sir. He was not.

Q. What is your height? How tall are you?

A. Six foot, sir.

Q. You are six feet tall?

A. Yes, sir.

Q. How much do you weigh?

A. I have weighed from 129 to 134 pounds. That's tops.

Q. How much did you weigh on the occasion you have just described?

A. That would be about as close as I could get it. About 129 to 134, sir.

The Court: Did you say you were six feet four?

The Witness: No, sir. Six, Your Honor. Six feet.

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

Q. From your observation of Martin Luther King, Jr. [fol. 1817] on this occasion that you just described, would you say that he was lighter than you were or heavier than you were?

Mr. Embry: Your Honor, we object to this. Is it understood that we have an objection and exception to all this line—

The Court: Yes. I believe I have let you go far enough on that—

Mr. Nachman: All right, Your Honor. I withdraw the question. No further questions.

Cross examination.

By Mr. T. Eric Embry:

Q. Are you in good health, Officer?

A. Yes, sir.

Q. Are you feeling good today?

A. Yes, sir. I think so.

Q. When did all this happen?

A. Now, I couldn't say because I didn't take any notes.

I would say along about September in 1958 or something like that, and that's purely from memory because I have no notes whatsoever.

Q. Well, I am not trying to be that accurate but I want to establish if I can if it's true. Did all of this occur before Commissioner Sullivan became the Commissioner of Public Affairs of the City of Montgomery?

A. Yes, it did.

Q. And someone else at that time was holding the office that he now holds.

A. Yes, sir. That's correct.

The Court: I think Mr. Clyde Sellers was the Commissioner then.

The Witness: That's right, Your Honor.

The Court: Mr. Sullivan succeeded him. Couldn't we have a stipulation here about what date Mr. Sullivan went into office? I think it is a matter of public record, isn't it? What date was it, Mr. Cater?

[fol. 1818] A Voice: October 5th, 1959, Your Honor.

Mr. Nachman: Let the Record show that we stipulate that that was the date that Commissioner Sullivan took office.

Mr. Embry: We have no further questions for this witness, Your Honor.

The Court: Any other questions?

Lawyer Gray: No questions.

FRANK R. STEWART, having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

By Mr. Robert Steiner:

Q. Please state your name, sir.

A. My name is Frank R. Stewart.

Q. What position do you hold, Doctor?

A. I am the State Superintendent of Education.

Q. How long have you been State Superintendent of Education?

A. It will be two years this January.

Q. In February and March of 1960, did the State Superintendent of Education, or did you as the State Superintendent of Education, sit as a member of the Alabama State Board of Education?

A. Oh, yes. I am a member of the State Board of Education as well as State Superintendent of Education.

Q. Are you also Secretary of that Board, sir?

A. I am an Executive Officer, yes.

Q. Over what schools of higher education does that Board have jurisdiction?

A. We have six institutions of higher learning in Alabama. There is one located at Jacksonville, the Jacksonville State College; one is located at Florence, the Florence State College; the Troy State College; Livingston State College; the Alabama A & M located at Huntsville and the Alabama State College located in Montgomery.

[fol. 1819] Q. Would you state the circumstances of the expulsion of nine students from Alabama State College by the State Board of Education?

Mr. Embry: Now, Your Honor, we want to object to this question and I assume that there will be a line of questions along this line and we wish our objections to apply then to them all. It is incompetent, irrelevant and immaterial and not within the issues framed in this case. This has not been made an issue in the case and is outside of the pleadings—

The Court: I believe it comes within the pleadings and I will give you an exception to this line of questioning.

Mr. Embry: Do we have an understanding, Your Honor, with plaintiff's counsel that we get the same objections or any additional grounds that we will think of at a later time—

The Court: Oh, yes.

Mr. Embry: With the same ruling and exception—

The Court: Yes.

Mr. Embry: Let the Record show that is stipulated then—

Lawyer Gray: We have the same objection and exception on the part of the other defendants.

Mr. Steiner: The plaintiff so stipulates.

The Witness: Do you want me to answer now?

By Mr. Robert Steiner: (Continuing)

Q. Do you remember the question?

A. I think I do. The action of the State Board of Education took place on March 2nd—

The Court: That would be in 1960 or when?

The Witness: This past March 2nd, Your Honor. March of 1960, when the nine students were expelled from Alabama State College by the State Board of Education and thirty-one students, I believe, I am not positive but I believe the Minutes will show that thirty-one students were put on probation at that time.

By Mr. Robert Steiner: (Continuing)

Q. The Board itself expelled those students?

[fol. 1820] A. The State Board of Education consisting of nine members, one from each Congressional District, the Governor and myself, making a total of eleven, everyone having a vote on the Board and the vote was unanimous to expel the nine students.

Q. Do you have the Minutes of that Board meeting with you?

A. I have a certified copy of the Board meeting of March 2nd dealing with the expulsion of the students.

Mr. Embry: Your Honor, we would like to have an additional objection and exception on account of the documentary evidence and we assign the same grounds and any additional grounds—

The Court: Is that one of the public records that you are required to keep by State law?

The Witness: Yes, Your Honor.

The Court: Those are official records of your office.

The Witness: Yes, they are open to the public, Judge.

Mr. Steiner: Mr. Embry, the Minutes are about this thick and we are only bringing in this one.

Lawyer Gray: May I see it for a minute?

Mr. Steiner: Yes. Here it is.

Mr. Beddow: Wait a minute. I want to look at it too.

The Witness: That is a certified copy.

Mr. Beddow: Well, I want to see it.

Mr. Steiner: Well, I offered it to your partner and he refused to look at it. Here it is.

By Mr. Robert Steiner: (Continuing)

Q. I believe you have already testified that you were the Secretary of the State Board of Education.

A. Yes, sir. That's right.

Mr. Embry: Your Honor, do we have the same understanding about any documents also and do we have the same objection and the same ruling and exception?

The Court: Yes.

Mr. Embry: We assign the same grounds and any—
[fol. 1821] Mr. Steiner: Are you making any point because this is a certified copy?

The Court: I understand you have no objection to the fact that it is a certified copy and not the original.

Mr. Embry: Oh, no, sir. That's right. We have no objection on that point.

By Mr. Robert Steiner: (Continuing)

Q. Doctor, would you read to the jury the document which you have certified as being a copy of the Minutes of the State Board of Education.

A. This entire thing?

Q. Yes, sir.

Mr. Embry: Is it identified by number as yet? Do you have an Exhibit No. on it?

Mr. Steiner: We will have it marked as an exhibit for identification now. It is marked and identified as Plaintiff's Exhibit No. 364. Will you read that, doctor?

The Witness: As you understand now, this deals only with the expulsion of the students.

Mr. Steiner: Yes, go ahead.

The Witness: "Dr. H. Council Trenholm, President, Alabama State College, complying with the former request of Governor Patterson, appeared before the Board and gave his report on the investigation relating to the downtown demonstration of certain students from the college in the matter of appearing at the Court House restaurant and

demanding service. It was determined by his investigations and that of Mr. Floyd Mann, Director of the State Department of Public Safety, that there were nine students who led the demonstration. Dr. Trenholm agreed that the students should be punished and that their action might have been influenced by a student or students out of the State. He earnestly requested that the students be allowed to take the final quarter examinations. The Board agreed that they be permitted to do so, but that the order of expulsion for the [fol. 1822] nine leaders of the demonstration be made effective Friday, March 4th, and that the pupil record show such action, also that probation of other students taking part in the demonstration be made effective the same date. Dr. Trenholm stated that the participating students were obsessed with obligation and conviction and felt that they had done no wrong. He expressed the feeling that he could control future behavior on the campus and that the students should be reprimanded and put on probation from now on. The Governor felt that the situation was much too tense and the danger of life and bloodshed too perilous to pass up lightly the matter of punishment of the participants. He then offered the following recommendations and moved its approval: After a full investigation of the demonstrations carried on by the students of the Alabama State College for Negroes and after careful consideration of the evidence obtained as a result of the investigation, I recommend that the following action be taken: One. That the following students be expelled: Bernard Lee, Norfolk, Virginia. St. John Dixon, National City, California. Edward E. Jones, Pittsburgh, Pennsylvania. Leon Rice, Chicago, Illinois. Howard Shipman, New York, New York. Elroy Emory, Ragland, Alabama. James McFadden, Prichard, Alabama. Joseph Peterson, New Castile, Alabama. Marzette Watt, Montgomery, Alabama. Two. That the following students be placed on probation and allowed to remain in school pending good behavior: Henry Allen, Seale, Alabama; Richard Ball, Fairfield, Alabama. Willis C. Battle, Phenix City, Alabama. Cornelius Benson, Birmingham, Alabama, Samuel Bouie, Anniston, Alabama. Floyd Coleman, Sawyerville, Alabama. Henry Crawford, Montgomery, Alabama. James Earl Davis, Prichard, Ala-

bama. Thomas C. Ervin, Heflin, Alabama. Arthur Lee Foster, Montgomery, Alabama. Isham Harris, Troy, Alabama. Jonathan Hicks, Chatom, Alabama. Trenholm Hope, Selma, Alabama, Jerry Leon Johnson, Collingsville, Alabama. Andrew William Jones, Birmingham, Alabama. Eddie Lee McSwain, Eufaula, Alabama. Theophilus Moody, Camden, Alabama. Joe Louis Reed, Evergreen, Alabama. William Renfroe, Roba, Alabama. Robert Lee Woods, Heiberger, Alabama. Three. That all other members of the student body be advised that they will be expected to behave themselves and obey the law and that any [fol. 1823] future conduct on their part which is in violation of the law or calculated to incite riots and disorders will result in their immediate dismissal from the school. Mr. Word moved the approval of the recommendation; his motion carried by all members voting aye." I have certified here that this is a true and correct copy of an excerpt from the Minutes of the Alabama State Board of Education meeting at 2:00 P. M. Wednesday, March 2nd, 1960, at Montgomery, Alabama.

Mr. Steiner: If the Court please, we offer this in evidence.

(Certified copy of excerpt of Minutes of the Alabama State Board of Education meeting of Wednesday, March 2nd, 1960, at Montgomery, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 364.)

By Mr. Robert Steiner: (Continuing)

Q. Doctor, did Mr. Whitesell, Mr. Nachman, Mr. Baker or do I represent you personally or the State Board of Education in any manner?

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

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

Mr. Embry: We can stipulate that if that's a fact.

By Mr. Robert Steiner: (Continuing)

Q. You have, of course, talked both to Mr. Nachman and to me.

A. Yes. That's the only two. I haven't talked to anyone else about the case at all.

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."

Mr. Embry: Don't answer yet, please, sir. We object to [fol. 1824] that on the grounds that it invades the province of the jury and it calls for the witness' conclusion as to a fact and is not a recitation of what happened—

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

Mr. Embry: We assign all of our other grounds previously assigned, Your Honor.

The Court: Yes.

Lawyer Gray: We have the same exception.

By Mr. Robert Steiner: (Continuing)

Q. You may answer.

A. That never was discussed when the students were expelled and it was never even mentioned at the State Board meeting when the students were—no. It was never mentioned. That wasn't even discussed at any of the Board meetings we had.

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

Cross examination.

By Mr. T. Eric Embry:

Q. I assume that the Minutes there—you are familiar with them, are you not?

A. Well, I hope so, sir.

Q. The Minutes set out the entire facts about the occasion when they were expelled, do they not, doctor?

A. Oh, yes.

Q. Are those the complete Minutes?

A. That's right as far as I know.

Q. Those are the complete Minutes with respect to those affairs of the expulsion of the students.

A. Yes. I would say this, Mr. Embry, that every word