

that was said at the Board is not incorporated in the Minutes. You understand that, of course. We discussed at the Board meeting not only—I remember this very distinctly—the discussion of the cafeteria incident and some of the other incidents that were taking place but the question [fol. 1825] that I was asked a few minutes ago about the singing—that was never even discussed or at least I never heard it.

Q. Well, in other words—what is this?

A. This is a board meeting later on.

Q. Well, what I meant really to ask you, I suppose, was this. This is the formal action of the Board in that regard, is it not?

A. The formal action of the Board when they were expelled. Yes, sir.

Q. Governor Patterson, I believe, is the ex officio Chairman of the Board, is he not?

A. Yes. He is the Chairman.

Q. And he was when this occurred and as the Minutes reflect, he offered the resolution as reflected by the Minutes there.

A. That's right.

Q. That was the only action taken with regards to the expulsion of the students. The only action taken was taken by the State Board of Education.

A. Yes, sir. The State Colleges come under the supervision of the State Board of Education.

Q. The City of Montgomery hasn't expelled any students or the City Government hasn't expelled any students at Alabama State College, have they?

A. Well, the City Government hasn't got anything to do with it, Mr. Embry. As far as the expulsion of the students, of course, we depend upon the City of Montgomery for law and order like we do for our public schools in the State but not to expel students because it is set forth in the Constitution of this State that those colleges would come under the supervision and direction of the State Board of Education.

Q. That's what I wanted to know. Thank you, sir. That's all.

Lawyer Gray: No questions.

Mr. Nachman: If the Court please, we would like to have the Court Reporter mark this two-page exhibit as our next exhibit No. 365. It consists of two pages.

Mr. Embry: May we have the same objection about this in that we have the same grounds of objection to this as to [fol. 1826] the testimony and the documents that were presented by Mr. John Matthews' testimony and we assign the same grounds and have the same ruling and let the Record reflect that?

The Court: Yes.

Lawyer Gray: That's also true for all the defendants, Your Honor.

Mr. Nachman: In other words though, counsel for none of the defendants object to Plaintiff's Exhibit No. 365 on the grounds of authenticity.

Mr. Embry: We don't.

Lawyer Gray: No.

The Court: What is that No. 365 about?

Mr. Nachman: Your Honor, this relates again to the incident of March 8th, 1960 and shows two convictions and paid and not appealed for the two individuals. This is some more of that group of some thirty-odd that Mr. Matthews testified about. Now, if the Court please, we offer into evidence as Plaintiff's Exhibit 365 these two pages which relate to the conviction of Jefferson Underwood for disorderly conduct and for Alean R. Underwood for disorderly conduct which shows that the fines were paid and that there was no appeal made to this Court.

(Recorder's Court record of Jefferson Underwood, dated March 8th, 1960, as No. 89426, offered and received in evidence and identified as Plaintiff's Exhibit No. 365 and Recorder's Court record of Alean R. Underwood, dated March 8th, 1960, No. 89418, offered and received in evidence and identified as Plaintiff's Exhibit No. 365.)

L. B. SULLIVAN, having been duly sworn, was called as a witness in his own behalf and testified as follows:

Direct examination.

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

Q. Will you state your full name, sir?
[fol. 1827] A. L. B. Sullivan.

Q. Are you the plaintiff in this case, sir?
A. I am, sir.

Q. Are you presently one of the Commissioners of the City of Montgomery, Alabama?

A. I am, sir.

Q. Would you state which office you hold and what the duties of that office are?

A. Commissioner of Public Affairs and the duties are supervision of the Police Department, Fire Department, Department of Cemetery and Department of Scales.

Q. You are charged with the supervision and overall control of the Police Department. Is that correct, sir?

A. Yes, sir.

Q. You took office, I believe we stipulated, in October of last year, in 1959.

A. On October 5th, 1959. That is correct.

Q. Would you state what position you held immediately prior to coming into your office in October of 1959?

A. I was employed as Safety Director for the P. C. White Truck Lines.

Q. How long did you hold that position?

A. For approximately two years.

Q. Am I correct in stating, sir, that you were at one time Public Safety Director for the State of Alabama?

A. That's right, sir. From April 1st, 1951 until January of 1955.

Q. Did you before that time hold any other position with the State of Alabama?

A. I did. I was employed at the Public Service Commission from 1947 until 1951.

Q. In what capacity did you work there?

A. I was first an Inspector with the Transportation Division of the Public Service Commission and later was Chief Inspector of the same division.

Q. Did you in the course of those duties concern yourself [fol. 1828] with the transportation or regulation of the transportation companies and motor carriers?

A. My primary work was in enforcing the regular laws regulating transportation of motor carriers.

Q. You said motor carriers and not railroads?

A. That's right.

Q. There is a separate division in the Public Service Commission for that.

A. That's right.

Q. I take it that you did not concern yourself with such matters as rates and things of that sort.

A. No. I did not. The principal duties were that of enforcement.

Q. Is it fair to say, sir, that you have spent a considerable portion of your time of service in the transportation field?

A. Yes. Several years. Either directly or indirectly.

Q. Have you also worked for a considerable period of time in the public safety field?

A. Most of my adult life has been spent in those two areas, in transportation and public safety type work.

Q. Have you held any position with any organizations in either of those fields which was national in scope?

A. At one time I was Field Representative in the International Association of Chiefs of Police in the Southern territory.

Q. Would you tell the Court and jury what that association does in a general way and what you did as Field Representative for the association?

A. The association itself is composed of police executives throughout this country and other countries. My particular duties was working with other police departments in making studies of their operations and recommendations for improvement and implementing some of the programs such as police training.

Q. Mr. Sullivan, I show you Plaintiff's Exhibit No. 347 which is the ad in The New York Times which is in con-

troversy in this case. I ask you to look at it and tell the Court and jury whether you are familiar with it and whether you have read it.

[fol. 1829] A. I am familiar with it and I have read it.

Q. I take it you have discussed it at some length with me.

A. I have.

Q. And with my partner.

A. Yes, sir. With you and other counsel representing me here today.

Q. I call your attention, Mr. Sullivan, to the third paragraph in the left hand column of this ad which reads as follows: "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus." I ask you if that statement is true or false?

Mr. Embry: We object to that, Your Honor. It calls for a conclusion on the part of the witness and it invades the province of the jury and there is no foundation laid for that question—

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

The Witness: That statement is—

Mr. Embry: Just a minute. We assign all of the other grounds, Your Honor, that we—

Mr. Nachman: Everything that you can to—

Mr. Embry: Everything in regard to the series of witnesses who testified as to their opinion as to what they thought from the ad or associated in their minds and we assign the same series of grounds that we assigned when we objected before and that it is not framed within the issues of the case—

Mr. Nachman: We will stipulate that counsel can assign in the Record any objections now made and any objections that may occur to them later if that is agreeable?

Mr. Embry: Yes, that's what I—

Lawyer Gray: That is applicable to us as well—

Mr. Nachman: Yes, it is applicable to all counsel in the case.

Mr. Embry: And, specifically, that the truth or falsity of it is not in issue.

[fol. 1830] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer the question, sir.

A. The statement in question is in my opinion completely false and I resented it very much when I read the fact that it had been made.

Mr. Embry: We move to exclude what he resents, if the Court please.

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

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

Q. Now, Mr. Sullivan, I call your attention to the next sentence in that same paragraph which reads as follows: "When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission." Is that statement true or false?

A. False.

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

The Court: Same ruling and you have an exception.

The Witness: False. In my opinion, it has never happened here in the City of Montgomery.

Mr. Nachman: Now, I call your attention to—

Mr. Embry: We move to strike his opinion, if the Court please.

The Court: You move to strike what?

Mr. Embry: We move to strike his answer purporting to be an opinion or a conclusion.

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

Mr. Embry: How wide are we going to get, Your Honor? Are you going to let him make a speech—

The Court: Well, he asked him about truckloads of police armed with shotguns and he said that he didn't do it. I don't see where that's any conclusion.

Mr. Embry: He didn't say that though, Your Honor. He didn't ask him about anything in there as to facts. He

asked him about the truth or falsity of it and he read him an article.

[fol. 1831] The Court: Well, let him ask the question again and we'll see. Ask the question again, Mr. Nachman.

Mr. Nachman: I read the statement to him, Your Honor—

The Court: Something about padlocking, wasn't it?

Mr. Nachman: Yes, Your Honor, and I asked the witness whether the statement was true or false—

Mr. Embry: And we object to that. No predicate has been laid for that question.

The Court: I will let it in.

Mr. Nachman: Is that true or false?

The Witness: False.

Mr. Embry: No predicate has been laid for that question. We except.

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

Q. Now, I call your attention, Mr. Sullivan, to the last paragraph at the bottom of 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." I ask you whether the Police Department has during your term of office or at any other time within your knowledge bombed Dr. King's home or been a party to it or condoned such action?

Mr. Embry: We object to that, Your Honor. Nobody could read that language and conclude that it imported that the police bombed his home. This is fantastic, Your Honor—

The Court: That may be but if it comes within these pleadings, I will let it in.

Mr. Embry: We except.

Lawyer Crawford: Your Honor, we would also like to interpose the same objection on the same grounds and further that if this witness is considered in his Police Department—and his Police Department considered law violators then, of course, it applies, but if he is not a law violator, then I don't see how in the world it could apply—

The Court: Well, we have a lot of jury questions in here [fol. 1832] and I take it that is one of them. It is set forth in the pleadings here and I will let it in and give you an exception.

Mr. Nachman: Your Honor, we made the stipulation which I just agreed to a few minutes ago and that is we would allow any grounds of objection to be assigned now or at any other time in order to expedite the saving of time for the Court, but if counsel is going to make a speech every time, then we are going to withdraw the stipulation and let them state their objections here and now.

Mr. Embry: That's certainly all right with us, Your Honor, and I am going to certainly call it to Your Honor's attention any time I think that the witness is going outside of the bounds of common sense and reason and the law.

Lawyer Gray: Let me see if I understand this now. Are you withdrawing the stipulation, Mr. Nachman?

Mr. Nachman: I am going to if—I see no reason to keep that agreement if we are going to have all of this sort of thing on every question. You may answer the question.

The Witness: To my knowledge there has never been any incident or bombing or in any way assaulting any person as charged in this advertisement.

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

Q. That includes the next sentence, "They have assaulted his person." Is that correct, sir?

A. That's right.

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

Mr. Embry: We object to that. It calls for an unauthorized conclusion on the part of the witness; it invades the province of the jury; it is not framed within the issues of this case; it has no probative value and it is incompetent, irrelevant and immaterial, Your Honor.

The Court: I will let it in and give you an exception.
[fol. 1833] Mr. Embry: We except.

Lawyer Crawford: We interpose a similar objection, Your Honor.

The Court: Same ruling.
Lawyer Crawford. We except.
The Witness: That is false.

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

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

Mr. Embry: We object to that, Your Honor. It calls for an unauthorized conclusion on the part of this witness; it calls for a mental operation and it is incompetent, irrelevant and immaterial. It invades the province of the jury and is not framed within the issues in this case. It is not responsive nor does it shed any light on any of the issues framed in this case, if it please the Court. It calls for an ultimate inquiry of fact which the jury must pass on, and it invades the province of the jury in that regard, if it please the Court.

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

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

The Witness: Nothing whatsoever.

Lawyer Gray: We interpose a similar objection.

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

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

Mr. Embry: We make the same objection on the same grounds previously assigned, Your Honor.

The Court: Same ruling.

Mr. Embry: We except.

Lawyer Crawford: We except.

The Witness: I testified at the trial.

Mr. Nachman: You did testify at the trial.

[fol. 1834] The Witness: I did.

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

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

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

The Court: Same ruling.

Mr. Embry: We except.

Lawyer Gray: Exception.

The Witness: I testified as to conditions that existed here in Montgomery.

Mr. Nachman: Namely as to whether he could get a fair trial—

Mr. Embry: We object to that—

Lawyer Crawford: We object to that, Your Honor—

Mr. Nachman: I withdraw the question.

The Court: The question is withdrawn. Go ahead.

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

Q. What was your testimony about in a general way, sir?

A. As I recall, the question was asked—

Mr. Embry: We object to that on the same grounds, Your Honor. Now, Mr. Sullivan, you have been examined before. I took your deposition up here about two weeks ago and as I understand it, sir, you are a highly intelligent man. Now, you know better than to answer those questions which deprives me of the right to object, don't you?

Mr. Nachman: Now, Your Honor, we are going to object—

Mr. Baker: We certainly object to that—

Mr. Steiner: Your Honor—

Mr. Embry: I have a right to—

The Court: Yes, that is arguing with the witness.

Mr. Embry: We object—

Mr. Nachman: May I call Your Honor's attention—

[fol. 1835] The Court: One at a time now. One at a time.

Mr. Beddow: I would like to call Your Honor's attention to one thing—

The Court: One at a time.

Mr. Beddow: Your Honor, may I say—

The Court: Just a minute. I am talking now. Let me get through and then I will hear you one at a time.

Mr. Beddow: I beg your pardon, Your Honor.

The Court: Now, I am going to make this suggestion

and you can follow it if you want to. We are just repeating here and Mr. Embry has assigned the grounds that a question is incompetent, irrelevant and immaterial. The Supreme Court of Alabama has held that that is a general objection but it isn't any good—

Mr. Beddow: Your Honor—

The Court: All right, Mr. Beddow. Go ahead.

Mr. Beddow: Your Honor, would you permit me to remind the Court that he is now being called upon to testify to things that occurred within the four walls of that place where the inquisitorial body of this county was hearing testimony—

Mr. Nachman: No, sir.

Mr. Beddow: And he is asking him to recite the things that occurred before the Grand Jury of this county—

Mr. Nachman: I didn't—

The Court: Hold here just a minute. The question as I understand it was whether he could receive a fair trial in Montgomery—

Mr. Nachman: That's correct—

The Court: There is no testimony that shows he ever went before the Grand Jury or testified before the Grand Jury.

Mr. Nachman: Exactly, Your Honor.

Mr. Beddow: Well, we haven't asked for a change of venue in this case and now he is asking about someone else getting a fair trial—

The Court: Well, I think—

Mr. Beddow: We haven't challenged this point—

[fol. 1836] The Court: Well, I will let it in and give you an exception.

Mr. Embry: We except.

Lawyer Gray: Exception.

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

Q. You may answer the question. Do you want me to repeat the question, Mr. Sullivan, or do you want the Court Reporter to repeat it?

A. If you will, yes.

Q. Would you state in a general way, sir, what your

testimony was at the trial of Martin Luther King, Jr. in this Circuit Court after the Grand Jury indictment?

The Court: Now, that was before a petty jury.

Mr. Nachman: Before the petty jury, yes, sir. After the Grand Jury indictment.

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

Mr. Embry: Now, we move that be excluded on the ground that that could not conceivably under any stretch of the imagination shed any light on any issue in this case, Your Honor.

The Court: Motion denied.

Mr. Embry: We except.

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

Q. Mr. Sullivan, do you consider the statement that I have just read you from this ad, Plaintiff's Exhibit No. 347, referred to you and are associated with you?

Mr. Embry: We object to that, Your Honor. It calls for an unauthorized conclusion of opinion evidence by this witness—

The Court: Well, let me stick by my former rulings and I will give you an exception.

Mr. Embry: It invades the province of the jury and calls for the ultimate fact under inquiry by this jury and we except, Your Honor.

[fol. 1837] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer.

A. I certainly do. The statements in this article concern the arrest of people—the statement concerning truckloads of police and as Commissioner of Public Affairs it is part of my duty to supervise the Police Department and I certainly feel like it is associated with me when it describes police activities.

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

Mr. Embry: We object to what he feels, Your Honor.

Mr. Nachman: In your judgment, have you been damaged by these statements?

The Court: The term, in your judgment, will be all right.

Mr. Embry: We except.

The Witness: Yes, sir.

Mr. Nachman: Would you state how?

Mr. Embry: We object to that. That is what the jurors are here to pass upon—

The Court: Well, the ultimate question is going to be for the jury to decide but a man can tell whether these statements damaged him or not—

Mr. Embry: That is a feeling and a sentiment and an opinion, Your Honor—

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

Mr. Embry: We except.

Mr. Nachman: You may answer.

The Witness: I certainly do. The statements contained in this ad that reflect upon my ability and integrity and certainly it has been established here that they are not true.

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

Q. Mr. Sullivan, I show you four documents which are in evidence here as Plaintiff's Exhibits numbered 355, 356, [fol. 1838] 357 and 358. These are four letters demanding retraction and I will ask you whether you ever received any reply from those four letters?

A. No, sir. I did not.

Q. Mr. Sullivan, I show you also Plaintiff's Exhibit No. 363 which is a letter from Lord, Day and Lord addressed to you and dated April 15th. I ask you, sir, whether other than that letter you have received any reply from the defendant, The New York Times, in regard to a demand for retraction?

A. This is the one and only reply that I received in reply to the requests for retraction.

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

Cross examination.

By Mr. T. Eric Embry:

Q. Mr. Sullivan, you say you felt hurt and that you were damaged by this ad that appeared in The New York Times on March 29th and you felt like you had been greatly injured by that.

A. I did, sir.

Q. By all thirty-five copies that came into Montgomery County—you heard the evidence about how many of those newspapers come into this county, didn't you?

A. I don't recall.

Q. Did anybody ever come up to you and tell you that they had read this advertisement of The New York Times in the newspaper other than leaving it on somebody's desk for the purpose of creating a law suit?

Mr. Baker: We object—

Mr. Nachman: We object to that question, the form of it, for the purpose of creating a law suit. There is not an iota of testimony in this case—

The Court: I think the question is bad.

Mr. Embry: Sir?

The Court: I think the question is bad.

By Mr. T. Eric Embry: (Continuing)

Q. Did you ever make a reply to Mr. Loeb's letter of April 15th?

[fol. 1839] A. I did not.

Q. As a matter of fact, you had no intention of replying. It made no difference to you whether any apology or retraction was made. You were interested in filing a law suit at that time. Wasn't that your sole purpose in making—

A. That was not. I think you will find in that letter it said those charges had been proven to their information substantially correct and I could see no reason for any further reply.

Q. And you didn't make any reply and you went on and filed a law suit, didn't you?

A. Yes, sir. The attorneys did.

Q. Did you ever read that advertisement in The New York Times?

A. I certainly have.

Q. When did you first read that advertisement? Who brought it to you and showed it to you?

A. No one brought it to me and showed it to me. I read the advertisement in the Mayor's office here in Montgomery and it was after the date it was published and between that time and the time the letter was written to The New York Times and the other defendants.

Q. And it was just like it exists right there in front of you on the witness stand now which was detached from the paper and laid on the Mayor's desk and you read it and you discussed about filing a law suit on account of that advertisement, didn't you?

A. Absolutely not. We discussed it. I discussed it with Mayor James and later on with Commissioner Parks.

Q. At that time you hadn't made up your mind to file a law suit.

A. At that time I hadn't talked to an attorney.

Q. And you did not read it in reading the newspaper. It was there detached from the newspaper laying before you and Mayor James and the other Commissioner.

A. I don't recall exactly whether it was detached or not and whether it was part of it or a single piece—

Q. When was this with reference to March 29th, 1960?

A. As I stated a moment ago, I said I don't remember [fol. 1840] the exact date. It was between the time the ad appeared in the paper and April the 8th when the request for retraction was written. I don't recall the exact date.

Q. And you are telling these gentlemen of the jury that when you read this statement, "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus," that you immediately concluded that charged you in having participated in what the recitation of that advertisement

purports to have happened out at the Alabama State College Campus. You and the other Commissioners—

A. I certainly did. Not only to myself but the Mayor and the other Commissioners.

Q. I asked you if you felt it referred to you?

The Court: He said he did.

The Witness: I certainly did.

By Mr. T. Eric Embry: (Continuing)

Q. Did you consider that when the statement in the advertisement "When the entire student body protested to state authorities by refusing to re-register, their dining halls were padlocked in an attempt to starve them into submission," charged you with having participated in some event wherein a charge was made that a dining hall was padlocked in an attempt to starve somebody and you read that and concluded that you were being charged with doing that?

A. That is the responsibility of the State Department of Education and I didn't—

Q. Did you—

Mr. Nachman: Let him answer, Mr. Embry.

Mr. Embry: Well, I am asking him—

Mr. Nachman: He is trying to answer—

By Mr. T. Eric Embry: (Continuing)

Q. Did you consider that it referred to you when you read this ad?

[fol. 1841] Mr. Nachman: We object to this question until the witness has had an opportunity to answer the previous question, Your Honor.

The Court: Well, let him answer the question if he can.

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

Mr. Embry: We move that his answer be stricken as not responsive to my question.

The Court: Motion denied.

Mr. Embry: We except.

By Mr. T. Eric Embry: (Continuing)

Q. When you read this statement, "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence," there in Mayor James' office, you immediately concluded that you were being charged—that you considered yourself a Southern violator and that had charged you with intimidating this Dr. King and being charged with assaulting his person and that's the conclusion you drew from reading that statement in Mayor James' office.

A. Based on that one particular statement—

Q. Can you answer that question—

The Court: He is trying to answer it. He said, based on the advertisement—

Mr. Embry: Your Honor, will you admonish this witness not to—

The Court: Well, you asked him if he thought that referred to him and he is trying to answer it and then you cut him off.

Mr. Embry: I want to ask him if he concluded that it referred to him. Is that the conclusion that you drew from reading that statement?

[fol. 1842] The Witness: That is a statement that is contained in a paragraph that I think definitely referred to me.

By Mr. T. Eric Embry: (Continuing)

Q. Did you make that conclusion at the time when you read it?

A. I did.

Q. And that when you read the statement in Mayor James' office that, "They have bombed his home almost killing his wife and child," you concluded that you were being charged with having bombed this man's home.

A. There again, it is in the same paragraph and it was

my conclusion that it referred to me and to the Police Department and the City Commissioners.

Q. And that you drew that conclusion from the words you read in that article or advertisement. Is that right?

A. I drew that conclusion from that paragraph. Yes, sir.

Q. And you drew the conclusion from the words contained in this advertisement, "They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses,' as charging you with having arrested this man for the offenses that were set out in that statement, 'Speeding,' 'loitering' and similar 'offenses.'" From reading that, you concluded that you were being charged with having arrested this man. Is that correct, sir?

A. By virtue of being Police Commissioner and Commissioner of Public Affairs, any activity on the part of the Police Department, certainly. I feel that—

Q. That's a question that directs itself to this jury and I am asking you if your conclusion was that it charged you with having arrested this—

A. Yes, sir.

Mr. Embry: We move that the previous answer be excluded, Your Honor.

The Court: Motion denied.

Mr. Embry: We except.

[fol. 1843] By Mr. T. Eric Embry: (Continuing)

Q. And the recitation you read that says, "And now they have charged him with perjury—a felony under which they could imprison him for ten years," when you read those words, you concluded that you had been charged with bringing about a charge against this man for perjury. Is that the conclusion that you drew?

A. Those words contained in the paragraph that I answered to just a moment ago that I felt like that it did apply to both myself and the other Commissioners.

Q. Now, you assumed the office of the Commissioner of Public Affairs in the City of Montgomery in October of 1959, didn't you?

A. That's right.

Q. And what ever may have occurred—the events with respect to any bombing that you heard testimony about—the arrest of this man at the City Hall that you heard testimony about and these arrests made for speeding, loitering and similar offenses and his indictment—this man's indictment—under a charge of falsification of Income Tax Return and for perjury—which of those events occurred after October 5, 1959 and which of those events occurred since you have been holding office as Commissioner of Public Affairs in the City of Montgomery?

A. Well, in reading that ad, it would be difficult to tell. Some of the events did occur before I took office as Commissioner of Public Affairs. At the very beginning of the first paragraph there—the first paragraph that is in question here that when they sang on the Capitol steps—that happened on March 1st of this year, 1960, and it goes on and relates these other incidents in the statement—in the ad which my interpretation of it was that they happened after March 1st of 1960.

Q. Did you ever order any of the police directly or tell any of the police officers to go out to this college campus and do anything out there—make any arrests or do anything out there on the campus? Did you ever give the police officers of the City of Montgomery detailed instructions or directions during this interim of time between March 1st to March 9th about going out to the Alabama [fol. 1844] State College and doing anything out there?

A. Yes, sir. I have.

Q. Did you directly supervise the activities of the Police Department on the occasion that this demonstration was occurring out there on the campus which resulted in the arrest of these thirty-five people—these thirty or thirty-five people that Mr. Matthews recited about from the record by name and—

Mr. Nachman: Your Honor, we object to the form of the question. The words, directly supervise, are not a clear cut—

Mr. Embry: Well, Your Honor, he stated that—

The Court: I think it is permissible and will give you an exception. Go ahead.

The Witness: I was not there personally supervising. I was in contact with Chief Ruppenthal who is the Chief of Police.

By Mr. T. Eric Embry: (Continuing)

Q. And Chief Ruppenthal is the Chief of Police of the City of Montgomery and was at the time these events occurred, wasn't he?

A. That is true.

Q. The Chief of Police under the exercise and function of his office was the police officer exercising and directing supervision over the activities of the police at the time these events occurred at the Alabama State College Campus during this period throughout from the 1st of January, 1960 up to the present time, isn't that correct?

A. With some exceptions. There was one occasion that he was not present that I directly supervised the activities.

Q. What occasion are you talking about now?

A. That was when the demonstration or the incident took place at the capitol on Dexter Avenue on March 6th, 1960.

Q. It wasn't the singing incident, was it? It was something else, wasn't it? Was it this occasion? Were you there either of those two times?

A. Yes, sir. I was there both times.

Q. Well, the time you just described was not the incident of the singing, was it?

A. Well, I think there were efforts being made to sing.

Q. But that was not when the song was sung that we have been talking about in the advertisement.

A. No, sir. That occurred on March 1st.

Q. Now, you say in your Complaint that by the publication of this advertisement, that the matter contained in these two paragraphs that you complained of imputed to you improper conduct and that that subjected you to public contempt, ridicule and shame. Now, would you tell these gentlemen of the jury, please, Mr. Sullivan, when and where anyone has held you in public ridicule or contempt or shamed you since the publication of this advertisement?

A. Well, I—

Q. Tell us of anybody who has said something to you

that has held you up to public contempt or someone that has ridiculed you or some person that has caused you shame as a result of the publication of this advertisement.

A. To those who might have believed it—I don't recall any particular incident where anyone walked up to me and told me that they held me in ridicule but to those who might have read this article and believed it, certainly it is conceivable that they could have.

Q. And nobody believe it except those that may have read it—

A. That, I don't know.

Q. It is not your belief that they believed it, is it?

A. I have heard testimony to the effect here—those that testified said they didn't but I don't know about any others.

Q. Have you felt ridiculed since the publication of this article? Do you feel ill-at-ease in walking around the streets of Montgomery to the extent that whoever may have read this article—to the extent that you have been ridiculed by whomever may have read this article in the thirty-five copies that came into this county?

A. You are asking the question, did I feel ridiculed?

Q. Yes, sir.

A. You mean you are asking me—

[fol. 1846] Q. Well, you said you felt like it referred to you and now I am asking you have you felt ridiculed by it?

A. I haven't had anyone come up to me personally and make any reference or ridiculed me as concerns the ad. I haven't talked to—I talked to a number of people about it but I don't say that I have had anyone come up to me and say that they held me in ridicule on account of it, no. Of course, I don't know how many might have read the ad.

Q. Now, Mr. Sullivan, honestly and candidly, you have enjoyed an excellent reputation in Montgomery and in Montgomery County since you have been a resident here. That's your belief, is it not, and, in fact, that's true. You have enjoyed an excellent reputation and have been so considered by the public to enjoy a good reputation in this community where you live since you first moved here from Kentucky and you have been here continuously since World War II or before World War II and you have a good reputation in this community, don't you?

A. I have endeavored to try to earn a good reputation and that's why I resent very much the statements contained in this ad which are completely false and untrue.

Q. And that reputation which you have always enjoyed, you still enjoy, don't you, Mr. Sullivan?

A. I would like to think so. I have tried very hard to maintain it.

Q. If anything—I will ask you your judgment about this—if anything—since the publication of this advertisement on March 29th and the thirty-five copies of that newspaper that came into this county—you are not thought any less of and, as a matter of fact, your reputation, if anything, has been enhanced, has it not?

A. I don't know—

Q. You have been held in higher regard. Isn't that your honest judgment?

A. I don't know. There has been no contest of popularity and I haven't endeavored to conduct one.

Q. And you as the Public Affairs Commissioner of the City of Montgomery since October 5th, 1959, are compensated according to some schedule of compensation set up by law on a salary or a per annum basis, are you not? [fol. 1847] A. That is true, sir.

Q. I don't know what it is and I am not interested in the amount as I am not prying into your private affairs but I want to ask you have you lost any of that compensation or that salary or stipend that you receive for your services to the public here after the publication of this advertisement?

A. I have not.

Q. Has anyone sought to cause your removal from office and to thereby seek to prejudice you in your office or profession or trade, which is the office of the Public Affairs Commissioner of the City of Montgomery, since the publication of this advertisement on March 29th, 1960?

Mr. Nachman: We object to the question, Your Honor, on the grounds that it equates someone seeking to remove him from office and the allegation that he has been prejudiced in his office and in terms of the allegation of the complaint and we maintain—

The Court: You think there is quite a difference between those two, do you not?

Mr. Nachman: We think so—

Mr. Embry: Your Honor, he has been permitted to give his thoughts and his ideas and his convictions and his ambitions and everything else and we think—

The Court: It doesn't say anything in the Complaint about kicking him out of office—

Mr. Embry: We except, Your Honor.

By Mr. T. Eric Embry: (Continuing)

Q. Has anyone threatened to have you removed from office after the publication of this advertisement?

A. To my knowledge, no, sir.

Q. Is your office or profession exactly the same today as it was prior to the publication of this advertisement? That is to say, are you still what you were prior to the publication of this advertisement with respect to language, title and compensation?

A. What period of time do you mean when you say prior? [fol. 1848] Q. From October 5th when you assumed that office.

A. Yes. I still retain the same title. I still have the same office I did at that time.

Q. I assume that as any normal individual of your age and occupation and station in your community that you have a certain amount of social or pleasure activity as all normal people do. Is that correct, sir, do you go out in public?

A. Yes, sir.

Q. As a matter of fact, it is probably fair to say that as the Public Affairs Commissioner of the City of Montgomery you are probably out in the public as it were more than an average citizen. Would you say that's a fair statement?

A. I would say yes.

Q. You are married, I assume, and you have a family?

A. Yes, sir.

Q. In connection with those demands and responsibilities as the head of a family, you take your wife and children

to public places such as restaurants and theaters or to other peoples' homes to visit or to parties on occasions, do you not?

A. That's true, sir.

Q. And you did that before the publication of this advertisement, did you not?

A. Yes, sir.

Q. Have you on any occasion since the publication of this advertisement on March 29th of which you complained in the Complaint been shunned by anyone within the company in which you found yourself placed in any public place or house of a friend or any restaurant such as you have visited since the publication of this advertisement?

A. Not that I can recall, sir.

Q. I will ask you to give me your fair judgment as to whether you have been ostracized by any segments of the society with whom you have associated since the publication of this advertisement?

A. I don't recall having been ostracized by any group of individuals. No, sir. Now, of course, if I were ostracized [fol. 1849] and they avoided me, the chances are that I might not have known it.

Q. You haven't noticed any lessening in the number of your social acquaintances or friends since the publication of this advertisement, have you?

A. No, sir.

Q. Now, Mr. Sullivan, is it fair to state that your feeling that the recitations in this advertisement were incorrect or false with reference to the events and happenings in the City of Montgomery and those recitations as being a reflection on the community is what incensed you rather than any feeling that they had any reference to you?

A. No, sir.

Q. You feel it as a direct personal reference to you by inferences which you have testified made you conclude that they did. Is that correct, sir?

A. It is my feeling that it reflects not only on me but on the other Commissioners and the community.

Q. But more particularly that it does reflect on you.

A. When it describes police action, certainly I feel it reflects on me as an individual.

Q. And you draw that conclusion from a reading of the portion of this advertisement about which you complained of in your complaint.

A. Yes, sir.

Q. And you didn't draw that from anything other than what that language seemed to mean to you when you read it.

A. I felt that as I mentioned before—

Q. Excuse me. Is that correct? You drew it only from what that language seemed to mean to you when you read it?

A. I drew it from reading the ad. Yes, sir.

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

Cross examination.

By Lawyer Crawford:

Q. Mr. Sullivan, do you consider your police force to be Southern law violators?

A. I certainly do not.

[fol. 1850] Q. Then, Mr. Sullivan, do you consider yourself as Police Commissioner a Southern law violator?

A. I don't consider myself a violator period. Southern or otherwise.

Q. Mr. Sullivan, as a result of your not being harmed, as you testified to, you are not held up in public contempt, you are not being ridiculed and you are not ashamed. The purpose of this law suit is the basis for state-wide publicity for running for another office. Is that not correct?

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

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

The Court: That's not a proper statement.

Lawyer Crawford: That's all. No further questions.

L. P. PATTERSON, having been duly sworn, was called as a witness for the Plaintiff and testified as follows:

Direct examination.

By Mr. Robert Steiner:

Q. State your name for the Record, sir.

A. My name is L. P. Patterson.

Q. Mr. Patterson, you, I believe, are one of the editors of the Montgomery Advertiser?

A. I am the Managing Editor.

Q. The Managing Editor of the Montgomery Advertiser?

A. Yes, sir.

Q. Mr. Patterson, as Managing Editor did you receive an issue of The New York Times of Tuesday, March 29th, in which this ad appeared on page 25 which I am exhibiting to you now?

A. I did, sir.

Q. I am referring to Exhibit No. 347 for the Plaintiff.

A. Yes, sir.

Q. Mr. Patterson, when you got it, what did you do with it?

[fol. 1851] A. Well, first, I read it.

Q. All right, sir. After you read it, what did you do with it?

A. Well, there were some facts in here that were strange to me that I had never heard before.

Mr. Embry: If the Court please, we object to that as not being responsive to the question.

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

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

By Mr. Robert Steiner: (Continuing)

Q. You may continue, sir.

A. I instructed the City Editor to immediately check with the Alabama State College officials on the truth of padlocking the dining hall.

Q. All right, sir. Now, I will ask you—

Mr. Embry: We move to exclude that, if the Court please. What he instructed the City Editor to do is certainly not within the issues of this case, if the Court please. Whether he checked on the truth of it or not or whether it was true to this witness or not—

Mr. Steiner: Your Honor, the ad charges that the dining hall was padlocked and he, as a newspaper Managing Editor, checked the accuracy of that statement.

The Court: Can he testify as to his personal knowledge or—

Mr. Steiner: No, sir. Just the fact that he did, Your Honor.

The Court: Well, if he has no personal knowledge of it, I kind of doubt if he can testify.

Mr. Steiner: All right, sir, are you sustaining the objection?

The Court: Yes.

By Mr. Robert Steiner: (Continuing)

Q. Mr. Patterson, did you or did you not put that ad on Mr. Grover Hall's desk?

[fol. 1852] A. I did.

Q. That's all.

The Court: He is the Chief Editor, isn't he?

The Witness: Yes, sir. He is my Superior.

Mr. Embry: We have no questions, Your Honor.

Lawyer Gray: No questions.

The Court: All right. Who do you have next?

PLAINTIFF RESTS

Mr. Nachman: The Plaintiff rests, if the Court please.

Lawyer Gray: Your Honor, the defendant has a Motion and we would like to be heard on it outside of the presence of the jury.

The Court: All right. Let me see the Motion first. Gentlemen of the jury, you may rest for a few minutes while we go in the back room here and discuss a few points of law.

(Motions presented to Court in Chambers.)

MOTION OF DEFENDANTS TO EXCLUDE THE PLAINTIFF'S CASE AS APPLIES TO THE FOUR DEFENDANTS AND DENIAL THEREOF

Lawyer Gray: Your Honor, this is a Motion to Exclude the plaintiff's case as applies to these four defendants. The plaintiff has failed to make out a *prima facie* case. The evidence conclusively shows that there is just two references to these defendants in all of the testimony introduced. One, their names appear on a printed ad—not signed, but printed. No testimony has been introduced by the plaintiff to the effect that this ad was, in fact, produced by these defendants or that they paid for it or that they gave their consent to the use of their names in connection with the ad. Second, the only other reference to these defendants are the letters that were sent by Mr. Sullivan to these four defendants asking them for a retraction. If this matter should go to the jury under the evidence presented by the plaintiff, any verdict against these defendants would amount to a denial of due process and a denial of equal protection of the law amounting to a taking of their property without due process of law. The plaintiff failed completely to present any evidence at all to show that these defendants, in fact, published this matter. That is our position, Your Honor, and we feel it is a proper one and we are asking the Court to exclude [fol. 1853] the evidence of the plaintiff as applies to the four named defendants we are representing.

The Court: All right. I will hear you gentlemen on the Motion.

(Argument presented to the Court by counsel.)

The Court: I will deny the Motion and give you an exception.

Lawyer Gray: If the Court please, we except.

MOTION IN BEHALF OF DEFENDANT, THE NEW YORK TIMES TO EXCLUDE AND IN THE ALTERNATIVE TO PRESENT A MOTION FOR A DIRECTED VERDICT AND OVERRULING THEREOF

Mr. Embry: If the Court please, we want to make a Motion to Exclude in behalf of the defendant, The New York Times, and in the alternative, to present a Motion

for a directed verdict and I wish to argue briefly in support of the Motion.

(Argument presented to the Court by counsel.)

Mr. Embry: For the Record, I call the Court's attention to the fatal variance between the pleadings and proof which would entitle the defendant, The New York Times Company, to a directed verdict. We are not waiving our grounds of demurrer because since the evidence is all in there has been a complete failure to supply those omissions under the evidence so as to make it a jury question.

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

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

(At this point, Court and Counsel returned to the Court Room.)

The Court: Gentlemen of the jury, at this time we will adjourn for lunch and be back in the jury box promptly at 2:30. While you are outside, bear in mind what I have said before about the case and don't talk to anyone about it and don't discuss the case at all. Be back in the jury box promptly at 2:30.

(At this point Court adjourned and reconvened at 2:20.)

[fol. 1854] Mr. Embry: Before we proceed, Your Honor, I would like to inquire of Mr. Nachman because I overlooked asking Mr. Sullivan about it while he was testifying—can we stipulate how many individuals make up and compose the Police Department of Montgomery?

Mr. Nachman: Do you know, Mr. Sullivan?

Mr. Sullivan: A total of 212.

Mr. Embry: Two hundred twelve?

Mr. Sullivan: That's right.

Mr. Embry: Does that include part time people as well as the regular force?

Mr. Nachman: We will get that information for you before the close of the case.

Mr. Embry: All right, sir. That will save a lot of talk.

GERSHON T. ARONSON, having been duly sworn, was called as a witness for the defendants and testified as follows:

Direct examination.

By Mr. T. Eric Embry:

Q. Will you state to the Court and jury your full name?

A. Gershon T. Aronson is my name. That is spelled G-e-r-s-h-o-n.

Q. Where do you live, sir?

A. In a suburb of New York City.

Q. By whom are you presently employed, sir?

A. By The New York Times.

Q. Were you an employee of The New York Times Company in March and during and through the entire month of March, 1960?

A. I was, sir.

Q. What department of the paper are you and were you an employee of during the period of time we were talking about between now and March of 1960?

A. I was on the National Advertising staff.

[fol. 1855] Q. Is there some description or designation as to what your job is with the National Advertising Staff?

A. Yes. I cover six categories of National Advertising.

Q. Well, what do you mean when you say you cover them?

A. I am a sales representative for The New York Times in six categories of National Advertising business.

Q. Do I understand by that that you mean you try to sell advertising?

A. Yes, sir. That is correct.

Q. What categories or what types of advertising do you try to sell?

A. Organizations and committees, office equipment, luggage and leather goods, toys, sporting goods and advertising agencies or institutional advertising.

Q. Would that be an instance where an advertising agency wants to advertise?

A. That's correct.

Q. In toys?

A. Yes, sir.

Q. Do you have any authority in your job and in your duties with The New York Times Company to either accept or reject advertising?

A. No, I do not.

Q. Is there another department within the advertising division or is there another division within the advertising department that has that responsibility?

A. Yes, sir. There is another department.

Q. Do you know by what name that department is called?

A. It is called the Acceptability Department.

Q. Now, I direct your attention to a period of time of either the 23rd or the 24th and you will have to tell me when I ask you in detail as to which of those dates this occurred—either the 23rd or the 24th day of March, 1960, on an occasion when a copy or a manuscript—when something was brought to you at your place of work where you were situated in The New York Times Company plant in New York City. Do you recall that at such a time something was brought to you by a man by name of John Murray?

[fol. 1856] A. Yes, sir. I recall that.

Q. And do you recall that the something that was brought to you was a typewritten manuscript or copy, so-called in the trade, I believe, of an ad which had a caption or headline, "Heed Their Rising Voices"?

A. Yes, sir.

Q. Now, will you tell these gentlemen of the jury, Mr. Aronson, first of all, do you recall the date on which this John Murray brought this manuscript copy to you?

A. Well, as I recall it, my recollection is that Murray came into the office late in the afternoon of a Thursday preceding the date of publication of that advertisement.

Q. I believe the calendar will show and indicate that's the 23rd day of March.

A. I believe it is.

Q. Is that your best recollection?

A. That's my recollection. Yes, sir.

Q. About what time of day or night was it?

A. Well, it was late in the afternoon. I would say somewhere in the neighborhood of from four to five P. M.

Q. Where were you situated in the plant or where was your office at the time it was brought to you?

A. Well, I was situated at my desk which is located on the corner against the wall there in the National Advertising Department.

Q. Is that on some particular floor of the plant? Is that more than a one story building?

A. Oh, yes. Our offices in our department are located on the second floor.

Q. Now, this National Advertising Department, is that a series of partitioned rooms or is that one great big unenclosed area such as you see here in this Court Room?

A. It is a large open office with the exception of one or two executive offices and there are no other private offices.

Q. Are there more than one or two people situated there?

A. Oh, yes.

[fol. 1857] Q. A large number of people are there or a small number of people.

A. A considerable number of people.

Q. I show you a photocopy of this exhibit A to the Answers of The New York Times Company to the Plaintiff's Interrogatories in order to direct your attention to that matter. Now, does that Exhibit A—look at Exhibit A, Mr. Aronson. This is it right here. Now, is that Exhibit A a photostatic copy of the typewritten sheets of paper that were brought to you there by this man, John Murray?

A. This appears to be an exact copy of the original manuscript that Mr. Murray brought into the office on that date.

Q. Well, did he walk up to your desk and ask to speak to you or how did it come about he came to see you there at your place of business on that occasion?

A. Well, I believe he inquired as to who would be the person that would handle an advertisement of this nature and whoever he made that inquiry of must have referred him to me.

Q. When he brought that to you, did he make himself known to you?

A. Yes, he introduced himself and gave me his name and he said that he represented a committee that wished to insert this advertisement in The New York Times just as soon as it could be done.

Q. Did you say anything to him in response to that inquiry or statement by him to you?

A. Yes. I said, well, do you have any specific date in

mind and he said, yes, we would like to run this very early next week.

Q. Did that bring any response on your part?

A. Yes. I realized that we would have a very short time in which to handle this order.

Q. Why is that so?

A. Well, because there are several steps that are necessary between the submission of a manuscript for an advertisement and the finished proof.

Q. Well, you have indicated to me and I want to ask you about it—is there some difference between what you do with regard to a manuscript type copy and typewritten sheets of paper than there is about what you do with a mat [fol. 1858] or a so-called finished copy brought to you by an advertising agent or agency? Is that clear? Have I made myself clear to you?

A. Yes.

Q. Is a mat something that is already made up so that you could pour lead in it or pour type in it and—

A. Yes, sir. That's correct. There is a great deal of difference in the matter of time on our part. With a manuscript of this kind, we would first have to have it laid out by our type people so that the sizes and arrangements of type would be indicated for the compositors, those who accept and set the advertisement in type.

Q. You mean by that in your own place of business with your own people?

A. Yes, sir. Our own people there at the Times.

Q. On that afternoon that you told us about, what if anything did you do with this manuscript copy or these typewritten sheets of paper that were brought to you by Mr. Murray?

A. We immediately, within a matter of a very few minutes, went up to our Advertisers Service Department which is on a different floor of the building and consulted with our Arts Director there as to typography as to the size and style and arrangement of the type.

Q. Is that sometimes referred to as the Production Department?

A. Well, no. That's a separate division.

Q. Was it taken to the Production Department too?

A. Not at that time.

Q. Was it later taken there?

A. Later it was, yes, sir.

Q. Now, at the time you took it to this production department later—when was it? The next morning?

A. No. Yes, that was the next morning. That must have been on a Friday.

Q. Did you cause a thermo-fax—this brown looking photocopy of the typed material to be made?

A. Yes, sir. I did.

Q. You caused that thermo-fax copy then to be sent to the [fol. 1859] Advertising Acceptability Department, did you not?

A. That is correct.

Q. Was there something brought to you along with the manuscript copy that we have been talking about—a letter?

A. Yes.

Q. I show you Exhibit B to the defendant, The New York Times Company's Answers to the Interrogatories propounded by the Plaintiff which is a letter with the letter-head of A. Philip Randolph and I will ask you if such a letter accompanied it?

A. Yes. This is a copy of the original letter.

Q. Did you have a thermo-fax copy made of that and sent along with the thermo-fax copy of this so-called manuscript we have been talking about?

A. I believe we did.

Q. Did you read this manuscript when it came in to you or when it was brought in to you by Mr. Murray?

A. No. I did not.

Q. Did you read this letter that came with it?

A. Yes, I read the letter.

Q. All right. Then, you put it into the process by which it becomes—

Mr. Baker: If the Court please, we object to the leading.

The Court: Yes, that would be leading, Mr. Embry.

By Mr. T. Eric Embry: (Continuing)

Q. What did you do with it then? I will ask you to state whether or not, after you did all of this you told us about,

it then became a part of the practice and procedure whereby it becomes a printed form which is referred to you as copy?

A. That was one step, yes.

Q. When did you next see this material?

A. I next saw a proof of this advertisement.

Q. Do you have with you the next thing that you saw after you did what you told us you did?

A. I saw this proof.

[fol. 1860] Mr. Embry: If the Court please, for the purpose of identification I would like to have these three sheets of paper marked and identified as Defendant's Exhibit No. 6.

Mr. Nachman: Mr. Embry, are there things on that No. 6 for identification there that we can't Cross Examine the witness about because they don't come within his jurisdiction?

Mr. Embry: Well, this is the same thing you already have there in the paper.

Mr. Nachman: Well, he will be able to testify about all the matters on it, will he not?

Mr. Embry: He will be able to testify about those that he knows about.

Mr. Nachman: Well, we will have no objection to it then.

Mr. Embry: If the Court please, we offer this in evidence as Defendant's Exhibit No. 6.

(Printer's Proof of Ad "Heed Their Rising Voices", dated March 28, and Order Blank for publication of the Union Advertising Service, 302 Fifth Avenue, New York 1, New York, dated March 28, 1960 and yellow inter-office memo, copy number 22, dated March 28, 1960, offered and received in evidence and identified as Defendant's Exhibit No. 6.)

By Mr. T. Eric Embry: (Continuing)

Q. Now, where did you leave the original manuscript?

A. I left the original manuscript with our Advertising Service Department.

Q. The Advertising Service Department?

A. Yes, sir.

Q. Is it the standard practice in the operation of the business there at The Times that those things are filed there in a file and kept for a period of thirty days and then destroyed?

[fol. 1861] Mr. Baker: We object to the leading, if the Court please.

By Mr. T. Eric Embry: (Continuing)

Q. Well, state whether or not it is the practice of The New York Times Company to keep them for thirty days and then destroy them?

A. Our practice is to keep material of this kind and then discard it after a period of thirty days.

Q. Was that done in this instance?

A. I believe it was, yes.

Q. Mr. Aronson, this blue piece of paper that is stapled to Defendant's Exhibit 6 and which is a part of Defendant's Exhibit 6—will you tell us what that is?

A. Well, that is an advertising agency insertion order authorizing The New York Times to publish this particular advertisement on the date specified on this order.

Q. Is that how they buy the ad?

A. Oh, yes. We couldn't publish anything without written authority from a recognized advertising agency.

Q. Now, in that particular instance, was that an order from a concern whose name is The Union Advertising Service?

A. That is correct.

Q. Now, you may refer to that if you need to in answering anything I ask you about it. From that document or insertion order an order for this space for The Union Advertising Service—does it appear on there in the order requesting the space—does the date and the time on which the copy is to be published in your newspaper? Does that appear there?

A. Yes, it does.

Q. What date does that specify?

A. Tuesday, March 29th.

Q. 1960?

A. Yes, sir. 1960.

Q. Now, is The Union Advertising Agency in the trade and business of publishing and advertising in New York City? Is that a recognized agency?

[fol. 1862] A. That is a regularly recognized agency doing business with various publications including The New York Times.

Q. Is it a reputable agency?

A. To the very best of my knowledge, it is.

Q. Did it enjoy the status with your newspaper of having credit, that is, did you charge this to their account and then bill them?

A. Oh, yes. This was accepted and approved.

Q. Before you had that brought to you and I believe you testified you didn't read it, I will ask you whether or not you had—well, I will withdraw that question. You may answer Mr. Nachman's questions. That's all.

Mr. Nachman: What is the Court's pleasure on the order of Cross Examination of this witness? Does the Court prefer the other defendants to go first as it makes no difference to us—

The Court: I imagine the plaintiff would be first. Go ahead.

Cross examination.

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

Q. Mr. Aronson, how long have you been with The New York Times in the advertising end of the business?

A. For twenty-five years, sir.

Q. Are you familiar with the company's policy regarding advertising in all of its aspects, that is, sales, acceptability and so forth?

A. Yes, sir.

Q. Referring to the ad which is in evidence identified as Plaintiff's Exhibit No. 347—I believe it is the same as the one you have there in your hand—why was this ad brought to your desk? Is that the regular procedure?

A. That's the regular procedure, yes. It would have to be placed in its proper routine as it were for processing.

Q. Is this ad in any kind of a special category as The Times would categorize it?

Mr. Embry: We object to that, Your Honor. We don't [fol. 1863] know what his question means.

Mr. Nachman: Well, I believe there was some testimony to the effect that it was an editorial type ad and that's what I am trying to find out.

Mr. Embry: We withdraw the objection.

The Court: Go ahead.

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

Q. Is that correct, sir?

A. I would call it an editorial type ad.

Q. Is that within your specialty too?

A. Yes, it is.

Q. Now, what makes an ad an editorial type ad as distinguished from some other type ad as The New York Times categorizes it?

A. Well, I should say it is the type ad that expresses or puts forth a point of view.

Q. And those ads are put into a separate category, are they not?

A. Yes, sir. We consider them all under the general heading of advertising of organizations and committees.

Q. And The Times has certain of its employees such as yourself who specialize in ads of that sort as distinguished from other kinds of ads.

A. Ads of this kind would come within my particular duties.

Q. Now, you are familiar, I take it, with The New York Times Advertising Acceptability standards, are you not? And I show you this booklet here.

A. Yes, sir.

Q. Is it the policy of The Times that all of the standards and procedures set out in that booklet should be followed in the consideration of all advertising which is submitted to The New York Times for publication?

A. That's their policy.

Q. Was that policy followed in the case of this ad?

A. I think it was.

Q. Well, was it? Is that a qualified answer or is it a definite unqualified answer?

A. Well, I am giving you the answer insofar as I am able to give it.

[fol. 1864] Q. Were the signatures on that ad when it was submitted the signatures of the persons whose names appear on the bottom of it?

Mr. Embry: We object to that. He assumes that they were—

Mr. Nachman: Were they or weren't they? That's what I asked him.

The Witness: Most of them were. There were a few changes made I believe, prior to publication.

Mr. Embry: I don't think he specified whether they were typed on here or whether somebody had signed them—

The Witness: They were—

Mr. Embry: Were they signatures or were they printed? That's what he meant.

The Witness: They were in manuscript form. They were typewritten. They were not in handwritten form.

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

Q. They were not signed by a signature.

A. No. That is correct.

Q. What basis did The Times have for assuming that the persons whose names were typed on the bottom of that manuscript had actually put their names to it or had authorized the use of their names?

A. Well, we had a written communication confirming the fact that the persons whose names were given here had authorized it.

Q. You are referring now, I take it, to the letter from A. Philip Randolph. Is that right?

A. Yes.

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

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

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

Mr. Embry: We except.

[fol. 1865] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer the question.

A. Would you kindly repeat the question, please, sir?

Q. The question was, on what basis did you for The Times assure yourself that these people had actually given permission to use their names?

A. Well, I personally would not be responsible for that but I might say that a letter of this kind is our usual authorization. It is our usual practice to accept letters of this kind as authority.

Q. Who is A. Philip Randolph?

A. I believe that he is, among other things, the head of a Railroad Pullman Car Union.

Q. Do you know whether or not he is personally acquainted with all of the people whose names appear on that ad?

A. I do not know that.

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

Mr. Embry: We object to that as being argumentative, Your Honor.

Mr. Nachman: I want to know, Your Honor, what they meant—

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

Mr. Embry: We except.

The Witness: We would so consider it.

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

Q. It doesn't specifically mention an ad in the paper though, does it? Let me show you the letter. I don't want to confuse you. This has been identified as Defendant's Exhibit No. 7.

A. That is correct.

Q. It does not mention an ad.

[fol. 1866] A. It does not.

Q. I assume, Mr. Aronson, that the original letter was actually signed by A. Philip Randolph. This photocopy shows no signature.

A. That's my recollection.

Q. Now, Mr. Aronson, do you consider that there are any ambiguous words or misleading words contained in this ad?

Mr. Embry: We object to that, if the Court please. He testified he didn't read it.

Mr. Nachman: Would you mind looking at it now?

Mr. Embry: Well, Your Honor, it not a question of what he thinks now. Prior to the publication—

Mr. Nachman: Let me re-phrase the question.

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

Q. Mr. Aronson, are you part of the process whereby the Times applies its advertising acceptability standards set out in this booklet that I have shown you?

A. I should say only to a limited extent.

Q. To what extent, sir?

A. If there was something that was obviously contrary to our policy and regulations, in order to save time I would have it changed or endeavor to have it changed.

Q. All right, sir. Then, I will ask you when you read that ad—when it was submitted to you—whether you found anything in that ad which to use the words of Item 3 on the second page of this booklet contained any words that are quote "ambiguous" or "which may mislead." Did you consider that there were any words in that ad which fell into that category when you looked at it on the day it was presented to you?

Mr. Embry: We object to that, if the Court please. He has already testified that he did not read the ad, Your Honor.

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

Mr. Embry: We except.

Mr. Nachman: They didn't even read the ad?

The Witness: I did not consider that there were passages [fol. 1867] in here that would come into that.

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

Q. Well, now, the first thing that I would like to know is whether Mr. Embry is correct when he says that you didn't even read the ad when it was submitted to you?

A. I did not fully read it. I scanned it very hurriedly.

Q. Is that a part of the process of applying the acceptability standards—a hurried scanning of the ad?

A. Well—

Mr. Embry: Mr. Aronson, give me a chance to get my objection in before you answer. We object to that, if the Court please—

The Court: I think that question is admissible. He can answer it if he can.

Mr. Nachman: You may answer the question.

The Witness: Would you please repeat that question?

Mr. Nachman: Will you read the question, Mr. Reporter?

The Reporter: Question: "Is that a part of the process of applying the acceptability standards—a hurried scanning of the ad?"

The Witness: Yes, because there are other points at which the acceptability is further considered beyond me.

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

Q. At what point, sir?

A. Well, at our Acceptability Department.

Q. Did this ad go to the Acceptability Department?

A. I believe it did.

Q. Now, I call your attention to the third paragraph on the left hand column and I ask you to read the first sentence and ask you whether you consider there is anything ambiguous in the use of the word "after" in that sentence?

Mr. Embry: Your Honor, there is no Complaint about any ambiguity in it and, as a matter of fact, to the contrary. They claim it is very clear.

[fol. 1868] The Court: Well, he is going into the standards of the acceptability of it. I will let it in and give you an exception.

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

The Witness: I would not consider that word ambiguous.

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

Q. What do you consider it means?

A. Well, just what it actually says. It gives an order in time in which these events occurred.

Q. And order in time.

A. Yes.

Q. The sentence is, "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus." Now, it is your testimony, I take it, as a man with over twenty years of experience in reading ads with ambiguous words, that the word "after" means only after in terms of time and has no cause and effect connotation at all.

Mr. Embry: Don't answer that. We object to that, Your Honor. That is pure argument. It invades the province of the jury and he is arguing with the witness, Your Honor. There is not any issue about that in this case and what this witness thinks the word means wouldn't shed any light on the issues in this case.

Mr. Nachman: If the Court please, their own standards say that they should not accept wording that is ambiguous or misleading. Now, this man was put on this witness stand as the man who was presented with this ad and who was one of the persons to determine whether or not it should be accepted and I want to know from him whether in the terms of the standards that The New York Times laid down that he, as a person who was a part of that process, considers that this word, "after" is ambiguous or whether it has a single, simple, plain meaning.

Mr. Embry: Your Honor, what he thinks about it wouldn't be any issue in this case even if it was accepted—

Mr. Nachman: Your Honor, they are claiming that this

[fol. 1869] was all an innocent process on their part and we want to know what the process was and how they looked at it.

The Court: I think it is admissible. I will give you an exception to each question along this line.

Mr. Embry: If the Court please, he previously testified that he scanned the ad—

The Court: I will let it in and give you an exception to each and every question.

Mr. Embry: We except.

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

Q. You may answer, sir, as to whether or not the use of the word "after" in that sentence to you connotes only a time sequence or whether it could also denote a cause and effect relationship, that it, because they sang "My Country, 'Tis of Thee" that these other events took place.

A. I only considered it, as I said before, in a time sequence but I would like to say that I did not examine the ad that closely.

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

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

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

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

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

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

Mr. Embry: We except.

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

Q. You may answer.

[fol. 1870] A. I see it only in its time sequence.

Q. Now, I call your attention to the last paragraph at the bottom of 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 will ask you again, bringing to bear your judgment and experience that you have gained in your job for over twenty years if you consider there is any distinction between the various "theys" that appear in that paragraph?

A. Well, I consider that those words refer to the first sentence, "Southern violators."

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

Mr. Embry: We object to that. Is it understood, Your Honor, that we have an objection and exception to this whole line of questioning?

The Court: Yes. You may have an exception to this entire line of questioning.

Mr. Embry: We object to it on the grounds that it calls for an unauthorized conclusion and invades the province of the jury and it has no probative value on the issues in the case made up by the pleadings of the parties. We except and note a stipulation that we have an objection and exception to each question in the Record.

The Court: Yes. All right. Go ahead.

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

Q. You may answer, sir.

A. Well, it is a very general term and applies, as I see it, to the first line of that paragraph.

Q. The question I asked you though was whether in your mind that the "they" as used at the beginning of each one of those sentences refers to the same people?

[fol. 1871] A. Well, it may have referred to the same people. It is rather difficult to tell.

Q. Now, I will ask you, sir, whether in terms of The New York Times Advertising Acceptability standards if you consider the use of the word "they" in that paragraph to come under this category, "Advertisements that are ambiguous in wording and which may mislead"?

Mr. Embry: Does that come under the Advertising Acceptability standards?

Mr. Nachman: Yes.

Mr. Embry: Do you have one of those booklets before you?

The Witness: I do.

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

Q. It comes under the heading, "Following Is a List of Several Classes of Advertising The Times does Not Accept," and this is Item No. 3.

A. Personally I would not consider that to have been ambiguous in the meaning of this third paragraph in the booklet.

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

Mr. Embry: We object to that. He is arguing with the witness, if the Court please.

Mr. Nachman: Well, I believe the witness just said that it was not clear to him.

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

Mr. Embry: We except.

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

Q. Is it clear to you today, sir, what the word "they" refers to as it is used repeatedly in that paragraph?

A. Well, I think now that it probably refers to the same people.

Q. Did you know John Murray who brought in the ad for publication?

A. I don't quite understand.

Q. I believe that you testified that a man by name of John Murray brought this in for publication.

[fol. 1872] A. Yes.

Q. Is he an employee of The Union Advertising Company?

A. No, sir. He is not.

Q. Did you know him personally?

A. No. I did not know him prior to the time that he came into the office.

Q. Had you ever seen him before?

A. I had never seen him before.

Q. Did he give you any credentials or did you ask for any credentials?

A. Well, he explained the authority—he explained the authorization for the publication—that the authorization for the publication of the advertisement would come from the Union Advertising Service.

Q. Did he give you the letter from Randolph or did that later come from the agency?

A. My recollection is that that come up by messenger a little later.

Q. Am I correct, Mr. Aronson, again within the terms of your knowledge as having been with The New York Times for over twenty years that investigations are frequently made by The Advertising Acceptability Department to develop further information or to determine the accuracy of statements? I am reading from the booklet here again.

A. That occurs, yes.

Q. Was any investigation made before the publication of this ad, the one in litigation now?

A. I would not know that, sir.

Q. Would you state to the Court and to the jury what circumstances bring about such an investigation as is referred to in this little booklet?

Mr. Embry: If you know?

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

Q. Yes, if you know and within the limits of your experience of twenty years or more with The New York Times Company.

A. Well, if there was something that was obviously objectionable or untrue.

[fol. 1873] Q. Could you give us an example or two of something that you as a person who worked in that department would consider so obviously objectionable that it would require further investigation or investigations?

A. Well, if there was the use of a superlative claim in the advertisement or a claim that a product is better than any other competitive product or service. This would obviously be objectionable.

Q. I assume then that any statement which is exaggerated would fall under the term superlative claim as you used it?

A. Well, not necessarily.

Q. A gross exaggeration?

A. Pardon me?

Q. A statement containing words of hyperbole—something that is grossly exaggerated or something of that sort?

A. If they were considered to be grossly exaggerated, yes.

Q. Now, sir, I would like for you to look at this advertisement identified as Plaintiff's Exhibit No. 347 and tell me whether you think there are any words in that which are of a superlative nature as you used the word?

Mr. Embry: We object to that, if the Court please. What he thinks of it now is not the issue. It would depend on what he thought of it at the time he saw the ad.

The Court: Well, the ad around March 29th—

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

Q. Well, that's the same ad that you saw in March, isn't it? It hasn't been changed any, has it?

A. I don't think so, sir.

Q. I don't think so either. It is the same now as it was in March and would you look at it, sir, and tell me now whether you think there are any words in there or phrases in there that are superlative in nature?

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

The Court: He is fussing over the word now. See if [fol. 1874] you can't get to March 29th.

Mr. Embry: The point of my objection, Your Honor, is that the only material thing would be what he thought about it at the time he accepted it—

The Court: The time he was in the process of getting the ad in.

Mr. Embry: Yes, Your Honor. And, if the Court please, he is not a member of the Acceptability Department which has that function.

Mr. Nachman: Is there anybody here from the Acceptability Department?

Mr. Embry: Yes, sir. The next witness may be able to answer your question.

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

Q. I would like you to tell us if you can, Mr. Aronson, whether that ad—the ad that was handed to you on March 23rd and which was published on March 29th, contained superlative words or phrases as you have just used the term.

Mr. Embry: We have the same objections and same grounds to this whole line of questioning, Your Honor. I want to point out to Your Honor that this is still within the line of questioning that I am objecting to.

The Court: Yes.

The Witness: I do not see any such.

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

Q. You don't see any such.

A. No.

Q. Now, may I look at the contract with the—

A. With the advertising agency?

Q. Yes.

A. Yes, sir. Here it is.

Mr. Nachman: What exhibit number is this, Mr. Embry? [fol. 1875] Mr. Embry: It is Defendant's Exhibit No. 6, I believe. You will have to ask the Reporter.

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

Q. Mr. Aronson, since March 28th, 1960, which was the date this ad was inserted by The Union Advertising Service

of 302 Fifth Avenue, has The Times continued to do business with this agency as a recognized advertising agency?

A. I believe they have.

Q. Up to the present time?

A. Yes, I should say so.

Q. Now, am I correct, sir, or do you know, that complaints were made to The New York Times that the material contained in this ad was misleading and inaccurate?

A. I heard about that later.

Q. Am I correct in stating, sir, that one of the policies set out in this booklet on advertising acceptability—do you have the booklet there?

A. Yes.

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

Mr. Embry: We object to that, Your Honor. There is no evidence that this paper ever published anything except the ad in reference to the Committee to Defend Martin Luther King—

Mr. Nachman: I asked about the Union Advertising Service.

Mr. Embry: The language of the rule—

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

[fol. 1876] Mr. Embry: We except.

The Witness: Well, I believe that other advertising for other clients or advertisers has been received from the Union Advertising Service.

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

Q. You accepted this, as I understand your Direct testimony, from the Union Advertising Service as a recognized reputable agency. Is that correct, sir?

A. That's correct.

Q. And you looked to that agency, I take it, to vouch for the accuracy and to vouch for the fact that this ad was up to standard, didn't you?

A. Yes.

Q. Am I not correct, sir, that when you find you have been done-in, so to speak, by an advertiser and you find that you cannot rely on him anymore, then this standard applies that I have just read to you?

A. Yes—

Mr. Embry: Your Honor, we object—

Mr. Nachman: He has already answered.

Mr. Embry: Don't answer until I have had a chance to object, Mr. Aronson—

The Court: Yes, I doubt that question—

Mr. Embry: We move to strike that, Your Honor—

The Court: Yes. I sustain the objection.

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

Q. Am I correct, sir, in stating that The New York Times has seen fit to—has not seen fit to apply the standard which I just read to you to The Union Advertising Agency?

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

The Court: At what time?

Mr. Nachman: Your Honor, the theory is this, sir. As I understand it, they claim before this Court and this jury that we accepted this advertisement from a reputable advertiser—

[fol. 1877] Mr. Embry: Now, I don't want Mr. Nachman saying what I say to Your Honor—

Mr. Nachman: I say, that's as I understand it. Now, as I also understand Mr. Aronson's testimony, included in their advertising acceptability standard is the provision that if an advertiser makes an inaccurate and misleading statement and so forth, then they do not accept any more announcements from his firm. Now, Mr. Aronson has also testified that they continued to accept advertising from this Union Advertising Service up to the present time and I am only trying to bring out that they did not apply this standard to the Union Advertising Service even though Mr.

Aronson testified that they had received complaints from their readers about this ad.

Mr. Embry: Apparently, Your Honor, Mr. Nachman doesn't understand the difference between an advertiser and an advertising agency.

Mr. Nachman: There's a lot about this I don't understand. That's just one of the things I don't understand.

Mr. Embry: You sure don't. We object on those grounds, Your Honor. He is arguing with the witness because the witness has not agreed with his definition of what an advertiser is.

The Court: I rather doubt if it would have any great evidentiary value and I will sustain the objection to it.

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

Q. Does that contract or the paper indicated as Defendant's Exhibit No. 6, Mr. Aronson, indicate how much The New York Times paid for this ad?

A. Well, it indicates the rate per agate line.

Q. Well, could you translate that into dollars for us, please, sir?

A. In the vicinity of \$4,800.00. A little over that.

Q. At the risk of being repetitious, Mr. Aronson, I wish you would outline in as much detail as necessary what takes place in the ordinary course of publishing an ad from the time it is first submitted until the time it appears in the paper?

[fol. 1878] A. An advertisement—when an advertisement first comes into the office, if they are to be set in type by The New York Times, they are brought, if it seems necessary or desirable, to our Advertising Service Department. If it does not seem necessary or desirable to do that, they are routed into our Production Department and they in turn process the advertisement as to date, size and kind of advertisement and keeps a record of that on a separate group of sheets and then they send that manuscript to our composing room where the advertisement is sent to a compositor and set up in type form. Then, when the advertisement is completely set, proofs of that advertisement are sent down to the Advertising Department and other proofs go to other departments.

Q. At what stage does the Advertising Acceptability Department get into the picture? Does it get into it at an early stage or what? Does it get into it early or when it is already or when it is nearly ready for insertion in the paper?

A. It can happen either way.

Q. Is there any basis for determining which way it happens?

A. Well, it depends on how much time is available.

Q. It is more a question of time than content then. Is that it?

A. I would say that time has an important bearing on it, sir.

Q. Does it have as important a bearing as content?

Mr. Embry: We object to that, if the Court please. His conclusion about what is important without hypothetical facts upon which to base it—

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

Mr. Embry: We except.

The Witness: It would be difficult to say which is more important in every case.

Mr. Embry: I withdraw my objection, Your Honor.

Mr. Nachman: All right. We have no further questions for this witness, Your Honor.

[fol. 1879] Cross examination.

By Lawyer Gray:

Q. Do you have Plaintiff's Exhibit No. 347 before you?

A. Yes.

Q. I would like to call your attention to the group of names at the bottom of that sheet. I am not talking about the first group of names but I am talking about the second group there. Now, will you read aloud the first name that appears there in the first column?

A. Reverend Ralph D. Abernathy.

Q. Now, will you tell the Court whether or not on this ad his name was subscribed to the ad?

A. His name was furnished in typewritten form and it was indicated that his name was to be inserted in this list.

Q. But it wasn't signed. It was typed to the ad.

A. That's my recollection.

Q. Now, will you tell the Court and the jury whether or not you or anyone from The New York Times prior to the date of publication of this ad—did you contact the Rev. Ralph D. Abernathy to ascertain whether he had given his consent for the use of his name on this ad?

A. I did not contact him.

Q. Did anyone from The New York Times contact him?

A. Not that I am aware of.

Q. All right. Now, let's take the next name, please, sir. Whose name is that? Read it aloud.

A. Reverend Fred L. Shuttlesworth.

Q. Was his name subscribed to the ad or was it typed?

A. I believe that it was typed.

Q. Did you or did anyone from The New York Times contact the Rev. Shuttlesworth to ascertain whether he had given his consent for his name to be affixed to this ad?

A. Not that I know of.

Q. Now, I call your attention to the third group of names, the one next up from the bottom and I ask you whose name appears there?

A. I beg your pardon?

[fol. 1880] Q. I call your attention to the third group of names under the same category, the second one from the bottom.

A. The Rev. S. S. Seay, Sr.

Q. Now, will you tell the Court whether or not his name was subscribed to the ad or whether it was typed on the ad?

A. I believe it was typed.

Q. Will you tell the Court and jury whether or not you or anyone from The New York Times prior to the date of publication contacted the Rev. Seay to determine whether he had given his consent for his name to appear on this ad?

A. Not that I am aware of.

Q. Now, I call your attention to the next column and the next to the last name. What name appears there?

A. The Rev. J. E. Lowery.

Q. I will ask you whether or not his name was subscribed to this ad or whether it was typed on it?

A. It was typed.

Q. Did you or anyone from The New York Times prior to the date of publication of this ad contact the Rev. Lowery to determine whether he had given his consent for his name to appear on this ad?

A. Not that I know of.

Q. Now, sir, on this letter that you testified was received at The New York Times from Mr. Randolph, Defendant's Exhibit No. 7, and on the original list of names that he assured the Times had given their consent—on that document did these four names—these four named defendants—were their names signed or were their names typed?

A. I don't believe their names appeared on that particular letter.

Q. That's all. Thank you.

[fol. 1881] D. VINCENT REDDING, having been duly sworn, was called as a witness for the Defendants and testified as follows:

Direct examination.

By Mr. T. Eric Embry:

Q. State your full name to the Court and jury.

A. D. Vincent Redding.

Q. I believe you are a resident of New York City?

A. A resident of Long Island.

Q. You are an employee of The New York Times Company?

A. That is correct, sir.

Q. How long have you been employed by The New York Times Company?

A. For five years and nine months, sir.

Q. Prior to that time, were you with another newspaper?

A. That is correct.

Q. Now, when you were initially employed by The New York Times Company, in what capacity were you employed some five years and nine months ago?

A. I was an Assistant to the Manager of the Advertising Acceptability Department.

Q. Now, during March of 1960 and in particular during the dates of the 23rd, 24th, 26th, 27th, 28th and 29th of that period of time, what was your title or classification of your job with The New York Times Company?

A. Manager of the Advertising Acceptability Department.

Q. Now, is that a division or a part of the national advertising department of The Times?

A. No, it is not.

Q. You are not an officer or a director of the management of The New York Times Company, are you?

A. I am not, sir.

Q. Now, in that acceptability department during the dates that I recited to you in March of 1960, how many people were employed in your department there?

A. At that time there were six.

[fol. 1882] Q. Does that department have some sort of function with the paper and I am handing you a little booklet we have been talking about before. Does that department have a function with the paper, and if so, tell us what that department's function is.

A. The department can be described as one that screens the advertising.

Q. Now, I direct your attention to an ad which is an exhibit in this case identified as Plaintiff's Exhibit No. 347 and ask you to go back in point of time. Do you have in your possession what is referred to as a manuscript copy together with a letter accompanying that manuscript copy?

A. I do, sir.

Q. It is a thermo-fax process of what later turned into that ad in print, is it not?

A. Yes.

Q. Well, let's get that out and look at it before we start anything else. Now, the Randolph letter consists of one sheet of paper, is that correct?

A. Yes.

Q. Now, this other one consists of six sheets of paper and is clipped together. Now, I ask you to state if this multiple group of sheets, the six of them, was what you saw and as to when you first saw it, we will get into that in

a minute, of the copy that was turned into this ad later? This was in your department I am talking about.

A. To the best of my recollection, that is correct.

Q. This very document right here I am holding.

A. That is correct.

Q. And this single sheet of a letter, is that the very document that you saw that time?

A. To the best of my belief, yes, sir.

Mr. Embry: Your Honor, we offer these two into evidence so that we can refer to them by number as we go along.

Mr. Nachman: We have no objections.

[fol. 1883] (Letter from A. Philip Randolph, 217 West 125th Street, New York 27, New York, dated March 23rd, 1960, to Mr. Jerry Aronson, New York Times, New York, New York, offered and received in evidence and identified as Defendant's Exhibit No. 7.)

(Manuscript of ad "Heed Their Rising Voices," offered and received in evidence and identified as Defendant's Exhibit No. 8.)

Direct examination.

By Mr. T. Eric Embry: (Continued)

Q. Now, there is some question probably in some peoples' minds as to whether these were attached together when you saw them. How did you first see them? Were they on your desk?

A. They were on my desk.

Q. How were they situated on your desk?

A. I cannot remember exactly. I don't know whether they were attached or not.

Q. Now, is this in the trade or business what is referred to as an editorial type ad?

A. Yes, sir.

Q. Now, in connection with your function of the Advertising Acceptability Department, is it routine that an editorial type ad comes across your desk?

A. It is. Yes.

Q. Is it routine that an ad that has imprinted on it—or a copy for an ad has imprinted on it persons' names that come across your desk—a group of peoples' names imprinted on it?

A. It is. Yes, sir.

Q. Did that happen in this instance?

A. Yes, it did.

[fol. 1884] Q. And this is what came across it.

A. Yes, to the best of my recollection.

Q. Now, do you recall—on that occasion, I assume you read this material, did you not?

A. I did.

Q. Did you have any knowledge or any information before you at that time from whatever source you may have gained that information and knowledge by reading or talking to someone else or anything that caused you to believe that anything in it was false?

A. I did not.

Q. And after reading it and not having before you anything that would cause you to believe that it was false, did you O. K. it for acceptance as an editorial type ad to be run as a paid advertisement in The Times?

A. I did.

Q. Now, did anything in that advertisement at the time you saw it—when did you see it? When did you see this manuscript on your desk? About when did you see it or do you have any recollection about it?

A. The nearest I can make it is about the 25th of March.

Q. Sometime during that day?

A. Yes, sir.

Q. Did anything you read in that ad cause you to believe that any of the contents of it were false?

A. Nothing whatsoever. No, sir.

Q. And not believing that any of the contents were false, did you place any reliance on any other factor or any other thing about that by which you concluded that the contents were true—not believing it to be false, and if so, tell the jury what it was.

A. Yes, I did, and it was because the ad was endorsed by a number of people who are well known and whose reputation I had no reason to question.

Q. All right, now, let me ask you if as a routine practice in the exercise of the function of your department which you described as routine on the Advertising Acceptability Department, is it the normal practice and is it routine to have a letter accompanying the editorial type ad where [fol. 1885] persons' names are imprinted on the copy to satisfy yourselves that the names that are imprinted on the copy—that those people have given their assent or permission that their names appear on the ad? Is that the routine way you do it?

A. It is routine to obtain such a letter if there is not one already with the ad.

Q. Oh, well, I didn't mean to imply that it wasn't. Was this with it?

A. That was with it.

Q. Is that the routine way it is done? If there is one with it, is that the routine way by which you assure yourself that the permission of the people has been given for the use of their names?

A. Yes. If there is a letter with the ad, then that is routine.

Q. And it was with this one.

A. Yes. That is correct.

Q. Now, in stating to these people of the jury here that you were led to believe it was true and had no reason to believe that it was false by the fact that it was endorsed by certain persons you considered to be responsible, can you tell the gentlemen of the jury what persons on that caused you to rely on the content of this advertisement as being true?

A. I can.

Q. All right. Will you tell the gentlemen of the jury here the names of some of these people?

A. Raymond Pace Alexander.

Q. All right. Now, who is he?

A. Councilman of the City of Philadelphia.

Q. Were you a resident of the City of Philadelphia at one time?

A. I was, sir, before I came with The New York Times.

Q. Do you mean to say that he was a City Councilman?

A. He wasn't then. To the best of my knowledge he was an attorney in the City at that time and I believe he was elected to the Council after I left the City.

Q. Well, I mean at the time you saw this ad.

A. To the best of my belief, he was a councilman.

[fol. 1886] Q. All right. Anyone else?

A. Mrs. Ralph Bunche.

Q. All right. Who is she?

A. She is the wife of one of the leading figures in the United Nations. I couldn't definitely say what her status was or is and I couldn't say what his status was or is with the U. N. but he is well known.

Q. Anyone else there?

A. Yes, sir. The Rev. Harry Emerson Fosdick.

Q. Who is he or who was he when you read this—

A. He is a widely known clergyman. He was and is.

Q. Where does he reside?

A. In New York.

Q. Is that the Riverside Church—

A. To the best of my belief, I believe so.

Q. Did you believe those persons to be trustworthy individuals at the time you read that?

A. I did.

Q. Did anyone else's name on the ad indicate to you that that person whom you believed to be a trustworthy person or identify this proposition to you and caused you to rely on the truth of it as set forth there—

A. Yes, there were others.

Q. All right. Who else?

A. Clarence Pickett.

Q. All right. Who is he?

A. Executive Director of the American Friends Service Committee.

Q. All right. Anyone else?

A. Mrs. Eleanor Roosevelt.

Q. All right. Anyone else?

A. Norman Thomas.

Q. Let me ask you this. You mean to say that the others you don't consider trustworthy but you didn't know the other people. Is that the idea?

A. That is correct. I picked these out as among those I might know of. I don't know the others.

[fol. 1887] Q. Now, this type of thing and for the purpose of identification we will label it as an editorial type

ad, I will ask you to tell these gentlemen of the jury if that —first of all, this has been identified but so that we will know what we are talking about this is the Advertising Acceptability standards and it is an exhibit in this case by virtue of being attached to the defendant's, The New York Times, Answers to the Plaintiff's Interrogatories and I don't assume that there is any point being made about it not being an exhibit. Now, does the editorial type ad come under the generalized statement of standards on the front cover of this set of standards?

A. Yes, it does.

Q. Now, at the time you read that manuscript when you saw it on your desk, did you have any facts within your knowledge that caused you to think that there was anything misleading or inaccurate or fraudulent recited in it?

A. No, I did not.

Q. I believe you already said that you didn't have anything within your knowledge that caused you to believe it to be false.

A. That is correct.

Q. Did you at that time, in fact, know anything about the facts, that is to say, have any personal knowledge or any knowledge gained from any source about the events or occurrences that purport to be talked about in this ad where it is claimed it happened in Montgomery—have you ever been to Montgomery before since you came down here on this case?

A. No, I have not.

Q. Had you read anything about any of those events that purport to be discussed in there that gave you any knowledge about these statements—about whether these statements were true or false?

A. Not to the best of my recollection.

Q. Or that caused you to believe they were false?

Mr. Nachman: Was his answer, no, he did not know anything about the facts or events?

Mr. Embry: That's right.

[fol. 1888] By Mr. T. Eric Embry: (Continuing)

Q. Did you have any knowledge at the time you read the ad—at the time you read the manuscript of the ad of the

agency which submitted the copy to The New York Times for insertion in the paper?

A. No, I did not.

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

Cross examination.

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

Q. Mr. Redding, you were asked to state who certain people were. Would you mind telling the jury who Norman Thomas is?

A. I would be glad to. Norman Thomas has been a candidate for President on the Socialist party ticket several times.

Q. Now, you gave a list of six people whose names appear on this ad and there are many, many more, are there not?

A. There were and there are.

Q. Possibly as many as a hundred?

A. Sixty-six. I counted them.

Q. How about some of the others? What about the other sixty? Would you rely on their trustworthiness as well?

A. Among those I knew of, I had no reason to doubt their trustworthiness.

Q. Well, let's name some more if you will, please.

A. I can read them from here, I assume.

Q. Yes. Name any others other than the six you already mentioned whose reliability and trustworthiness assured you that this ad was correct.

A. Well, may I say I had no reason to doubt their trustworthiness?

Q. Phrase it anyway you want to. I just want to know who they were.

A. Harry Belafonte. Marlon Brando. Nat King Cole. Rev. Donald Harrington.

Q. Who is he?

A. I think he is a Unitarian minister in New York.

Q. Go ahead.

A. Rabbi Edward Klein. Sidney Poitier. A. Philip Randolph.

[fol. 1889] Q. Who is Sidney Poitier?

A. A movie actor.

Q. Who is A. Philip Randolph?

A. President of the Sleeping Car Porters Union.

Q. Go ahead.

A. That would be all.

Q. Those would conclude the list of persons on whose reliability you yourself relied. Is that correct?

A. I would rather say that I knew nothing that would question their trustworthiness.

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

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

The Court: I believe that is a good question. Let me give you an exception.

Mr. Embry: All right, Your Honor. We except.

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

Q. You may answer.

A. Will you repeat the question?

Q. Did you consider that these people whose names you have mentioned—would you say that they were sufficiently familiar with events about Montgomery purportedly described in that ad so that you could rely on the ad as being accurate and trustworthy?

A. I couldn't answer that, as to whether I knew they were familiar with the events.

Q. Did you contact any of those persons by phone or in any other way to check the accuracy of the statements in the ad?

A. No, I did not.

Q. You made no effort to test their knowledge of these events as described in the ad. Is that correct?

A. That is correct.

Q. What do you do when you screen an ad, Mr. Redding? [fol. 1890] Supposing you tell us what process you go through.

Mr. Embry: Are you talking about this kind of an ad?

Mr. Nachman: Yes. You are the screener as I understand it, are you not?

The Witness: Yes, sir.

Mr. Nachman: All right. Tell us what you do.

The Witness: I read it.

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

Q. Go ahead.

A. I read it and I look into the identification to be sure that if it were published that the sponsorship would be clear to our readers. I would be concerned with accuracy and with possible libel.

Q. Now, how do you go about checking on accuracy? As I understand it, you knew nothing about Montgomery and you knew nothing about the facts or the events purportedly described in it. Is that correct?

A. That's correct.

Q. You didn't check anybody else. Not even the signers, to see if they knew anything about them. Is that correct?

A. That's correct.

Q. You didn't read anything about the events in Montgomery. Is that correct?

A. To the best of my belief, yes.

Q. Now, did you read any stories in The New York Times on February 18th, 1960 about any events in Montgomery before you cleared this ad?

A. I can't answer that as a matter of fact. I try to read most of the stories but I can't recall whether I read anything about this.

Q. How about The New York Times issue of March 2nd, 1960?

A. Same answer.

Q. How about The New York Times issue of March 3rd, 1960?

A. The same answer, sir. I couldn't be sure.

Q. What about March 5th, 1960?

A. I couldn't be sure.

Q. March 6th, 1960?

[fol. 1891] A. Same answer, sir.

Q. What about March 7th, 8th, 9th, 10th, 11th, 12th, 13th, 23rd, 27th and 30th, 1960?

Mr. Embry: March 30th?

Mr. Nachman: I beg your pardon. March 27th, 1960?
Leave out March 30th. Same answer?

The Witness: Now, if you don't mind, give me the question again.

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

Q. Did you read anything in The New York Times about these matters on those dates and I will repeat them if you want me to.

A. About what?

Q. About any events in Montgomery, Alabama?

A. I cannot say affirmatively whether I did. I am not sure.

Q. Now, Mr. Redding, wouldn't it be a fair statement to say that you really didn't check this ad at all for accuracy?

A. That's a fair statement, yes.

Q. That's a fair statement.

A. Yes.

Q. All right. That's all. No further questions.

Cross examination.

By Lawyer Gray:

Q. Do you remember the name of the gentleman who was in here before you from The New York Times?

A. Yes, of course.

Mr. Embry: Aronson.

By Lawyer Gray: (Continuing)

Q. This ad went to your office after it left his office. Is that correct, sir?

A. That is correct.

Q. He testified that the letter that was written by A. [fol. 1892] Philip Randolph which has been introduced here in evidence as Defendant's Exhibit No. 7 included a list of names attached to it but he further testified that that list of names did not include the name of Rev. Ralph D.

Abernathy, Rev. J. E. Lowery, Rev. S. S. Seay, Sr., and Rev. Fred L. Shuttlesworth. Is that correct?

A. I don't know. I don't know about that.

Q. Did you ever receive this letter? That is, the letter referred to in Defendant's Exhibit No. 7 written to Mr. Aronson which is purportedly signed by A. Philip Randolph?

A. Do you mean the original?

Q. Yes.

A. No. I did not see the original letter.

Q. Did you see the copy?

A. This copy?

Q. Yes. Did that copy get on your desk?

A. Yes.

Q. Was there accompanying that copy a list of names?

A. The names are in there.

Q. Is it your testimony that Defendant's Exhibit 8 is the list of names that accompanied this letter?

Mr. Embry: We object to that. He has already testified what came to him, Your Honor. He has already testified that's what came to him.

Lawyer Gray: He said this came to him. I am asking him specifically whether or not this is the document that is referred to in A. Philip Randolph's letter.

The Witness: To the best of my belief, that is correct.

By Lawyer Gray: (Continuing)

Q. Now, how many times did this ad get on your desk? Isn't it a fact that it came to your desk once and it was sent back and it came back a second time?

A. (No answer from the witness.)

Q. Isn't that a fact?

[fol. 1893] A. Can you clarify your question a little bit?

Q. Didn't the ad come on your desk at one time? It was sent back and when it came back the second time there were some additional names added to it?

A. When you say it came back a second time can you tell me when—

Q. I mean it left your desk and went some place and came to your desk again?

A. I don't recall that.

Q. You don't recall?

A. No.

Q. I will ask you this now. This last group of names and in this last group of names the four individual defendants' names appear. Now, isn't it a fact that their names were added to this list after the ad had originally been sent to The New York Times office?

A. I don't know that to be a fact.

Q. You don't know.

A. If it was so, I don't know it.

Q. Now, this purports to be and this is Defendant's Exhibit A and this purports to be the original copy. Is that right? From which this ad was drawn—

A. A copy of the original.

Q. A copy of the original?

A. Yes.

Q. Are there any differences between the ad as published and this copy?

Mr. Embry: If the Court please, we object to that. The documents speak for themselves.

Lawyer Gray: Well, I am asking him—

The Court: Well, it is Cross Examination. Let him go ahead. I will give you an exception.

Mr. Embry: We except.

The Witness: I am aware of no differences. If there are, I don't know.

[fol. 1894] By Lawyer Gray: (Continuing)

Q. Now, I call your attention to the next to last page of Defendant's Exhibit No. 8 and I would like you to look at that and to particularly look at the area that separates the names up at the top from the names on the bottom. Please look at that.

A. Yes.

Q. Have you had a chance to look at it?

A. Yes.

Q. Now, I would like you to look at the ad identified as Plaintiff's Exhibit No. 347 and look at the material which

separates the top names from the bottom names and tell this Court and this jury whether there is any difference.

A. Do you mean the difference between this section and this section?

Q. No. I mean the difference between the names appearing at the top and the names appearing at the bottom.

A. I am sorry. I don't know.

Q. Read to the jury what is on the ad exactly. What appears between the two sets of names? What separates them? Read it.

A. It says, "We in the south who are struggling daily for dignity and freedom warmly endorse this appeal."

Q. Now, is there anything else that separates the two groups of names?

A. Not within my understanding of your meaning. No.

Q. Now, refer to the copy of the original manuscript and read to the Court and the jury what appears there.

A. Do you mean right here?

Q. Yes, sir.

A. It says, "We who are struggling daily for dignity and freedom in the south."

Q. Now, isn't there something else separating those two lists of names?

Mr. Embry: Your Honor, we object to that. These documents speak for themselves.

Lawyer Gray: Your Honor, we have been reading these documents all day—

The Witness: I left out, "warmly endorse this appeal."

[fol. 1895] By Lawyer Gray: (Continuing)

Q. Look at it again. Look at it again and see if there isn't something else that separates the two lists of names.

A. Yes. "Additional signers from the South."

Q. Now, will you read to the jury and point out to the Court and jury what the difference is between this ad and the names as they appear on the original manuscript.

Mr. Embry: We object to that, if the Court please. That's for the jury to say if there is—

The Court: Well, let him point it out if he can.

The Witness: You mean this part—

Lawyer Gray: What is the difference between—what separates the two groups of names? That's what I am trying to find out. That's all I want to know.

The Court: Are you referring him to the thermo-fax copy?

Lawyer Gray: I am referring him to the thermo-fax copy as compared to the ad as published, Your Honor.

The Witness: Where it says "Additional signers from the South" in parenthesis.

By Lawyer Gray: (Continuing)

Q. Now, that is on the thermo-fax copy.

A. That is correct.

Q. That does not appear on the draft as published, does it?

A. It does not.

Q. Now, isn't it a fact that the names which follow that statement were added to it—were added to that list after A Philip Randolph had written his letter to The Times assuring the Times that the signers of that ad had given their consent?

A. I don't know that to be a fact.

Q. You don't know.

A. No, I do not.

Q. What would be your opinion in view of the fact that it says "Additional signers from the South?"

[fol. 1896] Mr. Embry: We object to that, Your Honor.

The Court: Yes, he will have to tell the facts as he knows them.

By Lawyer Gray: (Continuing)

Q. Now, Mr. Redding, will you tell me whether or not on the thermo-fax copy of the ad was the four named defendants. Were their names signed to the ad or were they typed on the ad?

A. If I understand you correctly, these are the names you are referring to.

Q. Yes, sir.

A. Typed on the original or whatever this was taken from.

Q. That's correct. Then, these defendants along with the others—their names were typed on this ad or typed on the original copy and—

Mr. Beddow: He answered this question once and it speaks for itself, Your Honor. He is just wasting time and we have been talking about getting along but he is wasting a lot of time here and—

Lawyer Gray: Your Honor—

The Court: I think it has evidential value. Let me let it in. Go ahead.

The Witness: Well, I think it is the same question as before and I will say yes again.

By Lawyer Gray: (Continuing)

Q. Now, will you tell the Court whether you or anyone from the Times—you as screener for The New York Times—did you contact the Rev. Ralph D. Abernathy to ascertain whether or not he gave his consent for his name to be on this ad?

A. No, I did not.

Q. Did you, in your official capacity, contact the Rev. S. S. Seay, Sr. to determine whether or not he gave his assent for his name to be affixed to this ad?

A. No, I did not.

Q. I ask you the same question with reference to the [fol. 1897] Rev. Fred L. Shuttlesworth?

A. I did not. No. I did not contact him.

Q. I ask you the same question with reference to Rev. J. E. Lowery?

A. I did not.

Q. Now, one other question in order to be sure I understand your testimony, sir. Now, is it your testimony that there was only one format to this ad and that one format included all of the names that appeared on the ad as published?

A. When you say, format—tell me what you mean by that.

Q. Well, I am merely using the terms as used by other witnesses here. Whatever type of copy is made up by your company prior to the time of publication so you can check over it and so that it can go back to the person who has

ordered the advertisement so that he can see it. You are saying there was only one format and that format included all of the names on this ad as published.

A. To the best of my recollection—yes, as published, that's right.

Q. Now, if that is not a fact, who in your organization would know what the facts are?

A. I couldn't be sure about that.

Q. That's all.

Redirect examination.

By Mr. T. Eric Embry:

Q. One other question, sir. You are familiar with the fact that this process that is called thermo-fax will not photograph a pen and ink signature on paper, are you not?

A. I understand that to be a fact, yes.

Q. All right. That's all.

Recross examination.

By Lawyer Gray:

Q. One further question, sir. Were the names signed to the original? Were these four defendants' names signed to the original?

A. I didn't see the original.

[fol. 1898] Q. That's all.

Redirect examination.

By Mr. T. Eric Embry:

Q. In the light of your previous testimony wherein you told these gentlemen of the jury of your reliance on the first six named persons as being truthful and trustworthy persons—in light of that fact, you did not think it necessary to make any further check in respect to the content of the ad. Is that correct?

A. That is correct.

Q. All right. That's all.

Mr. Nachman: No further questions.

HARDING BANCROFT, having been duly sworn, was called as a witness for the Defendants and testified as follows:

Direct examination.

By Mr. T. Eric Embry:

Q. Is this Mr. Harding Bancroft?

A. Yes, sir.

Q. Where do you live, Mr. Bancroft?

A. In New York City.

Q. Did you live there in March of 1960?

A. Yes, sir.

Q. Are you connected with The New York Times Company?

A. Yes, sir.

Q. In what capacity?

A. I am Secretary of the Times.

Q. You are one of the officers of the corporation.

A. Yes, sir.

Q. And you were, I believe, on March 29th, 1960.

A. Yes, sir.

[fol. 1899] Q. You have not been under the Rule and you heard the testimony in this case and to shorten my questioning, I will ask you if you knew anything about—you as the Secretary of the corporation—knew anything about this ad before it was published?

A. No.

Q. Did you see the ad before it was published?

A. I did not.

Q. Do you recall whether you saw it since?

A. Yes.

Q. Did you hear any discussion of the ad in The Times or within The Times before it was published?

A. No.

Q. As a matter of fact, let me get this straight, did you see the ad after it was published before the litigation was instituted?

A. I saw the ad—I remember reading the ad after we heard there was going to be litigation but before it was actually instituted.

Q. Now, as Secretary of the corporation, was your attention directed to a letter received by the corporation over the signature of Mr. L. B. Sullivan, the Plaintiff in this case?

A. Yes.

Q. Now, I only have a copy here and I do not have the original but I show you this copy which is identified as Defendant's Exhibit C to the Defendant New York Times Answers to the Plaintiff's Interrogatories in this case which has already been introduced into evidence.

A. Yes, that was brought to my attention.

Q. After the receipt of this letter by the corporation, did you direct the general counsel of the corporation, Mr. Loeb, to reply to that letter along the lines that the letter itself in Exhibit No. 363 indicates?

A. Yes, we did.

Q. Now, within the same period of time was a letter directed to the company by the Governor of Alabama?

A. Yes, within the same period of time but a little bit later.

Q. A little bit later?

A. Yes.

[fol. 1900] Q. Now, it has already been testified about and I am going to shorten it by—you heard read the content of the reply which is Exhibit E of our Answers to the Plaintiff's Interrogatories and I will ask you was there also a letter that was sent along with that Exhibit E?

A. Yes, there was a letter sent from the President of The Times addressed to Governor Patterson.

Q. Was that letter signed by Mr. Orvil Dryfoos?

A. Yes.

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

Mr. Nachman: No objections.

Lawyer Crawford: May I see it?

Mr. Embry: Certainly, yes. Here it is.

(Letter from New York Times signed by Orvil Dryfoos, to Governor Patterson, Montgomery, Alabama, dated May 16th, 1960, offered and received in evidence and identified as Defendant's Exhibit No. 9.)

Mr. Embry: If the Court please, for the information of the jury and for clarification I would like to read this letter which has been identified as Defendant's Exhibit No. 9.

The Court: Go ahead.

Mr. Embry: The letter is dated May 16, 1960 and it is addressed as follows: "Dear Governor Patterson: In response to your letter of May 9th, we are enclosing herewith a page of today's New York Times which contains the retraction and apology you requested. As stated in the retraction, to the extent that anyone could fairly conclude from the advertisement that any charge was made against you, The New York Times apologizes. Faithfully yours, Orvil Dryfoos." A copy was sent to Mr. Loeb and a copy was sent to Mr. Sulzberger's office.

[fol. 1901] By Mr. T. Eric Embry: (Continuing)

Q. Now, I will call your attention to another exhibit. Now, I direct your attention and ask you if at the time you initiated the letter to be sent to Governor Patterson had you after this matter came up and the litigation had been threatened, had you read this statement contained in the ad that "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.

Q. You had read it.

A. Yes.

Q. What was the occasion, please, sir, for your initiating the letter directed to Governor Patterson enclosing the apology that you had printed in that issue of The New York Times?

A. Well, what we had done was, as is shown in the Answers to the Interrogatories, we asked our stringer down in this area—

Q. What is a stringer by the way? Do you know what a stringer is?

A. I know the general definition of the term, yes.

Q. All right. Tell us what it is.

A. It is a newspaper term. It means a man who is not on the payroll of The Times, not an employee of The Times in any legal sense but is asked by The Times to—or any other newspaper—to prepare material on a given instance in the area where he lives and write a story about it and he gets paid by the line or by the word and not by the week as normal reporters and correspondents do.

Q. Now, I interrupted you while you were giving your last answer and you might want the Court Reporter to pick you up as it were, and I will ask him to read you the question back to the time where I interrupted you—

A. Well, I can remember it roughly.

Q. Can you?

A. Yes. We asked our stringer down here, a man by name of McKee, to act as our correspondent to cover some statements—we asked our stringer down here, McKee, and [fol. 1902] we asked our correspondent who covers some states in this general area to look into the matter or matters which were referred to in the ad that was published. We got replies from them, one by telegram and one by telephone which was recorded and typed so that a complete transcript of the telephone conversation was there and those two things are referred to in the Answers to the Interrogatories which are now in evidence as I understand it.

Q. Well, now, let me refer to that if you have our copy of it before you. Are you speaking now of our Exhibit A to the supplemental answers?

A. Yes. That's right.

Q. And which has a bunch of hieroglyphics up at the top that doesn't mean anything to me although it may mean something to the telegraph people and it is dated Montgomery, Alabama, April 14th. That is the one that is purported to have been sent and was sent by this Don McKee?

A. That's right.

Q. Now, let me get some events in chronological order here. When did we receive the letter from Commissioner Sullivan? That is an exhibit too.

A. It was April 8th, I believe. March the 8th.

Q. March 8th?

A. It must be April 8th. It is dated March 8th and then it must be April 8th but the ad didn't appear until March 29th. This is dated April 14th and the letter is dated March 8th which would make it appear it was written before the ad was published and I am sure it wasn't. It refers in the first paragraph to an ad published on March 29th.

Mr. Embry: Can we stipulate it was written after the ad was published?

Mr. Nachman: Yes.

By Mr. T. Eric Embry: (Continuing)

Q. And this was supposed to have been written about April 14th and you got the letter on the 8th and six days later you got the telegram from Mr. McKee.

[fol. 1903] A. I am not sure we got the letter on the 8th. The letter was dated on the 8th and it was probably two or three days before it got to New York.

Q. Then, the one from Sitton was on May 5th.

A. That's right.

Q. And the McKee telegram refers to this padlocking—the state authority thing, doesn't it?

A. Yes.

Q. Then the other—generally speaking, the other matters that are complained of here is referred to in the Sitton telegram of May 5th. Isn't that correct?

A. That is correct. The Sitton telegram gave us a complete chronology of events down here.

Q. Which McKee's did not.

A. That's right. The McKee telegram did not.

Q. Now, what was the occasion of your sending the letter to the Governor and not to Commissioner Sullivan?

A. Well, the Governor wrote us a letter asking us for a retraction and we replied in what was, in effect, a retraction and apology and the reason we did that because we didn't want anything that was published by The Times to be a reflection on the State of Alabama and the Governor was, as far as we could see, the embodiment of the State of Alabama and the proper representative of the

State and, furthermore, we had by that time learned more of the actual facts which the ad purported to recite and, finally, the ad did refer to the action of the State authorities and the Board of Education presumably of which the Governor is the ex-officio chairman, we understand, and, therefore, we thought it was appropriate to send to the Governor the letter which Mr. Dryfoos sent enclosing a copy of the retraction which was printed in The Times itself.

Q. I believe that there was a specific reference to State authorities.

A. The words, state authorities, I believe, were in the ad itself.

Q. Well, that's correct. That's what I meant. After this matter all came up and you read this ad, did you consider that any of the language in there referred to Mr. Sullivan? [fol. 1904] A. No. I think that was the reason why we asked our general counsel to write in the terms that he did to Commissioner Sullivan pointing out to him that we didn't see how the ad reflected on him in any way or how he could be identified by the ad and saying that we were puzzled by his attitude on that and pointing out that we were looking into the matter further which we did do by getting a letter from our correspondent down here, Claude Sitton, and finally suggesting to the Commissioner that he might want to reply to us indicating how in fact he was involved in the text of the ad.

Q. I believe the evidence so far is and I will ask you if this is correct—that you did not receive any reply from Commissioner Sullivan to that letter.

A. No. The letter that I have right here said, "In the meantime, you might if you desire let us know in what respect you claim that the statements in the advertisement reflect on you," and we had no response to that suggestion.

Q. All right, Mr. Bancroft. That's all and thank you.

Cross examination.

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

Q. Mr. Bancroft, am I correct in understanding your testimony to be that you did think that this ad referred to

the Governor and the State authorities and that's one of the three or four reasons why you retracted for the Governor and not for the Plaintiff in this case?

A. No. What I said or attempted to say if I didn't mix up my words in saying it, the ad did, as I remember it, refer to the State authorities and, therefore, inasmuch as the Governor is the embodiment of the State authorities, we printed the retraction in The Times and wrote the letter to him enclosing it, the letter from Orvil Dryfoos.

Q. And you felt that the ad did not refer to the City of Montgomery and to the Plaintiff in this case and for that reason you did not retract in response to a demand from the Plaintiff in this case. Is that correct, sir?

A. Yes, I think that is correct.

[fol. 1905] Q. Now, you, as I understand it, signed the Interrogatories which are in evidence for The New York Times Company, did you not?

A. Yes, sir.

Q. I call your attention to Answer No. 11. Do you have them there with you?

A. Yes, sir.

Q. I call your attention to the second full sentence on page 4 in the Answer to the Interrogatory No. 11. Have you found that?

A. Yes. It says, "It did so—"

Q. That's right. "It did so although in its judgment no statement in said advertisement referred to John Patterson either personally nor as Governor of the State of Alabama nor referred to this Plaintiff or any of the Plaintiffs in the companion suits." Now, will you explain to the jury if there is any difference between that Answer in the Interrogatories and the answer which you have just given to them? Does it mean the same thing?

A. I don't think there is any difference. The answer on the witness stand was that I referred to the fact that state authorities were referred to in the ad.

Q. Is there anything in that sentence that says that?

A. In the sentence that says what?

Q. In the sentence that I just read you that differentiates in any way the position of Patterson as the Plaintiff in his suit and Mr. Sullivan as the Plaintiff in this suit?

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

The Court: Well, it is Cross Examination. I will give you an exception.

Mr. Embry: We except.

The Witness: Your question is, is there any difference—

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

Q. Is there anything contained in this sentence in the Interrogatories that I just read to you which differentiates in any manner the position of Governor Patterson in his suit with Commissioner Sullivan in the present suit?

[fol. 1906] A. As I read the thing, the answer is no.

Q. They are put on a par, aren't they, Governor Patterson and this Plaintiff?

A. Yes.

Q. But there was a retraction for Governor Patterson and there was no retraction for this Plaintiff. That is correct, isn't it?

A. That is correct.

Q. You were present in Court throughout Mr. Redding's testimony, were you not, sir?

A. Yes, sir.

Q. Do you have any disposition at this time to correct or amplify or change any testimony that Mr. Redding gave by way of disagreement?

Mr. Beddow: We object to that question, Your Honor, please. He is asking this witness to interpret testimony and to take over the function of the jury—

The Court: I believe you will have to be more specific such as by referring to one specific question but as a general question, I don't believe the question is good and I sustain the objection.

Mr. Beddow: It is a multiple question, Your Honor.

Mr. Nachman: All right, sir. I will be more specific then.

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

Q. Do you disagree with the testimony that Mr. Redding gave regarding the fact that no check was made on the statements contained in this ad before they were published by The New York Times?

Mr. Beddow: We object to that question on the grounds that it calls for irrelevant, illegal, incompetent and immaterial testimony and it is argumentative, if it please the Court, and he is asking this witness—

The Court: I don't know whether I am especially impressed with the use of the word "disagree".

Mr. Nachman: Is there anything incorrect about that [fol. 1907] testimony?

Mr. Beddow: Now, we object to that, Your Honor.

The Court: I believe all he can do is testify to what he knows. I doubt if he could answer that question. I will sustain the objection to it.

Mr. Nachman: May I test his knowledge a little bit, Your Honor, as to what he knows—

The Court: Yes. Go ahead.

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

Q. As Secretary of the corporation, The New York Times Company, did you make a determination in the course of your duties as such officer as to whether or not any check had been made by Mr. Redding in his advertising acceptability department into the accuracy of this ad prior to its publication?

A. Did I make a check—

Q. Did you make that determination as to what kind of a check, if any, Mr. Redding's department had made into the statements contained in the ad—

A. When did I—

Q. At any time.

A. Yes. We did. After the ad was published and we knew that litigation—or we had learned through an AP story in the paper that litigation was going to be brought against The Times. We then did have a check made as to what we had learned about the ad before it was published.

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

Mr. Beddow: Now, Your Honor, we object to that question. It is uncertain and indefinite as to person and time. He can ask him whether he made any check into it or whether or not—

The Court: Well, he asked him if it was within his knowledge—

Mr. Nachman: Within his knowledge as Secretary of the corporation. He is the man who sat here throughout the trial—

[fol. 1908] The Court: I will let it in and give you an exception.

Mr. Beddow: We except.

Mr. Nachman: You may answer, sir.

The Witness: I believe that no check was made, sir.

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

Q. Now, Mr. Bancroft, refer, if you will, sir, to the letter sent by Lord, Day and Lord to the Plaintiff which is Exhibit D to the Interrogatories. Do you have the original?

A. Yes.

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

Mr. Beddow: We object to that question, if the Court please. He is asking him what his position is now—

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

Mr. Embry: It invades the province of the jury, Your Honor. It is argumentative—

The Court: Well, the letter is in evidence and I think he can state his position.

Mr. Embry: We except, Your Honor.

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

Q. You are authorized to speak for The New York Times in this law suit, are you not, sir, as its Secretary?

A. I suppose so.

Q. You may answer that question then.

A. I think it is a pretty hard question to answer, Mr. Nachman. What The Times believes is a pretty hard thing to define but—

Q. What they contend in this law suit.

Mr. Embry: We object to that. Whether it is true or not—

Mr. Nachman: That is a simple and plain question—
[fol. 1909] The Court: I think it is admissible on Cross Examination.

Mr. Embry: We except.

Mr. Nachman: You may answer.

The Witness: All I am trying to say is what The Times knows about the facts in the ad are all set forth—it doesn't know anything more than what is set forth in these two responses which our stringer and correspondent there, which are annexed to the Answers to the Interrogatories and we don't have any additional knowledge to that.

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

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

Mr. Embry: Now, we object to that, Your Honor. It is not a question of what his opinion of the position of the Times is now. Those events are dated by the pleadings that framed the issues in this case and it is not the function of this witness to argue the case or to draw conclusions as to what—

The Court: I think the question comes within the pleadings. I will give you an exception. Go ahead.

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

The Court: He may answer it if he can.

The Witness: I really think I have to answer the question by saying I don't know. As I tried to say earlier, all

the information The Times has about the incidents referred to in the ad are contained in these two annexed to the [fol. 1910] Answers to the Interrogatories. I don't have any further information myself and so I don't know whether the words "substantially correct" are an accurate definition or not.

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

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

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

The Court: Well, it is Cross Examination and under our statute you have to—

Mr. Embry: Your Honor, the undisputed testimony will show that the only information The Times had in its possession at the time he is talking about when Mr. Bancroft was concerned with framing the reply to Mr. Sullivan's letter was a telegram from McKee and the jury will have that telegram before them and it is the province of the jury to pass upon whether based on that as cited in that telegram everything was substantially correct as far as The Times knew except that statement as referred to in that letter.

The Court: I will allow the question.

Mr. Embry: We except.

Mr. Nachman: You may answer.

The Witness: I have lost track of the question, sir.

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

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

Mr. Embry: We object to that—

The Court: Same ruling.

Mr. Embry: We except—

Mr. Nachman: Is that a fair summary of your testimony on this point?

The Witness: Well, it is awfully difficult to define what [fol. 1911] The Times thinks. This letter is signed by Lord, Day and Lord, our general counsel, and they said that after their investigation it would seem to indicate that the statements were substantially correct.

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

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

Mr. Embry: Your Honor, we object to that. This is not within the pleadings in this case—

The Court: What was the question?

Mr. Nachman: Your Honor, we are calling on the man here who is here who is here as spokesman for this defendant corporation. We are asking him to state to this Court and to this jury here and now whether they say these statements are true or whether they say these statements are false. This is a libel suit and we say they are false. Now, if the defendant, The New York Times, wants to admit that they are false, then we will not ask any more questions about it and Mr. Embry keeps saying, it is not an issue, it is not an issue, but if he wants to admit that the statements are false—

Mr. Embry: Your Honor, I am going to ask that you restrict the attorney from making a jury argument as he has been doing here throughout the course of this trial. Now, I have tried to restrain my temper but it is so obviously improper, Your Honor, that it violates—

Mr. Nachman: Your Honor, I am trying to—

Mr. Embry: Just a minute, sir.

Mr. Nachman: I beg your pardon. Go ahead.

Mr. Embry: Now, Your Honor knows and, of course, Mr. Nachman knows that that is an improper question. Those are things that the jurors decide from all of the facts that are before them and not from the opinions of any—

The Court: Well, he is the Secretary of the corporation and I think the question is good. Let me give you an exception.

Mr. Embry: We except.

The Witness: I am afraid I am going to have to ask the [fol. 1912] Reporter to read the question to me again. I know the general drift of it.

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

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

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

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

Mr. Embry: We except.

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

Q. The statements set out in the letter demanding a retraction and the statements contained in the Complaint in this cause.

A. I agree that I am the Secretary of the corporation but I find it terribly difficult to be able to say that The Times, as such, believes something is true or is not true. Now, all I can tell you is what the sources of The Times' knowledge are and the sources are The Times' knowledge—the complete sources as far as I know, are the two annexes attached to the Answers to the Interrogatories. Now, if you asked me would I use the words "substantially correct", now, I think I probably would, yes. The tenor of the content, the material of those two paragraphs in the ad which have been frequently read here are not substantially incorrect. They are substantially correct. Now, what sort of words I can use to give you an answer that would satisfy you, I don't know.

Q. I think that answered the question, sir. Am I correct in stating, sir, that throughout the month of March, or at least throughout this year, from January 1st to the present, that Claude Sitton has been a regular employee of The New York Times?

A. Yes. He is a regular employee.

Q. And his base, so to speak, is in Atlanta, Georgia?

A. Yes, I think he has an office in Atlanta. He moves generally about the area down south here.

Q. And that area includes the State of Alabama, does it not?

[fol. 1913] A. I believe so but that's pretty much out of my province.

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

Cross examination.

By Lawyer Gray:

Q. I have just a few questions, Mr. Bancroft. You heard the two employees of The Times who have testified to the fact that the four individual defendants of this suit—that their names were not signed to this ad but they were typed. Is that your testimony too?

A. Well, I don't have any basis for that testimony except to say that I heard them testify to that effect. I did not see the manuscript of the ad that was admitted into evidence.

Q. You also heard them testify that they made no effort to ascertain from these four defendants whether they had given their consent for affixing their names to this ad.

A. Yes, I heard that testimony.

Q. And that's true?

A. So far as I know it is true, yes.

Q. That's all, sir.

Redirect examination.

By Mr. T. Eric Embry:

Q. Mr. Bancroft, did you, when you were concerned with the matter the time that the—did you consider at the time —do you now consider that the—from a reading of the language contained in it—that the language contained in the portions of the advertisement complained of, did not refer to any individual and so state that position in your reply to the Governor and to Commissioner Sullivan?

A. Yes, sir.

Q. Am I correct, in your understanding that even though you felt that way and your general counsel felt that way, that because of your consideration that the Governor of Alabama was the embodiment of Alabama that an apology would be made to him even though you didn't conclude that it referred to him?

[fol. 1914] A. That's correct.

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

Mr. Embry: Your Honor, we have a stipulation we want to put in the Record. We made inquiry into the number of persons that composed the Police Department of the City of Montgomery and opposing counsel has passed me a note and we will stipulate for the Record that the Police Department of the City of Montgomery consists of 175 regularly full time employed policemen divided into three shifts and four divisions and there's something about these special traffic directors or ladies who handle traffic at the schools and that there are twenty-four of them and I suppose you would call them "lady looker-afterer-of-school children," I suppose.

The Court: All right. Are there any more witnesses?

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

The Court: All right. We will proceed with the other defendants.

Lawyer Gray: If the Court please, we will consolidate the defense of all four defendants. Our first witness will be the Rev. S. S. Seay, Sr.

The Court: All right. Proceed.

SOLOMON S. SEAY, SR., having been duly sworn, was called as a witness in his own behalf and testified as follows:

Direct examination.

By Lawyer Gray:

Q. State your name, please.

A. Solomon S. Seay, Sr.

Q. Are you a resident of the State of Alabama?

A. Route 3, Box 400-D, Montgomery, Alabama.

Q. Tell us whether or not you are a minister, sir?

A. Yes, I am a minister.

[fol. 1915] Q. What church?

A. The M. E. Zion Church.

Q. How long have you been a resident of the State of Alabama, sir?

A. Well, I have been in and out of Alabama—I was born here and I guess I have spent forty years in Alabama.

Q. Now, I show you this ad identified as Plaintiff's Exhibit No. 347 and I ask you to look at that ad. Look at the whole ad. Now, tell the Court and jury whether or not your name appears on that ad?

A. Yes, sir. It does.

Q. In what location on the ad does your name appear? At what point on the ad?

A. It appears in the third column to the right under the heading "We in the South who are Struggling Daily for Dignity and Freedom Warmly Endorse this Appeal."

Q. Tell the Court and the jury whether or not you published that ad in The New York Times.

A. I did not.

Q. Did you pay the New York Times or anybody else to publish that ad?

A. I did not.

Q. Tell the Court and the jury whether or not you caused that ad to be published in The New York Times.

A. I did not.

Q. Did you authorize anyone to use your name and affix your name to that ad which appeared in The New York Times?

A. I did not.

Q. Did you authorize anyone to use your name in the furtherance of the work of the "Committee To Defend Martin Luther King and The Struggle For Freedom in the South".

A. I did not.

Q. Did you have any knowledge prior to the time that ad was published that that ad was going to come out?

A. I did not.

Q. Did you know prior to the time of the publication of that ad that your name would be affixed to that ad?

A. I did not.

[fol. 1916] Q. As best you can recall, tell the Court and jury when the first time it was that you saw a copy of that ad.

A. I saw a copy of this ad—not the actual copy of the ad—I saw an account of it in the Complaints that were sent to me.

Q. Now, did the Complaint that you received have a copy of the ad attached to it?

A. No, it did not.

Q. Your Complaint did not have a copy of the ad attached to it.

A. No. It did not.

Q. Well, in the Complaint you mean that there were some paragraphs in the Complaint that referred to that article?

A. Yes.

Q. But at that time you still had not seen a copy of the article.

A. No.

Q. As best you can recall, how long after the suit had been started was it before you found a copy of that ad?

A. Well, I am afraid to say.

Q. Well, just give us your best judgment about it. Do you have any idea about how long it was?

A. You mean the ad as it is here?

Q. A copy of that ad.

A. No. I really have never seen nor read a copy of the ad as it is here.

Q. Did you receive a letter from Commissioner Sullivan requesting that you retract that ad?

A. Yes, I did.

Q. Did you reply to that letter?

A. No, I did not.

Q. Tell the jury and the Court why you did not reply to it.

A. Well, in the first place, I was so amazed about the Complaint and about the ad until I was afraid to make any reply to it until I had had some legal advice on it for fear that I might incriminate myself. I had no knowledge of it whatsoever.

Q. Now, prior to that time, did you have any knowledge [fol. 1917] at all that this ad would be published?

A. No, none whatsoever.

Q. Did you have any control or any method by which you could compel The New York Times to retract that ad?

A. No.

Q. Do you have any control over The New York Times at all as to what it publishes in its newspaper?

A. None at all.

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

A. No.

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

Cross examination.

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

Q. I take it, that A. Philip Randolph was incorrect then when he said that he had permission to use your name in furthering the work of this committee referring to exhibit B of the Interrogatories. You heard the testimony about that.

A. Emphatically so. Emphatically so, sir.

Q. He is wrong about that.

A. That's right.

Q. Have you ever communicated with him since these matters have come up since you got the letter demanding a retraction and since you got the summons in this law suit? Have you ever communicated with him and told him that he was wrong?

A. You are speaking of Randolph?

Q. Yes.

A. I have not.

Lawyer Seay: Your Honor, I think the evidence in this case thus far points to the fact that the bottom list of names that appear on this ad did not originally accompany the letter—they did not originally appear on the list that was accompanied by the letter of A. Philip Randolph and I think counsel is assuming that as a fact and as being an [fol. 1918] issue here—

The Court: I think the question is proper and I will give you an exception to the Court's ruling.

Lawyer Seay: We except.

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

Q. Have you ever written to The New York Times or communicated with The New York Times in any way and asked them to retract this ad?

A. No, I have not.

Q. Have you ever written any letter for publication in The New York Times stating that you had nothing to do with this ad and that you disavowed it?

A. No, I have not.

Q. As I understand it, and as I understand your testimony, you did receive a letter from Commissioner Sullivan asking for a retraction, did you not?

A. Yes, I did.

Q. You did not answer it?

A. No, I did not.

Q. Now, I would like you to look at the third paragraph on the left hand side there on the ad and read that. Read that section where it says "IN Montgomery, Alabama, after students sang—"

A. You mean—

Q. Well, that's all right. We will not go into that now. That's all.

Redirect examination.

By Lawyer Gray:

Q. Just one more question. Did you know prior to the hearing at this trial that A. Philip Randolph had written such a letter to The New York Times?

A. No.

Q. What was your answer? I didn't hear you.

A. No.

Q. When was the first time you found that out?

[fol. 1919] A. During this Court proceeding.

Q. During this Court proceeding.

A. That's right.

Q. All right. That's all.

RALPH DAVID ABERNATHY, having been duly sworn, was called as a witness in his own behalf and testified as follows:

Direct examination.

By Lawyer Gray:

Q. State your name, sir.

A. Rev. Ralph D. Abernathy.

Q. What is your occupation, sir?

A. I am a minister of the gospel.

Q. Where is your residence?

A. Here in the City of Montgomery.

Q. How long have you so resided?

A. I have been here for about eight years.

Q. Now, I show you Plaintiff's Exhibit No. 347 and ask you to look at that.

A. Yes, sir.

Q. Now, tell the Court and jury whether or not your name appears on that ad?

A. Yes, my name does appear.

Q. Tell the Court and jury whether or not you published that ad.

A. No, I did not.

Q. Did you cause the ad to be published in The New York Times?

A. No, I did not.

Q. Did you authorize anyone to use your name on this ad?

A. No, I did not.

Q. Did you authorize anyone to use your name in the furtherance of the work of the "Committee to Defend Martin Luther King and the Struggle for Freedom in the [fol. 1920] South."

A. No, I did not.

Q. Did you pay to The New York Times any amount of money to have them publish that ad?

A. No. I never paid any money to The New York Times for anything.

Q. Did you have any prior knowledge that this ad would appear in The New York Times and that your name would be affixed to it?

A. No, I did not.

Q. As a matter of fact, were you in the country when this ad came out?

A. Let me see. This was published March 29th. Yes, I believe I was in the country when it was—when it came out. However, I did not know that it was out.

Q. You did not know it was out.

A. No, sir.

Q. Did you authorize anyone to use your name in connection with that ad?

A. No, I did not.

Q. Did you request The New York Times to run this ad in the March 29th issue of The New York Times?

A. No, I have never sent anything to The New York Times to be published.

Q. Prior to the publication of the ad had any representative of The New York Times contacted you to ascertain whether or not you had given your consent for the use of your name on the ad?

A. No.

Q. Did you receive a letter from Commissioner Sullivan requesting that you retract that ad?

A. Yes, sir. I received a letter.

Q. Did you make such retraction?

A. No, I did not.

Q. Tell the Court and jury why you did not make such a retraction.

A. Well, I didn't make a retraction, number one, because I did not publish the ad and I felt that I was being asked to retract something that I did not put forth.

Q. Could you compel the paper, the New York Times, to retract the ad?

[fol. 1921] A. No, I could not.

Q. When was the first time you saw the ad?

A. Well, I saw the ad—a photostatic copy of it—when the papers were served on me and I believe that was somewhere about the latter part of April.

Q. Did you tell A. Philip Randolph that he could use your name in connection with this ad?

A. No, I did not.

Q. You have heard a reference made to the letter written

by him and as far as you are concerned, is that letter applicable to you?

A. Certainly not.

Q. You did not give him your consent for your name to appear in this ad.

A. No, I did not.

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

Mr. Embry: No questions.

Cross examination.

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

Q. Did you give A. Philip Randolph your consent and permission to use your name in furthering the work of the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South?"

A. No, I did not.

Q. I see. He is wrong about that when he said you did. Is that your testimony?

A. Yes.

Q. Are you acquainted with him?

A. Yes. I know him.

Q. Is he a good friend of yours?

A. No, he is not a good friend of mine but I know him.

Q. Do you see him frequently?

A. No, I don't see him frequently.

Q. Have you seen him and communicated with him since this ad came out and you were aware of it?

[fol. 1922] A. No, I have not seen him since this ad was published.

Q. How about communicating with him? Have you communicated with him?

A. No, I have not communicated with him.

Q. You did not answer Commissioner Sullivan's letter, did you?

A. No, I did not answer it.

Q. You didn't communicate with him in any way and tell him that you had nothing to do with the publication of this ad.

A. No. I did not.

Q. Did you communicate with The New York Times in any way and tell The New York Times that you had nothing to do with the publication of this ad?

A. No, I did not.

Q. Did you write a letter to The New York Times and request that it be published disavowing any connection with this ad?

A. No, I did not.

Q. Did you take any steps whatsoever to disavow this ad and to disconnect yourself with it?

A. Yes, I did.

Q. What did you do?

A. Well, I called this Committee to Defend Martin Luther King in the Struggle for Freedom in the South and called their attention to the fact that I had received a letter demanding a retraction for an ad that had appeared in The New York Times and that my name—that I had never given my consent and I did not sign such an ad and I did not have the authority to make such a retraction and, of course, since this was their matter that I wished they would attend to it.

Q. What were you told by the person you talked to?

A. They said that they would look into it and take care of it.

Q. Well, did they?

A. I really don't know.

Q. You never followed up on it at all?

A. Yes, I called them again.

Q. What was the content of that conversation?

A. Well, they said they were working on it.

[fol. 1923] Q. Are they still working on it?

A. I really couldn't say. I don't know any more about it than you do.

Q. You haven't bothered yourself with it since that time. Is that right?

A. Yes. My attorneys are here now representing me.

Q. But you never told Mr. Sullivan that you didn't publish it. Is that right?

A. No. I have already testified to that and I said that I never did.

Q. And you never complained to The New York Times about it.

A. That's still my testimony. Yes.

Q. And you don't know what the committee did.

A. I don't know.

Q. All right. That's all.

Redirect examination.

By Lawyer Gray:

Q. One further question. When was the first time you learned that A. Philip Randolph had written such a letter as has been testified to in this case?

A. I believe it was yesterday during the testimony here in this Court.

Q. It was since this Court has been in session trying this case.

A. Yes, that is correct.

Q. All right. That's all.

Recross examination.

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

Q. Did you make any effort to contact A. Philip Randolph after you found out yesterday?

A. No. The case is now in the hands of my attorneys and I have not made any.

Q. All right. That's all.

[fol. 1924] FRED L. SHUTTLESWORTH, having been duly sworn, was called as a witness in his own behalf and testified as follows:

Direct examination.

By Lawyer Gray:

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

A. Fred L. Shuttlesworth.

Q. What is your occupation, sir?

A. I am a minister of the Bethel Baptist Church located in Birmingham, Alabama.

The Court: What did you say your name is?

The Witness: Fred L. Shuttlesworth and I am a minister of the Bethel Baptist Church in Birmingham, Alabama.

By Lawyer Gray: (Continuing)

Q. Speak up so that the Court and jury and the lawyers here can hear you. Now, I show you this ad identified as Plaintiff's Exhibit No. 347 and ask you to look at it. Does your name appear on that ad, sir?

A. Yes.

Q. Did you publish the ad?

A. I did not.

Q. Did you cause the ad to be published?

A. No.

Q. Speak up a little louder, please. Did you authorize any person to use your name on that ad?

A. No, I did not.

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

A. I did not.

Q. Are you a member of "The Committee to Defend Martin Luther King and the Struggle for Freedom in the South"?

A. Not to my knowledge.

Q. Did you have any prior knowledge that this ad would [fol. 1925] appear in The New York Times?

A. I did not.

Q. Did you request that The New York Times run this ad or did you pay The New York Times or any other agency for them to publish this ad?

A. I did not.

Q. Prior to the publication of this ad in question, did any representative from The New York Times contact you to ascertain whether you had given your consent for your name to appear on this ad?

A. No.

Q. Did you receive a letter from Commissioner Sullivan requesting that you retract statements mentioned in the ad?

A. I did.

Q. Did you reply to that letter?

A. I did not.

Q. Tell the Court why you did not reply.

A. I had not written anything to be retracted as the letter demanded and neither had I seen the material which the letter called upon me to retract.

Q. When was the first time you saw this ad?

A. I believe it was near the 1st of May. I was in New York City.

Q. Was that before or after the suit was filed?

A. It was after the suit was filed.

Q. Did your copy of the Complaint contain a copy of the ad?

A. It did not.

Q. Now, you have heard a great deal of testimony here with reference to a letter which purportedly was written by A. Philip Randolph. Did you know such a letter existed prior to the trial of this case?

A. No, I did not.

Q. Did you authorize him to use your name in the furtherance of the work of the committee?

A. I did not.

Q. All right. That's all.

[fol. 1926] Cross examination.

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

Q. You never answered Commissioner Sullivan's letter, did you?

A. I did not.

Q. You never communicated with him in any way, did you?

A. No, I didn't.

Q. You never denied to him nor publicly admitted that you had published this letter. Is that correct?

A. I did not.

Q. Did you ever write to The New York Times about this matter?

A. About retracting the ad? I did not.

Q. About anything concerning the ad.

A. No.

Q. You never wrote and requested that they publish in their letters to the Editor column or anywhere else your statement that you had nothing to do with it.

A. I hadn't written anything to be retracted. No.

Q. You never wrote such a letter?

A. I did not.

Q. You never wrote such a letter to The New York Times asking that they print you hadn't done any such—

A. I did not.

Q. Did you ever ask the New York Times to send you a copy of the ad or ask anybody to send you a copy of the ad?

A. I did not.

Q. You just saw it casually sometime when you were in New York around May—

A. The first time I saw it was in New York City.

Q. How long ago was that? Did you say it was in May?

A. I believe it was the first—I believe it was before the first Sunday in May, I believe, if I recall correctly.

Q. When did you get this letter from Mr. Sullivan?

A. I don't know. I don't remember the date. It might have been in April sometime. Maybe it was around April [fol. 1927] 18th or 20th, I guess. I don't remember the exact date.

Q. Now, I show you this receipt which is an exhibit identified as 362 and I ask you whether or not that's your signature there.

A. That is my signature. Yes.

Q. What is the date on that receipt?

A. April 11th, 1960.

Q. Do you have any disposition to correct that date as having been the date you received the letter?

A. I don't.

Q. Then, from that date, April 11th, 1960 until some time in May you made no attempt whatsoever to get hold of a copy of this ad. Is that your testimony?

A. I did not. I took the position that I hadn't written that ad.

Q. How did you happen to see the ad up in New York?

A. I went by the office of the Committee to Defend Martin Luther King and they had a stack of them there and I really didn't know what they were and I was surprised to find all of these signatures on them and I asked if I could see one and they said I could have as many as I wanted and so I took several copies.

Q. Why were you surprised to see all of those signatures on the ad?

A. Well, these were names of people about whom I had read in the paper—celebrities and so on.

Q. What surprised you about seeing their names on it?

A. Well, I mean, such a large number of celebrities.

Q. Well, I understand what you mean but what I want to know is why were you surprised in seeing their names on the ad?

A. Well, maybe the word surprised is the wrong word to use but I just asked to have a copy of it.

Q. All right, that's all.

Mr. Embry: No questions.

[fol. 1928] J. E. LOWERY, having been duly sworn, was called as a witness in his own behalf and testified as follows:

Direct examination.

By Lawyer Gray:

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

A. J. E. Lowery.

Q. Where do you live, sir?

A. In Mobile, Alabama.

Q. What is your occupation?

A. Methodist minister.