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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962] 1963

No. 606 [REDACTED] 39

NEW YORK TIMES COMPANY, PETITIONER,

vs.

L. B. SULLIVAN.

No. 609 [REDACTED] 40

RALPH D. ABERNATHY, ET AL., PETITIONERS,

vs.

L. B. SULLIVAN.

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

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

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1962

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GROVER C. HALL, JR., having been duly sworn, was called as a witness for the Plaintiffs and testified as follows:

Direct examination.

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

Q. This is Mr. Grover C. Hall, Jr.?

A. Yes, sir.

[fol. 485] Q. You are the Editor of the Montgomery Advertiser?

A. Yes, sir.

Q. Mr. Hall, I show you a document which has been previously identified as Plaintiffs' Exhibit No. 310 and ask you whether you recognize that?

A. Yes, sir.

Q. I will ask you whether that came to you through the mail in Alabama?

A. That is correct.

Mr. Nachman: Your Honor, with that identification we would like to introduce this document into evidence.

Mr. Embry: Just a minute. Do you know when you received that?

The Witness: I am fairly certain it was sometime in June because I have since seen the envelope with my handwriting on it postmarked June 23rd.

Mr. Embry: Do you mean June 23rd of 1960?

The Witness: Yes.

Mr. Embry: Do you have the envelope you received it in?

The Witness: Mr. Nachman has it.

Mr. Embry: Off the Record for a minute, Mr. Reporter.

(Off the Record discussion between counsel.)

By Mr. T. Eric Embry: (Continuing)

Q. You don't have the envelope in which you received this?

A. Not unless it is there.

Mr. Embry: I want to ask him a few more questions, Your Honor, on Voir Dire to see whether I want to object to it or not.

The Court: Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Do you know—I assume you meant by the mail the United States mail that you received this through—

A. Yes.

Q. Do you know by whom it was prepared or by whom it [fol. 486] was actually physically put together and sent from and deposited in the mail before you received it in June?

A. Not beyond the return addressed envelope.

Q. Or who printed it?

A. No. I don't know who printed it.

Q. You don't have any independent knowledge of that, do you?

A. No, sir.

Mr. Embry: Did Your Honor hear the last question I asked? The last question I asked was that I asked Mr. Hall if he had any independent knowledge of who printed or prepared that material or who physically put it together and deposited it in the mail in June of 1960 and I assume it was postmarked in New York or some place in that area or do you have any knowledge of that?

The Witness: It just came in with a mass of other mail and—

Mr. Embry: You don't know, in fact, where it came from, do you?

The Witness: I could not testify it was postmarked New York except the return—

Mr. Nachman: Is the envelope here that came with it?

The Witness: That's right.

Mr. Nachman: We will introduce that too, Your Honor.

Mr. Embry: We object to the document, Your Honor. We don't see where it has any evidentiary value particularly with respect to the time that Mr. Hall testified that he received it which was long following the time of April 21st through the 26th—

The Court: It was received after the filing of this suit—

Mr. Nachman: Again, Your Honor, as yesterday, it represents a course of conduct and we don't think that this course of conduct stops. If we can show a continuation of the course of a promotional conduct, then we think it is relevant and I think Mr. McCade recognized it as being promotional material.

Mr. Embry: The fact that it was deposited in the United [fol. 487] States mail and delivered by mail into the State of Alabama is no evidence on the question of whether or not this defendant was doing business in the State of Alabama in April of 1960—

The Court: I believe it would be admissible. I will let it in and give you an exception.

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

(One New York Times Brochure pertaining to The New York Times Index and envelope, offered and received in evidence and identified as Plaintiffs' Exhibit No. 310.)

Mr. Nachman: We have no further questions for Mr. Hall.

Mr. Embry: Well, just a minute. I would like to ask a few questions.

Mr. Nachman: Well, we object to any questions that go beyond the identification of that document.

The Court: Well, let's see what they are. You may be unduly alarmed.

Cross examination.

By Mr. T. Eric Embry:

Q. Mr. Hall, is the Montgomery Advertiser a member of the Associated Press?

A. Yes.

Mr. Nachman: We object to that, Your Honor. That goes completely beyond the scope of Direct Examination—

The Court: Well, let's leave it in for whatever value it may have. Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Do you consider that the Montgomery Advertiser is [fol. 488] doing business in New York City when it uses the facilities of the Associated Press as a member thereof?

Mr. Nachman: Just a minute! We object to that.

The Court: What are the grounds for your objection?

Mr. Nachman: Well, first of all, Your Honor, it goes completely beyond the scope of Direct Examination. All we

did was ask Mr. Hall to identify a document and now they are asking him whether he considers that The Advertiser does business in New York.

Mr. Beddow: That's what we thought, Your Honor, when they attempted to show that the Associated Press was an agent or an employee—by virtue of the fact that they were a member of the Associated Press and received information from the Associated Press that they were an agent of The New York Times. The whole thought, in my opinion, was asinine but they asked the question and we have a right to do the same things as I see it.

Mr. Nachman: Well, that's legal argument, Your Honor, and Mr. Loeb, as I recall it, was the one who volunteered the information about the Associated Press when I was examining—

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

Mr. Baker: I would like to add the additional ground, Your Honor, that it calls for the opinion of the witness on a question of law.

The Court: Go ahead.

Mr. Baker: We except.

The Witness: Will you repeat the question?

By Mr. T. Eric Embry: (Continuing)

Q. Do you remember the question?

A. No.

Q. Do you consider that by your membership in the Associated Press, your being the Montgomery Advertiser, of course, and your membership in the Associated Press and being a recipient of the services of the Associated Press which is located in New York City, that the Montgomery [fol. 489] Advertiser is doing business in New York City?

A. Well, in this case I suppose you would describe our relationship as being a quasi since it is a co-op. All the newspapers that are members of the Associated Press are the equivalent of stockholders.

Q. Don't you pay for the services you get?

A. Yes. The two papers—over one hundred thousand dollars a year.

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

**NEW YORK TIMES COMPANY ASSIGNMENT OF ADDITIONAL
GROUNDS OF OBJECTIONS**

Mr. Embry: Under the stipulation and agreements had throughout the hearing on the Motion to Quash in the L. B. Sullivan case wherein it was agreed that counsel for The New York Times Company could assign any additional grounds of objections to questions propounded to the various witnesses and to the introduction of documentary evidence that they saw fit so to do, such stipulation being for the purpose of saving the Court's time on the original hearing, the defendant, The New York Times Company, wishes to and does assign the following additional grounds of objection. To each objection made originally to questions propounded to the witnesses and the introduction of documentary evidence, that the questions called for a mental operation of the witness and not facts and that the questions called for an answer which does not tend to prove or disprove whether Don McKee and John Chadwick were agents of The New York Times Company so that purported service upon McKee would constitute valid service upon this defendant. It does not tend to prove whether or not the Times did business in Alabama or whether the cause of action attempted to be stated in the complainant's cause accrued from or was incident to the doing of business or performance of work or service in Alabama by The New York Times Company or its agents, servants or employees and that these same grounds of objection apply to the introduction of the various exhibits offered by the plaintiff. Further grounds of objection to questions propounded to the various witnesses as well as to the introduction of documentary evidence are that the question and the evidence sought to be adduced by an answer thereto and the documents would not be material or legal evidence such as would authorize a construction by the Court of Section 199 (1) of Title 7, Code of Alabama 1940, that would per [fol. 489a] mit the Court to assert jurisdiction over the person of The New York Times Company, a corporation, and to admit such evidence for such purpose would be such a misapplication of the law as would deprive this defendant of its property without due process of law in contravention

or violation of the Fourteenth Amendment of the Constitution of the United States and in contravention or violation of Article 1, Section 6, of the Constitution of Alabama 1901, and would deny to this defendant equal protection of the law in contravention or violation of the Fourteenth Amendment of the Constitution of The United States and would constitute an abridgement of freedom of the press in contravention or violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Inter-State Commerce in contravention or violation of Article 1, Section 8 of the Constitution of the United States and such questions and the evidence sought to be adduced therefrom and such documents would be illegal and immaterial as a basis for the Court construing or holding that Don McKee was an agent of this defendant upon whom service of process might be had so as to support a holding by the Court that any purported service upon him would subject this defendant to the jurisdiction of this Court and the admission of such evidence and the holding on the basis of such evidence that he was an agent so as to subject this defendant to the jurisdiction of this Court, would deprive this defendant of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States and in violation of Article 1, Section 6 of the Constitution of Alabama, 1901, and would deny to this defendant equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States and would abridge freedom of the press in violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Inter-State commerce in violation of Article 1, Section 8 of the Constitution of the United States.

[fol. 489b]

COLLOQUY RE INTRODUCTION OF EVIDENCE

Mr. Nachman: Do you have the Motion to Quash, Mr. Embry?

The Court: Here it is.

Mr. Nachman: I don't know whether this is necessary, Your Honor, but we would like to introduce into evidence the Motion to Quash as our next exhibit.

The Court: Well, you can do it but I think it is part of the Record anyway.

Mr. Embry: Under the statute, Your Honor, I think motions are a part of the Record but we will stipulate that it is a part of the Record—

Mr. Nachman: And goes into evidence? It goes into the Record?

Mr. Embry: Well, I think—well, I had better not think. You are talking about the whole thing.

The Court: The whole thing.

Mr. Nachman: Yes, the whole thing.

The Court: Well, the whole thing is in. It is part of the Record.

Mr. Nachman: Your Honor, in introducing into evidence we would like to call your particular attention to Ground 6 of the prayer which reads as follows: "This Court dismissed this action of The New York Times Company, a corporation, for lack of jurisdiction of the subject matter of said action." At the appropriate time when the law is argued we expect to urge on Your Honor that that constitutes a general appearance and the majority of jurisdiction in this country hold that a special appearance is waived by urging—

[fol. 490] The Court: That would be a question of law. What do you have next?

Mr. Nachman: As our next exhibit, Your Honor, we would like to introduce a certified copy of the—well, I believe that it was stipulated that the Motion to Quash would be considered part of the Record.

Mr. Embry: Yes. I think so.

Mr. Nachman: And considered as evidence.

Mr. Embry: I think so.

Mr. Nachman: We would like to introduce this certified copy of the petition for mandamus which was filed by this defendant in the Supreme Court of Alabama.

The Court: Is this the recent one?

Mr. Nachman: Yes, sir. In connection with this case, Your Honor. It is certified by J. Render Thomas, Clerk of the Supreme Court of Alabama.

The Court: All right. Go ahead.

(Petition for Writ of Mandamus, filed in the Supreme Court of Alabama, June 29, 1960 in the matter of Ex Parte, The New York Times Company, a Corporation, Petitioner, versus Honorable Walter B. Jones, individually and as Judge of the Circuit Court of Montgomery County, Alabama, Respondent. In the Supreme Court of Alabama, Third Division and Allied Papers attached thereto, offered and received in evidence and identified as Plaintiffs' Exhibit No. 311.)

Mr. Nachman: As our next exhibit, Your Honor, we would like to introduce a certified copy of the Memorandum Brief of Authorities in support of the petition for Mandamus, that is, the one that we have just previously introduced.

Mr. Embry: Your Honor, I can't see the pertinency of [fol. 491] a Brief of Authority filed in the Supreme Court. Now, if I understand his theory, he is going to contend that the filing of the petition in the Supreme Court constitutes a general appearance in this cause but I don't see that a Brief on the law would be any part of it.

Mr. Nachman: The relevancy, Your Honor, is this. The authorities that we rely on hold that if persons in urging that an order or decree or judgment of the Court be set aside urges non-jurisdictional grounds as well as jurisdictional grounds, that that is a waiver of the special appearance and the Brief, we contend, raises no jurisdictional grounds at all and is—

The Court: Is this the Brief filed in the Supreme Court?

Mr. Nachman: Yes, sir. In support of the petition which we have just introduced in evidence and it spells out why—the reasons why this petitioner urged the Supreme Court

to grant the petition for Mandamus and there are no jurisdictional grounds in it.

The Court: Well, I will let it in sort of as a complement to the petition.

Mr. Nachman: Yes, Your Honor. It goes along with it.

(Memorandum Brief of Authorities in support of Petition for Mandamus filed in the Supreme Court of Alabama, June 29, 1960, in the matter of Ex Parte, The New York Times Company, a Corporation, Petitioner, versus Honorable Walter B. Jones, individually, and as Judge of the Circuit Court of Montgomery County, Alabama, Respondent, in the Supreme Court of Alabama, Third Division, No. 927 and Certificate attached thereto of J. Render Thomas, Clerk of the Supreme Court of Alabama, offered and received in evidence and identified as Plaintiffs' Exhibit No. 312.)

Mr. Nachman: Next, also in that connection, Your Honor, we have a certified copy of the Order of the Su-[fol. 492] preme Court on the petition which we offer into evidence.

The Court: All right. Go ahead.

(Order of the Supreme Court of Alabama, Third Division, No. 927 in the matter of Ex Parte, The New York Times Company, a Corporation, Petitioner, versus Honorable Walter B. Jones, individually and as Judge of the Circuit Court of Montgomery County, Alabama, and Certificate of J. Render Thomas, Clerk of the Supreme Court of Alabama, attached thereto, offered and received in evidence and identified as Plaintiffs' Exhibit No. 313.)

Mr. Nachman: Again, Your Honor, these documents may be also a part of the Court files like the Motion to Quash. One is the Motion for an extension of time to file these documents and the other is the Order of Your Honor granting the extension of time and we may have the same stipulation—

Mr. Embry: I assume those things are either in your Honor's Motion Docket or in this Court file, one or the other, but under the statute there is no question but that they are part of the Record in this case and we will so stipulate.

Mr. Nachman: And can be considered as evidence.

Mr. Embry: Surely.

Mr. Nachman: Now, can we introduce, again on the same theory, the appearance sheets on the deposition which we took on the merits? There are three of them.

Mr. Embry: Well, it will be all right if you will introduce the notice. If you will introduce the notice where we were given notice to—

Mr. Nachman: Well, that's why I made the statement for the Record that that was what we wanted to introduce.

Mr. Embry: If the notice where we took the deposition where you gave us notice to appear and shows that we [fol. 493] appeared in conformity with that notice and agree that we did that and it indicates that we did that—

Mr. Nachman: Well, page 4 of this deposition recites Mr. MacLeod's statement and Mr. Baker's statement and my statement and if that is the only thing you want to put in we can read it in or however Your Honor would prefer it to be done.

Mr. Embry: Well, of course, that doesn't show the notice we were given. That's the point I am making.

Mr. Nachman: Well, the notice I think will be a part of the Court file. Let's see.

Mr. Embry: Well, get it too and we can read both of them.

Mr. Nachman: Well, we will be glad to introduce that along with this.

Mr. Embry: Well, this is for the Court Reporter's benefit in making the Record. On file in the case of L. B. Sullivan, this is The New York Times Company and others and so that he will know what we are talking about he might mark it as an exhibit, the notice of the—

Mr. MacLeod: Now, in the deposition we had the agreement that the same statement would be part of the other two—

Mr. Nachman: That's right. The same statement would be part of the others too. Now, if there is any other portion that you want read we can read it.

Mr. Embry: Well, supposing I read this and we won't have to put all that in.

Mr. Nachman: Well, that's what I was going to do. I was just going to read that page.

Mr. Embry: All right. Go ahead.

Mr. Nachman: Your Honor, I am reading from page 4 of the deposition of J. E. Lowery, which is on file in this Court in this cause, and I quote: "MacLeod: It is stipulated and stated for the Record that the presence of counsel for the defendant, The New York Times Company, is strictly in connection with the special appearance made by The New York Times Company to test jurisdiction of [fol. 494] the Circuit Court and is not in any wise a general appearance and not in any wise a waiver of the defendant, The New York Times Company's special appearance and is not a submission to the jurisdiction of the Circuit Court and is not a general appearance in this cause. Mr. Baker: The Plaintiff would like to state for the Record that these depositions have nothing whatsoever to do with the special appearance of The New York Times and we don't expect to adduce any testimony that would be relevant or pertinent or pertaining to the special appearance. This deposition relates solely to the merits of the controversy. Mr. Nachman: In amplification of Mr. Baker's statement, the primary purpose of this discovery is on the merits. Of course, we don't restrict the use of this deposition in any way at any stage of the proceedings." Then, I go on with a further statement—do you want me to put that statement in too?

Mr. Embry: No. Don't put that in.

Mr. Nachman: All right. Just stop after the word "proceedings" Mr. Reporter.

(Notice of taking of deposition in the matter of L. B. Sullivan, Plaintiff, versus The New York Times Company, a Corporation, and others, in the Circuit Court of Montgomery County, Alabama, Case No. 578, No. 579 and No. 580, dated June 15, 1960 and statements taken from page 4 of deposition taken by Walter E. Graham, Official Court Reporter of the 15th Judicial Circuit of Alabama at the Montgomery County Court House, Montgomery, Alabama, on June 24, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 314.)

Mr. Nachman: Your Honor, we now have two depositions which we had previously taken of Mr. Claude F. Sitton and Mr. Thomas Hurley, both having been referred to throughout these proceedings and how would you like us to proceed with those, Your Honor? Shall we read [fol. 495] them or—

The Court: Well, Mr. Baker might make a pretty good witness if you put him on the Stand to read it.

Mr. Embry: It will be perfectly agreeable to us that the written deposition themselves be introduced and that Your Honor treat the objections made at the time as objections before Your Honor and rule on them and examine the testimony by visual examination and if that meets with approval we will agree to that in order to save time.

The Court: Well, you have the Court's approval if it can be worked that way. What do you want to do, Mr. Nachman?

Mr. Baker: I am not quite sure just what your suggestion was, Mr. Embry.

Mr. Embry: Well, you can just mark the deposition as an exhibit and then where there is an objection made at the time the deposition was taken we will stipulate that that be treated as an objection made now when the Court considers it and let the Court rule any way it wants to on it and let it become a part of the Record that way.

Mr. Nachman: Your Honor, we don't want to burden this Court with a time consuming procedure but we feel that what is in here—we know that Your Honor will probably not have an opportunity to read them before the oral argument on the law and we do think it would be beneficial to Your Honor to have this before you hear the oral argument and I don't think it will take a very long time to read it.

Mr. Embry: All right. Do it your way then.

The Court: Go ahead. I would like to have a copy of the deposition in order to follow along with you.

Mr. Nachman: You may have my copy, Your Honor. I will read over Mr. Baker's shoulder.

Mr. Embry: Your Honor, we would like the stipulation appearing in the Record to be made a part of this Record also.

Mr. Nachman: All right. I will read those too. Now, Your Honor, I am reading and quoting from the deposition of Claude F. Sitton and Thomas M. Hurley, taken in Atlanta, Georgia, on Friday, June 3, 1960. I quote.

"Mr. Embry: Let the Record show, Roland, that Mr. Daly and I appear for the sole purpose of cross-examination of this witness on any testimony elicited pertinent to the grounds of the Motion to Quash filed by the defendant New York Times Company in this case, and that by appearing we in no wise waive our limited and special appearance filed by filing the Motion to Quash, nor do we make any general appearance in the cause but appear solely at the taking of this deposition to cross examine as to evidence pertinent to the grounds contained in the motion to Quash on the basis of the jurisdiction of the Court and expressly objecting to the jurisdiction of the Court.

Mr. Nachman: I might state at this point we have stipulated with counsel for The New York Times that we understand that their appearance, or the appearance of their agents, at this deposition in no manner waives any grounds raised by their Motion to Quash Service and it is stipulated that it shall not be considered as a general appearance in this case. This deposition proceeding is taken pursuant to Act 375 of the Regular Session of the 1955 Alabama Legislature. It is stipulated that the signature of the deponents is waived.

(At This Point, Mr. Nachman Begins Reading the Questions Propounded in the Deposition of Claude F. Sitton and Thomas M. Hurley and Mr. Baker Reads the Answers Thereto.)

Q. Would you state your name, please, sir?

A. Claude—C-l-a-u-d-e—F., as in Frank Sitton.

Q. Are you a resident of Atlanta?

A. That's correct.

Q. Am I correct that you are employed by The New York Times Company, the defendant—one of the defendants in this case?

A. I am employed by The New York Times, yes.

Q. There is no distinction between The New York Times

as you use it and The New York Times Company, Incorporated?

A. I don't think so.

Q. Would you consult with your attorneys and see whether there is any distinction?

[fol. 497] Mr. Baker: Mr. Embry: That's correct.

Mr. Baker: Mr. Daly: I don't think it's "Incorporated;" it's The New York Times Company.

Mr. Baker: Mr. Embry: A company.

Mr. Embry: Your Honor, may I point out that the word "Incorporated" set out in quotes is not a part of the name.

The Court: Yes. Go ahead.

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

(Continues reading from deposition)

Q. A corporation. How long have you been employed by The New York Times, Mr. Sitton?

A. Since October, 1957.

Q. Beginning with that date, would you state for the Record what your duties have been with The New York Times?

A. From October, 1957, until May, 1958, I was employed as a copy editor with The New York Times in New York, resident of New York City. In May of 1958, I was transferred to the South as Southern Correspondent of The New York Times.

Q. I might interrupt at that point. At what place—to what place were you transferred in the South at that time, or did you continue to live in New York?

A. Well, my family continued to live in New York until July of '58, and I actually had no residence as such.

Q. In other words, the change of assignment at that time did not—

A. Well, my legal residence all along has been Rockdale County, Georgia—my legal residence, that's where I voted and so forth. I actually only rented an apartment in New York.

Q. Go ahead.

A. And since May of '58 I have covered the South for The New York Times, southern territory.

Q. You have, you say, held the same position with The Times since that date in 1958?

A. That's correct.

Q. Up to the present time?

[fol. 498] A. That's correct.

Q. What is your position in Atlanta, what is the title that you have, is it Southern correspondent?

A. Southern correspondent.

Q. The Times does have an office in Atlanta, does it not?

A. I have desk space at the Constitution.

Q. I see. How many employees does The Times have in Georgia, in Atlanta?

A. Two that I know of.

Q. You and Mr. Hurley?

A. No, myself and a part-time secretary.

Q. Did John Popham ever live in Atlanta?

A. No.

Q. Did he ever have a position as Southern correspondent of The Times?

A. Yes, he did.

Q. He was your predecessor?

A. That's correct.

Q. In a general way, Mr. Sitton, would you outline what your duties are as Southern correspondent of The New York Times?

A. Well, to cover news in the South.

Q. Gather news?

A. That's correct.

Q. What area is embraced by the term "South" as you use it?

A. Virginia, Kentucky, North and South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana and Arkansas.

Q. Does The Times have other so-called regional correspondents—if that is the correct phrase—such as yourself for other regions?

A. Yes.

Q. How many other regions constitute the geographical break-down?

A. Well, actually, some of these men are not—well, we have a man in Boston, have a man in Detroit, have two men in Chicago, one man in San Francisco, two men in Los Angeles, one man in Hollywood.

Q. I take it from your earlier testimony that Atlanta is your base of operations, so to speak?

[fol. 499] A. That's correct.

Q. Is it your duty, Mr. Sitton, to regularly canvass the current events that are taking place in these states you have named and to transmit to The Times any newsworthy events that occur in those states?

A. No, only selected events.

Q. Who selects them?

A. Sometimes I do, sometimes The Times does.

Q. In other words, sometimes you're sent into these various states on special assignment from The New York office and other times—

A. It's sort of a case of mutual agreement. Some stories there's no question we should cover. Other stories, I confer with the desk in New York and after talking it over, we reach a mutual decision on it.

Q. Mr. Sitton, this is probably elementary to you but for those of us who aren't so well versed in the newspaper business, would you mind explaining how a news story, let's say, gets to The New York Times for publication; suppose you're covering a news event in one of these states, how would you get the story to The New York Times from that state?

Mr. Embry: We object, Your Honor, because the question—well, I withdraw that objection.

The Court: Yes, go ahead.

Mr. Nachman: I clear it up later, Your Honor.

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

(Continues reading from deposition.)

Q. Mr. Sitton, do you recall that on a Sunday, March 6, 1960, where you covered a so-called demonstration in the City of Montgomery, Alabama?

A. I think I did, yes.

Q. You were present in Montgomery on that date?

A. I think so.

Q. And you recall the demonstration I'm talking about which occurred on the corner of Dexter and Decatur Streets in Montgomery near the capitol in front of Martin Luther King's church and the Supreme Court Building?

A. I don't recall the demonstration. I was there, there [fol. 500] was some trouble there.

Q. I didn't mean to put the word "demonstration" in your mouth. You recall the occurrence there?

A. I recall an occurrence there. I was there, yes.

Q. In terms of Mr. Embry's objection, did you send a story to The New York Times covering that occurrence?

A. Yes, sir.

Q. Would you state how that story got to the Times for publication?

A. I called it in.

Q. From Montgomery?

A. That's correct.

Q. You dictated the story over the telephone?

A. That's correct.

Q. To someone in New York?

A. It was recorded on a plastic disc, yes.

Q. In New York?

A. Yes.

Q. In the offices of The New York Times?

A. Correct.

Q. In addition to the correspondents, the regional correspondents, that you named specifically in the states that come under your jurisdiction, does The Times have so-called string correspondents located in these states and specifically in Alabama?

Mr. Embry: Your Honor, we objected at that time and we object to the question now on the basis that the witness has answered the question.

The Court: Well, it looks like the next question cures that, doesn't it?

Mr. Embry: Yes, Your Honor. I think so. Go ahead.

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

(Continues reading deposition)

Q. Do you know?

A. You refer to my jurisdiction there. This is not really my jurisdiction. I have no—I'm—I'm simply a reporter [fol. 501] down here. I cover the South and as I said before, I told you the basis. I have no—no jurisdiction whatsoever over any other operations that might be conducted in this area.

Q. Well, do you know, or don't you, whether there are located in Alabama certain so-called string correspondents?

A. I know one stringer in Alabama, yes.

Q. What is his name?

A. Don McKee.

Q. Do you know a man in Birmingham named John R. Chadwick?

A. No, sir.

Q. Do you know whether or not he is a string correspondent?

A. I don't know him, how could I know?

Q. I thought you might be making a distinction between knowing him personally—

A. I've never talked to him, I've never met him.

Q. Do you know of his existence?

A. That would be hearsay, wouldn't it?

Q. Whether it would be hearsay or not—

A. I've heard that there is such a man there, yes, sir.

Q. And you've heard he is a string correspondent—

A. Yes.

Q. For the Times. Do you know, either personally or through hearsay, of a man named Castle in Mobile who—

A. I've heard his name mentioned once.

Q. As a string correspondent of The Times?

A. Yes.

Q. Do you know a man named William McDonald in Montgomery?

A. Yes.

Q. Do you know whether or not he was at one time a string correspondent for The Times?

A. He told me he was.

Q. Do you know a man named G. C. Long in Montgomery?

A. No.

Q. Do you know a man named Murphy in Montgomery [fol. 502] who was at one time a string correspondent for the Times?

A. What is his full name?

Q. Charles Murphy, I believe.

A. I don't know. I don't know this man who was a former string correspondent of The Times. Whether I met him or not, I do not know. I don't recall. I don't recall ever meeting a man by that name but it's possible, but I don't know him as a former string correspondent for The Times.

Q. What are the duties of a string correspondent, Mr. Sitton?

A. I've never been a string correspondent. I couldn't testify to that.

Q. Do you, as a result of having been with The New York Times since 1957, I believe you said—is that correct?

A. Correct.

Q. Do you know from general knowledge you have obtained of the workings of The New York Times what the duties of a string correspondent are?

Mr. Embry: We object to that question, Your Honor, on the basis that it calls for a description and outline or description and it presupposes that they have duties and his testimony already has been that he is not familiar with how they conduct the operations, if it is conducted, with reference to stringers.

The Court: That sounds like a good objection. Apparently he doesn't know much about it.

Mr. Embry: If Your Honor will notice line 7 on page 30—

Mr. Nachman: Well, Your Honor, I will withdraw that question. We will go on with the next question.

The Court: All right. Go ahead.

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

(Continues reading from deposition.)

Q. I didn't ask you under whose supervision they were. I asked you whether you knew what their general duties were from your knowledge of the workings of The New York Times.

The Court: It looks like we go to the top of page 13 now. [fol. 503] Mr. Embry: Well, I object to it because it assumes they have duties as opposed to the relationship shown by the evidence previously adduced, Your Honor. The contention we made, Your Honor, is that they sell stories and their contention is that they are employees and I think it is an unauthorized assumption.

The Court: I will let it in. You may have an exception.

Mr. Embry: We except, Your Honor.

Mr. Nachman: We will start at the top of page 13, then.

The Court: Go ahead.

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

(Continues reading from deposition)

Q. I am, of course, referring to string correspondents.

A. I assume they file stories to The Times. News stories.

Q. Mr. Sitton, I don't mean this as an exclusive breakdown but I have noticed, in reading The Times, that there seem to be several ways in which a story is identified. In some instances, it is identified by a by-line written by a correspondent such as yourself. In other instances, it's identified by either an AP or UP symbol.

A. Yes.

Q. In that instance, I take it, The New York Times is getting its story from the wire services of either the AP or UP as the case may be. Is that correct?

A. I suppose it's correct, yes.

Q. In a third instance, there is—the story is identified as it is on page 50 of the Sunday, April 10—Sunday, April 10, 1960 edition of The Times, a page of which I show you.

A. With just a "Special" slug on it.

Q. That's correct.

A. They use that sometimes on my stories. For example, I may have three or four stories in the paper and we have a rule only—they give only one by-line and I get a by-line on one story and the other stories have “Special, New York Times.”

Q. When a story is identified as it has been in this issue of The Times—let me identify this for the Record as [fol. 504] Plaintiff’s Exhibit 1. When it’s identified as it is here now, “Special to The New York Times,” and then a Montgomery, Alabama, dateline, does that indicate that the story or the basis—the facts that form the basis of the story have been sent in to The New York Times office by someone in Montgomery?

Mr. Embry: No objection.

A. I don’t really know. I can’t say. I mean I just don’t know.

Q. Well, doesn’t The Times have some general methods of identifying news stories? Doesn’t this “Special to The New York Times” phrase mean anything in the manner in which The New York Times identifies its stories?

A. It means it’s a special.

Q. What does that mean, that it’s a special?

A. Well, as I say before—I said before, sometimes I file stories that don’t have my by-line on them but have “Special to The New York Times.”

Q. Let me put it this way, Mr. Sitton. It does indicate, does it not, it did not come in from one of the wire services, isn’t that correct?

A. I think—I think that would be correct, yes.

Q. In other words, when The Times is using a wire service story, it identifies it either AP or UP. I don’t know whether they use INS, but anyway, either AP or UP. Is that correct?

A. Sometimes. Sometimes they put it in the body of the story.

Q. There is an attribution when they use an AP or UP story, is there not?

A. I’m a reporter. I’m not a desk man. I don’t work in New York now.

Q. I understand that.

A. I can't—I cannot—I think so, as far as I know. But I can't testify to that from first-hand knowledge.

Q. And your testimony is you don't know then, what the phrase, "Special to The New York Times"—

A. Yes.

Q. Is designed to connote?

A. It means it's a special. It isn't sent in by the wire—either of the wire services.

[fol. 505] Q. Do you know what category of persons send those stories in?

A. I send them in.

Q. You send them in?

A. Yes.

Q. Or some other correspondent?

A. No, not another correspondent necessarily.

Q. I don't mean for this particular story. I mean—

A. Yes. Stringers. They send in stories, I think, that are slugged in that manner.

Q. That's what I was getting at. When stringers send in those stories, they are also designated "Special to The New York Times," are they not?

A. I think so, yes.

Q. In a fourth category of stories, there's no identification whatever. It's just a story, so to speak.

A. Yes.

Q. What does that indicate? Is that a rewrite or—

A. No, the small city stories that don't carry a by-line generally carry no slug at all.

Q. Mr. Sitton, do you recall any discussion you had with Don McKee, specifically, in around the time of the Civil Rights Commission hearings in Montgomery in late December of 1958 and early January 1959 about becoming a string correspondent for The New York Times?

A. I did talk with him about it, I think. Yes.

Q. And did you specifically solicit for The Times his services as a string correspondent for The Times?

Mr. Embry: Let me see now whether I need to object to that. Let me look ahead here in the Record for a minute, Your Honor.

The Court: It looks like at this point we have a lot of incompetent, irrelevant and immaterial grounds of objection—

Mr. Baker: He declines to answer.

Mr. Embry: Where is that?

Mr. Baker: He declines to answer at the top of page 17-A, Your Honor.

Mr. Nachman: Down at the bottom of page 17-A—

[fol. 506] Mr. Embry: He answers there. We spent about a half hour arguing about it and then I think he answers—

Mr. Nachman: We go to the bottom of page 17-A then? Is that right, Mr. Embry?

Mr. Embry: Yes, I think so.

Mr. Baker: Shall I start reading again?

Mr. Nachman: Yes, start reading at line 23 on page 17-A.

A. To the best of my knowledge, I spoke to McKee and told him that we had no stringer in Montgomery and I thought The New York Times was interested in a stringer and I asked him if he was interested. He indicated he was. I told him I would pass his name on to New York and that they would get in touch with him.

Q. Was Mr. McKee recommended to you by anybody or did you happen to know him personally?

A. I don't really recall. I had known him. I had met him on visits to our advertiser. I don't recall. He might have been. I might have spoken to someone about him—asked whether he was a good man or I might have seen some story he had written. I don't recall.

Q. In answering the question, you used the word "interested," that The Times was interested in having a stringer in Montgomery. Why was The Times interested in having a stringer in Montgomery?

Mr. Embry: We object to that, Your Honor. It calls for a mental operation of the witness. It is not shown to have been within the realm of his knowledge and was the result of a discussion between—

Mr. Baker: He declined to answer.

Mr. Embry: He declined to answer but he was asked a further question on page 19 as to who told him that The

Times was interested in having a stringer and he answered—

Mr. Baker: Well, shall we skip to the bottom of page 18?

Mr. Embry: Yes. Go on down to line 24 on page 18.

[fol. 507] By Mr. M. R. Nachman, Jr.:
(Continues reading from deposition)

Q. How did you know the Times was interested in having a stringer in Montgomery?

A. They had told me.

Mr. Nachman: Shall we skip to line 9 on page 19 now?

Mr. Embry: Yes.

By Mr. M. R. Nachman, Jr.:
(Continues reading from deposition)

Q. Who told you that The Times was interested in having a stringer in Montgomery?

A. To the best of my knowledge it was Harold Faber, the Assistant National News Editor.

Mr. Nachman: That is mis-spelled. That was the gentlemen who testified—

Mr. Embry: Yes. Let the answer read "Faber."

Mr. Nachman: Now, let's go down to line 24 on page 19.

Mr. Embry: Yes.

By Mr. M. R. Nachman, Jr.:
(Continues reading from deposition)

Q. What are Mr. Faber's duties in regard to stringers?

A. I don't feel competent—I don't feel competent to answer that question. I don't work in New York.

Q. You don't know?

A. No. I don't work in New York. I've never worked on the National News Desk. I just—I don't feel I'm competent to answer.

Q. It's your testimony here you have no knowledge whatever of the relationship between Mr. Faber, Mr. Harold Faber, and the stringers?

A. I don't think I said that.

Q. I'm asking you is that your testimony?

A. No.

Q. Would you state what knowledge you have about Mr. Faber's relationship with the stringers?

A. Could you ask me a specific question about—you're asking me to generally describe his relationship with the stringers?

[fol. 508] Q. That's correct.

A. I can't do that. If you ask me a specific question about his relationship with the stringers—possibly I can answer.

Q. Well, would—

A. I can't generally give you a description of what he does, no.

Q. I'm asking the question that way. If it is your answer that you can't tell me what general knowledge you have about Mr. Faber's relationship with the stringers, that's your choice.

A. Well, now, the best of my knowledge, and this is—this is—this is almost completely hearsay because I have never been present at any time when Mr. Faber had any dealings with stringers. Mr. Faber—he gets in touch with the stringers when he is interested in having a report on some event that's taking place and requests that they file a story.

Q. What does he have to do with the employment of stringers?

Mr. Embry: We object to that as it calls for a conclusion on the part of the witness, Your Honor. It assumes that they are employed.

The Court: I think the objection would be good.

Mr. Nachman: Well, Your Honor, we don't insist on it. He never answered it anyway. We will skip down to line 20 on page 21 now.

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

(Continues reading from deposition)

Q. Mr. Sitton, I understand you may not know everything about these questions I'm asking you and of course,

you're free to limit the extent of your knowledge anywhere you want to. But this is a discovery proceeding and we intend to obtain this discovery as fully as possible. I think it might save us all a lot of time and expense if you would answer the questions to the best of your knowledge and as fully as possible, limiting the answers in any way you see fit. I'm not trying to ask you to go beyond the scope of your knowledge.

A. I'm trying to be as cooperative as possible.

Q. It will save a lot of time and expense.

A. Surely. I would like to do that.

[fol. 509] Mr. Embry: We objected then, Your Honor.

Mr. Nachman: We will skip over to page 23, line 2, Your Honor.

The Court: All right. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition)

Q. Mr. Sitton, I would like to get back to my question as to those operations and ask you again to give us your knowledge and information about the relationship of the stringers to The New York Times.

A. Well, as I said, they file—I assume—I suppose that they file stories to The New York Times from time to time for which they are paid.

Q. And are they people who are on call from The Times to file stories when The Times wants a story from a given area where they live?

Mr. Embry: We objected to that.

Mr. Nachman: Well, that question was not answered.

Mr. Baker: We go down to line No. 15 on page 23 now?

The Court: Yes.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition)

Q. Does the Times regularly ask these stringers for stories regarding certain news events in the areas in which these stringers live?

A. What do you mean by "regularly"?

Q. Well, is this regular procedure of The Times, that when The Times feels that there is a news story of note going on in an area where a particular stringer lives, that The Times calls on this stringer for a story?

A. I will answer your second question, yes.

Q. And that's the purpose of having the stringer there, isn't it?

Mr. Embry: We object to the purpose of having a stringer there, Your Honor. I think that would be up to the Court to deduce from the testimony as to what the purpose was in having such a person and it is a conclusion of the witness.

The Court: Well, I think it would be a shorthand rendition. I will let it in.

[fol. 510] Mr. Embry: We except.

Mr. Nachman: Begin reading and start with the answer at line 1 on page 24.

A. Sure.

Q. Of course it is. Am I not also correct Mr. Faber, for The Times—or at any rate, The Times send out instructions to the stringers, general instructions about how they are to conduct their business and their operation?

A. I don't believe I can—you can ask me to testify that. I don't work in New York. I'm not connected with the stringer system. I work in Atlanta. I'm a reporter. That's all. How do I know what Mr. Faber does? I've never seen Mr. Faber send out any instructions, no.

Q. Do you know of your own knowledge or through your general knowledge of the operations of The Times whether a general set of instructions is sent out to stringers?

A. A general set of instructions?

Q. General instructions in written form.

A. I've heard that there was, yes.

Q. That general instructions are—in written form are sent out to the stringers?

A. Wait a minute, now. Would you go into this "general instructions"? What do you mean by "general instructions"?

Q. I mean instructions to the stringers about how they

are to conduct their business insofar as it relates to The New York Times.

A. Conduct their business?

Q. The business of sending news stories in.

A. I think I've heard that instructions are sent out as to how they should transmit the stories, giving telephone numbers, that sort of thing, yes.

Q. And those instructions emanate from the home office, so to speak, in New York?

A. So I've heard, yes.

Q. Have you heard anything to the contrary?

A. No.

[fol. 511] Q. Do you have anything to do with the advertising?

A. No, sir.

Q. Do you know how ads are obtained from advertisers in Alabama for The New York Times?

A. No, sir.

Q. Mr. Sitton, when you go to Alabama—let's use your March 6th trip—are your expenses paid by The New York Times?

A. Yes, sir.

Q. What procedure do you follow in submitting your expenses to The New York Times for reimbursement?

A. I file a—file an expense account which is in the amount and I'm reimbursed for the amount of the expenses.

Q. Do you have regular specified forms for sending it in or do you send it in in your own way?

A. No, I have forms.

Q. Those forms are furnished by The Times?

A. That's correct.

Q. And are you reimbursed by check or other—special voucher?

A. They reimburse my account in a local bank.

Q. Does that mean that The Times deposits in a bank of your designation an amount equivalent to the amount you submit on your particular expense account?

A. If they agree with the expense account.

Q. Yes, on that assumption, of course.

A. That's correct.

Q. I assume that they would never disagree with such an able reporter as yourself.

A. Thank you, sir.

Q. It is, as I understand it, part of your job, Mr. Sitton, to be where the newsworthy events are going on in the area covered by the Southern correspondent. Is that correct?

A. Yes, sir.

Q. Would you consider that during the past four years that Alabama has been a rather newsworthy state?

A. Not—not overly so. Really, no. That's the last four [fol. 512] years—I've only been down here—

Q. Let's cut it off—

A. Yes, at the period I've been in the South.

Q. Yes, sir.

A. I wouldn't say overly so. I have—goodness alive! I've spent much more time in other states than I have in Alabama.

Q. Have you spent as much time continuously in other states?

A. Oh, yes.

Q. Leaving out Georgia, where you live?

A. Yes, yes, goodness.

Q. No, Mr. Sitton—

A. For example, I spent two months—two months at one whack in Little Rock without a day off.

Q. Now, am I correct, sir, you covered the Civil Rights Commission hearing in Montgomery with—which began on December 1, 1958?

A. To the best of my knowledge, I did, sir.

Q. And did that coverage necessitate your physical presence in Montgomery during this time?

A. I was there.

Q. You were there in Montgomery during the whole time?

A. I'm not sure about the whole time. I think I was there during the whole time to the best of my knowledge.

Mr. Embry: Excuse me, Your Honor. Now, may I move to exclude that testimony with respect to such time as he was here in December, 1958 and any reference to any

other dates in 1958, on our grounds previously stated to Your Honor—

The Court: Let me let it in and give you an exception.
Mr. Embry: We except, Your Honor.

Mr. Nachman: We go down to line 19 on page 27 now.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition)

Q. Was there another—were there any other Times correspondents there too during any of that period?

A. No, there are—

[fol. 513] Q. Let's use the period, say, from December 1, 1958, through January 29, 1959, roughly the months of December, 1958, and January, 1959.

Mr. Embry: I want to get an objection in there on the same grounds, Your Honor.

The Court: All right. Same ruling.

Mr. Embry: We except, Your Honor.

Mr. Nachman: We will continue reading on line 3 at page 28.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition)

Q. Were there any other New York Times correspondents other than yourself that were physically present in Montgomery during any of that period from early—

A. I think I heard one came over there the latter part of January. I'm not real sure about the dates on this.

Q. That was Russell Porter, was it not?

A. That's what I heard, yes.

Mr. Embry: Your Honor, I would like to have an objection to any period of time except from the 1st of January, 1960 through April and I would like to have an objection to each question along that line—

Mr. Nachman: I will be glad to agree to that.

The Court: Yes. All right. Go ahead.

Mr. Nachman: Let's see. Where did I leave off?

Mr. Baker: Start at line 9, page 28.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition)

Q. And he is a regular New York Times correspondent too, is he not?

A. As far as I know, yes, sir.

Q. A regularly salaried person.

A. As far as I know, yes.

Q. Now, what did your news gathering activities consist of while you were in Montgomery during this period?

A. Covering the hearing.

[fol. 514] Q. That means you attended the hearings, of course?

A. Uh-huh.

Q. And I believe there were some other proceedings in the United States District Court in Montgomery during that time?

A. Yes, sir.

Q. And you attended those?

A. Yes, sir.

Q. There were also, I believe, some events which took place outside of Montgomery, specifically, there were some events that took place in Barbour County?

A. Yes, sir.

Q. And there were some took place in the town of Clayton?

A. Yes, sir.

Q. And in the town of Union Springs?

A. Yes, sir.

Q. And you went down to those places?

A. Yes, sir.

Q. Did you go over to Wilcox County or Dallas County during that time?

A. No, sir.

Q. Did you interview any persons in Alabama, residents of Alabama, while you were there on this coverage?

A. Yes, sir.

Q. Would you state the names of some of the persons whom you interviewed?

Mr. Embry: Your Honor, we object to that and we renew our objection on the basis of an Alabama statute—

Mr. Nachman: We worked that out, I believe, Mr. Embry. We said that we weren't asking what the people said but just whom he talked to. Skipping over to line 11 of page 30, I said, "We're not asking you for the specific things they told you but for the names of the people you talked to." Then, Mr. Daly, said that he had no objection.

Mr. Embry: All right. Go ahead.

[fol. 515] By Mr. M. R. Nachman, Jr.: (Continues reading from deposition)

A. I talked to Sam Lemaistre down in Clayton, isn't it?

Q. Yes.

A. And talked to little George Wallace down at Clayton. I talked to Wallace's attorney, I forget his name. And a number of other people.

Q. And I take it you interviewed the members of the Civil Rights Commission from time to time, Mr. Hanna and others?

A. Interviewed them?

Q. Either interviewed them by yourself or as a part of a—as a part of the news conference.

A. I was there. I was there in the hearing room. Now, Mr. Story was foreman at that hearing. He issued statements. I put those down. I don't recall—

Q. Do you recall that the day before the hearing began there was a press conference on a late Sunday afternoon which the correspondents, newspaper people there, were given an opportunity to interview and ask questions of the members of the Commission who were present?

A. Now, to the best of my knowledge, and I might be wrong, but to the best of my knowledge, I don't think I was present for that news conference.

Q. I see, sir. So that your news coverage consisted of attending the various proceedings, the Commission proceedings and the Court proceedings and in interviewing people who were involved, so to speak, in the various matters considered by the Commission and by the Court.

A. Some of those involved, yes.

Q. I believe there were also photographs in some of the stories that The Times carried about these matters, were there not?

A. I don't really recall.

Q. You don't recall that. Who, on the assumption that there were such pictures—for example, on the assumption that in The New York Times of January 16, 1959, there was a picture of George Wallace walking up the steps of the Federal Court Building with his attorney. Who would have arranged for such a picture? Would you?

A. I tell you—

[fol. 516] Mr. Embry: We objected to the question then and we renew our objection now, Your Honor, because it is an assumption and there is no predicate laid as a matter of fact—

Mr. Nachman: Well, skip down to line 13 on page 32.

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

(Continues reading from deposition)

Q. Now, to ask the question again, I will call your attention to a story which was under your by-line, one that appeared in the January 14, 1959 issue, which carried a picture of George Wallace. Do you recall that story and that picture?

A. If you had the picture—

Q. It was a story with a Clayton date line.

A. You said before—is this a different—

Q. I'm referring to a different picture. You said you were not there. You were on vacation.

A. I said to the best of my knowledge I wasn't there. I could refresh my memory on those dates if it's very important.

Q. I understand you to—

A. I'm not sure because part of that time Porter was there. At least, I heard he was there. I was on vacation.

Q. For that reason I'm referring to another that might refresh your memory.

A. This is a picture at Clayton?

Q. This was a picture of George Wallace which appeared in a news story with your by-line under the date of January 14, 1959 with a Clayton, Alabama dateline.

A. Yes.

Q. Now, who would have arranged for that picture to have accompanied the news story?

A. It probably—

Mr. Baker: Mr. Daly said, "Who would have arranged for the taking of the picture?" We go down to line 22, I think.

Mr. Nachman: Yes. Line 22, page 33.

[fol. 517] By Mr. M. R. Nachman, Jr.:

(Continues reading from deposition)

A. Off the record. I don't want to say anything about that picture without seeing something on it. In a thing like that—that was a long drawn-out proceeding and I would rather not say. If you've got a copy of the picture, I'll be glad to tell you the best of my knowledge what I know about it.

Q. Let me ask you this way. Is it from time to time customary for you to decide that a picture should go along with a news story?

A. No.

Q. Who makes that decision?

A. It's made in New York to the best of my knowledge.

Q. How do the people in New York get the picture?

A. Well, I think they get it from AP Wire Photo or UP Telephoto.

Q. At no time in your experience has it entered your mind you should have a picture to go along with a news story to send in to New York for publication?

A. It's possible, but I don't—I wish you had a copy of this picture and then I could tell you.

Q. Referring to the March 6 incident in Montgomery, March 6, 1960—

A. Yes.

Q. There was a picture accompanying that story, was there not?

A. I believe there was, yes.

Q. Did you have anything to do with arranging for that picture to go into the Times?

A. No.

Q. It did not occur to you at that time that a picture

along with the story might be newsworthy and might be an event which The New York Times would want a picture with?

A. I try to avoid getting the pictures in—it cuts down on the amount of space I get.

Mr. Nachman: We will skip down to line 18 on page 35 now.

[fol. 518] By Mr. M. R. Nachman, Jr.:
(Continues reading from deposition)

Q. The question I was asking, Mr. Sitton, was, during your experience as a newspaper reporter for The New York Times have there been occasions when you were covering a news story when it occurred to you that it might be well for a picture to go along with the news story and if it did so occur to you, what arrangements, if any, do you make to get such pictures?

A. General practice, no.

Q. You have never done that?

A. I'm not—you said general practice.

Q. Now, I'm asking whether you have ever done it.

A. I think possibly I have on one or two occasions.

Q. What arrangements did you make on those two occasions?

A. I don't—I'm not really sure. I think once I spoke to someone about—to the AP about a—what we call a Man-In-The-News profile feature and asked them if they happened to have a file picture of the person involved and said something about I imagine—"I think we're interested; I imagine you will hear from New York on it."

Q. Do you ever, in the course of your news coverage, attempt to determine whether the AP has—or any other news service has—taken a picture of the events you're covering?

A. That's possible.

Q. And have you, during the course of your work as a reporter for The Times, ever notified the New York office that there was such a picture in existence which The Times could use if it saw fit?

A. I believe, going back to this other thing, on this

Man-In-The-News I did say "Yes, AP has a picture here, has a file picture, if you want to get it up on the wire."

Q. Do you recall, Mr. Sitton, whether at any time during the course of your coverage of these Civil Rights hearings and their aftermath, so to speak, a biographical sketch of George Wallace was run in The New York Times?

A. Yes.

Q. Did you write the biographical sketch?

[fol. 519] A. Yes.

Q. Am I correct that the existence of such a biographical sketch of a person in the news on the particular day is an indication of the importance which The Times attached to the particular news story?

Mr. Embry: If the Court please, we want to object to this line of testimony beginning here—

The Court: What line are you on?

Mr. Embry: Starting on line 14 at page 37, Your Honor. I would like to state my grounds to the Court.

The Court: Go ahead.

Mr. Embry: He has been going into a line of questioning that doesn't relate to whether or not he was at a place—whether this reporter was at a place or not or when but he generally goes into the question of the fact that a man is in the news as indicating there was an important news story and that appears here and there in the testimony and I thought it well to give Your Honor my thoughts on it at this point because from time to time throughout the deposition he asks similar questions. We don't believe that what he considers a newsworthy event or a newsworthy person has any evidentiary value with respect to activity of the corporation and I would like to just state that to Your Honor now rather than to be interrupting the reading of the deposition throughout.

Mr. Nachman: Your Honor, my theory in asking these questions—

The Court: You are talking about the important—the importance of the story?

Mr. Nachman: Yes, sir. The Times has this column or biographical sketch or whatever it is called entitled "The Man in the News" and as will be brought out here later

on they have only one issue and it is marked in my mind that it indicates that a man in the news from Alabama—if he is the man in the news for that day, it indicates that The Times considers that a relatively important news story and probably more important than the others because they take someone out of that news story and print a biographical [fol. 520] sketch about him in the same edition of the paper and it indicates an importance at the time of these news events in Alabama and, of course, it ties in with their having news gathering facilities in Alabama including a reporter who came in here and wrote the sketch. That's the theory on which we offer it, Your Honor.

Mr. Embry: Well, it still doesn't shed any light one way or the other as to whether or not any activities went on in Alabama.

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

Mr. Embry: We except, Your Honor.

Mr. Nachman: That's gets us down to the answer on line 15 at page 37. Go ahead and read the answer, Mr. Baker.

By Mr. Sam Rice Baker:

(Continues reading of deposition)

A. You mean by—what do you mean by “importance”?

Q. I'll ask it this way and maybe I should ask it over a series of questions. This practice in The Times of running this biographical sketch is of fairly recent origin. By that, I mean within the last two or three years or four years. Isn't that correct?

A. I don't really know.

Q. It is customary only one such biographical sketch appears in the edition for that particular day. Is that correct?

A. Correct.

Q. Am I correct that the selection of a person to appear in such a biographical sketch is an indication of the importance of that person in the news on that particular day?

A. I don't know. I guess maybe the general conclusion—possibly that could be true, but sometimes you will find a man in the news on a story that's way inside the paper and doesn't even start on the front page.

Q. Well, is it on occasion an unimportant news story?

A. Are they what? Unimportant?

Q. Unimportant.

A. I consider all of our stories important.

[fol. 521] Q. Well, relatively unimportant in terms of the other stories which appear in the paper. By the paper, I mean The Times.

A. Generally speaking, it's some—judging from reading the paper, it's based on, and generally they try to have, a man in the news on some person who is—figures rather relatively prominently that day.

Q. I take it—

Mr. Embry: We have the same objection to that, Your Honor, and an exception.

The Court: Yes.

Mr. Nachman: We move to exclude that testimony.

The Court: Overrule.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition)

Q. I take it—maybe I shouldn't ask this, but you read The Times regularly every day?

A. That's true. Sometimes I miss though.

Q. Do you recall whether The Times covers the swearing in of all the governors in the country or just certain—

A. The inauguration?

Q. The inauguration.

A. No, we don't.

Q. You do, however, cover the inauguration of some of the governors of the states?

A. Oh, I guess we always cover the inauguration of the Governor of New York, but I passed up a number down here. In fact, I've never covered an inauguration.

Q. You have read though in The Times stories covering the inaugurations of governors?

A. Yes.

Q. And your answer, I believe, to my earlier question was that The Times does not cover the inauguration of all of the governors?

A. That's correct.

Q. Now, on what basis does it select its governors inaugurations which it will cover?

A. I have no knowledge of that.

Q. This is not a complicated question. Is it not the answer it considers the inauguration of some governors more important than some?

A. I don't know.

Q. Would you say, as a newspaperman of some stature, that the newsworthiness in terms of The Times' reading public is a criterion?

Mr. Embry: We object to that, if the Court please. I object on the same grounds, Your Honor, in that it cannot shed any light on the activities of the corporation within the State—

The Court: I believe you are going rather far off on that question.

Mr. Nachman: Your Honor, my theory again is that The Times considered—and at this point I would like to state that the story covering the inauguration of Governor Patterson is in evidence already—that the inauguration of the Governor of Alabama is considered so important that they carried a news story and a picture but that it doesn't cover the inauguration of some of the other governors and it is an indication as to how important The Times considered this was to its reading public to have coverage in Alabama and they obviously considered that its readers would be interested in the inauguration of a Governor of Alabama more so than the inauguration of a Governor in another State.

Mr. Embry: Well, conceding, Your Honor, for the sake of argument on this question of relative importance that maybe they considered the inauguration of the Governor of Alabama a matter of extreme and urgent importance, but what possible light could that shed on how much activity the corporation has engaged in—

The Court: I believe that's a little far off. I will give you an exception.

Mr. Nachman: All right, Your Honor. Now, on page 41 we go into the question of the accompaniment of the story

with a picture. Would Your Honor's ruling be the same on that also?

The Court: Yes.

[fol. 523] Mr. Nachman: Then, that takes us down to line 21 on page 41, Mr. Baker. I will continue reading at that point.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Now, Mr. Sitton, during the time you have been the Southern correspondent for The Times, would you to the best of your knowledge, give me the names of any other regular Times correspondents who have gone into Alabama and written news stories?

A. From my reading of The Times?

Q. Yes, from your general knowledge.

A. Well, now, I've seen by-lines in The Times in Alabama.

Mr. Embry: I object, Your Honor. His answer shows there that he is not basing it on his knowledge.

The Court: Well I think it might be admissible. I will let it in and give you an exception.

Mr. Embry: We except, Your Honor.

The Court: That might be second hand knowledge—vicarious knowledge. Go ahead.

The Witness: Russell Porter, Harrison Salisbury. I can't recall off-hand any others.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. How about Wayne Phillips?

A. I heard—I believe I heard in Alabama Phillips covered the Autherine Lucy case but I wasn't down here at the time. I don't know but I heard that.

Q. How about Clarence Dean?

A. It's possible, but not to my knowledge, no.

Q. Gladwin Hill?

A. Gladwin—possible again. You mean since I've been down here?

Q. During the time you've been familiar with The Times' operations.

A. You can—I take it—I think the Autherine Lucy event you're referring to took place in 1956.

Mr. Embry: I want to get my objection in there on the [fol. 524] time element, Your Honor.

The Court: Same ruling.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. I wasn't referring to any particular events.

A. You're calling names of men, I mean, for example, of Phillips. When did the Autherine Lucy thing take place?

Q. 1956.

A. I didn't come to work for The Times until November, 1958 or October, 1957.

Q. That was not what my question was. What my question was was your knowledge of New York Times correspondents who have gone to Alabama and written news stories about events in Alabama.

A. My personal knowledge?

Q. Personal knowledge either gained by seeing them there or reading their material in The Times.

A. The only stories I have read that I can recall that were covered by other correspondents were those by Russell Porter and Harrison Salisbury.

Q. And you recall seeing none by Wayne Phillips or Gladwin Hill?

A. No, sir.

Q. How about George Barrett?

A. No, sir.

Q. Peter Kihss?

A. No, sir.

Q. John Popham?

A. I think possibly in the clips I've seen stories that had an Alabama date line by Popham.

Q. Edith Evans Asbury?

A. I don't recall, no, sir.

Q. Is there a man named Plann?

A. No.

Q. Do you know a correspondent of The Times by that name?

A. No.

[fol. 525] Q. As best you can estimate it, Mr. Sitton, how frequently have you gone into Alabama during 1960?

A. 1960?

Q. Yes.

A. Four times.

Q. How long have you stayed on those occasions?

A. Time varied. I would have to refresh my memory to give you a—give an estimate. I think the longest period I was there was during that March 6th period. Somewhere in there. I was there, I believe, about three or four days at one time and I left and then I went back and stayed two days, I think, something like that.

Q. Were you there last week in Montgomery?

A. Last week?

Q. Last week.

A. Yes.

Q. Specifically, on Saturday, the 28th of May?

A. No.

Q. What day were you there?

A. Friday.

Q. The 27th of May?

A. Yes.

Q. What was the purpose of that trip?

A. To cover the King trial.

Q. To gather news for the Times about the King trial?

A. Correct.

Q. By the King trial, you're referring to the Martin Luther King trial in Montgomery?

A. That's correct.

Q. What did your news covering activities consist of on that visit?

A. I didn't do anything.

Q. Did you attend the trial?

A. No, sir.

Q. You came to Montgomery and did nothing?

A. That's correct.

[fol. 526] Q. Was that the purpose of your coming to Montgomery, to do nothing?

A. No, sir.

Q. What made you decide to do nothing?

Mr. Embry: We object to that, Your Honor. It calls for a mental conclusion of the witness.

The Witness: Yes—

Mr. Nachman: Well, I believe you finally went ahead and—

Mr. Embry: Well, Your Honor, I don't think I have to object because I think the answer came out anyway.

Mr. Nachman: Well, let's just go ahead at the top of page 46 and start reading at line 1.

The Witness: Well, I was advised that it might be best for me to come back to Atlanta.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Who so advised you?

A. Mr. McLeod.

Q. Who is he?

A. Mr. McLeod.

Mr. Baker: Then, Mr. Embry said, "Roderick M. McLeod, Jr., one of my law partners."

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Do you customarily confer with lawyers when you go into Alabama to write a news story?

Mr. Embry: Well, we had some by-play there, Your Honor, and I made a statement about attempting to get service on him, Your Honor. Let me read what I stated at that time and I will read it for the Record. I said, "We object to that." Mr. Daly was present with me and he is a member of the law firm of Lord, Day and Lord, and Mr. Daly said, "You didn't get service. You were attempting to serve him down there. You people were or someone was."

Mr. Nachman: Then I continued, Your Honor.

The Court: All right. Go ahead.

[fol. 527] By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Do you adopt the statement of your counsel?

A. I'll say this. I understood that an attempt would be made to serve me and I thought it best that I get in touch with Mr. McLeod.

Q. And he instructed you to leave?

A. That's correct—no. He advised me to leave. He didn't instruct me.

Mr. Nachman: Then, Mr. Embry said, "You did leave."

The Witness: I left. He advised me, but he didn't instruct me.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. In 1959, to the best of your knowledge, how frequently did you come to Alabama to cover news events?

Mr. Embry: I want to object here again on a time element objection, Your Honor.

The Court: All right. Same ruling.

Mr. Embry: We except.

Mr. Nachman: All right. Read the answer at line 1, page 47.

The Witness: Oh, rough approximation, I would say ten or twelve times.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. And over how long a period of time would those occasions extend? I realize they may vary.

A. I imagine the longest period was on that Civil Rights Commission thing. I don't really recall. I would guess a week. That's a rough guess.

Q. Did—the longest period of time on any one of those two occasions or ten occasions was a week?

A. I think so. It might have been longer. It might have been ten days. But without refreshing my memory, I would say a week or possibly ten days.

[fol. 528] Q. How about 1958? I realize that your recollection may be dim.

A. I think I was there two times, I think. I'm not sure. About twice, I think.

Mr. Embry: I want to object to that again on the time element basis, Your Honor. I didn't have time to object then.

The Court: Same ruling and give you an exception.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. How about 1957?

A. Well, I didn't—no. I wasn't down here then.

Q. And in 1956 you weren't here then?

A. No.

Q. When did you begin your duties as Southern correspondent for The Times, the date in 1957?

A. May—no. May, 1958, I began my duties as Southern correspondent. I came to work for The Times in October, 1957.

Q. I see. You were not down here at all in 1957?

A. No. I was in New York.

Q. Am I correct that Mr. Popham had your job, so to speak, before you took it over?

A. Yes.

Q. Mr. Popham is now in Chattanooga?

A. General Managing Editor of the Chattanooga Times. Yes.

Mr. Baker: Then, Your Honor, Mr. Daly said, "He's not employed by The New York Times?" And the witness said, "No."

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. I take it that you submitted expense accounts for each one of these trips into Alabama?

A. Yes, sir.

Q. And they were all paid?

A. Yes, sir.

Q. Whom do you submit your expense accounts to when you—

[fol. 529] A. The Auditing Department.

Q. Just generally the Auditing Department or any particular person in the Auditing Department?

A. Well, it's changed. I don't remember the other fellow's name. Harold C. Newhut.

Q. You send them directly to him or address them to the Auditing Department?

A. Address them to him—Mr. Harold C. Newhut, Auditing Department, 8th Floor, New York Times, and so forth.

Q. Have you conferred with anybody else in Alabama other than Don McKee about being a string correspondent for The Times? By anybody else in Alabama, I mean any other residents in Alabama?

A. You mean asked them if they would be a stringer?

Q. A conversation of similar import to the one you had with McKee.

A. I think I asked Bill McDonald something about a question of a stringer. He had once been a stringer.

Q. Something about a stringer—you mean about—

A. About—

Q. About the names of people?

Q. I might have asked Bill—it's quite possible I asked Bill if he had any ideas or something like that.

Q. Do you happen to know how many string correspondents there are resident in Alabama?

A. Only from your questions. I know—I knew of the existence of one stringer in Birmingham whom I don't know. I never met—never talked to him. Of course, I knew about McKee and then you mentioned one in Mobile. He has never been mentioned to me by anyone before.

Mr. Baker: Then, Your Honor, Mr. Daly said, "You're assuming then, he's a—and the witness said, "I say from what he said, he said."

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. I wasn't asking you to relate what my statements—

A. I'm pointing out you said he was a stringer and I

[fol. 530] assume you're an honest man. So I'm taking your word for it. I guess we've got a stringer in Mobile.

Mr. Nachman: Then, Your Honor, Mr. Daly said, "In other words, you don't know?" Read the answer now.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

A. I don't know. I've never talked to him. I've never heard of him. I didn't know we had a stringer in Mobile.

Q. Did you know you had one in Birmingham?

A. Yes, but I didn't know him. I never have talked to him.

Q. You have never had any conversation with the stringer in Birmingham?

A. No. No dealings whatsoever.

Q. I take it, then, it's fair to assume that the existence of stringers in Alabama is not important to you in your work?

A. No. It's not really part of my work.

Q. In other words, when you want an Alabama news story, you go in there yourself and get it?

A. Sure. If I'm going to cover a story, yes. I go in and cover it myself.

Q. You don't rely on a stringer?

A. No. I call McKee from time to time.

Q. Approximately how often do you call him?

A. Very seldom.

Q. Could you give us some sort of estimate? I realize it would be imprecise.

A. To ask him for information.

Mr. Embry: Then, Your Honor, I asked him to specify the period of time. I didn't know what period of time they were talking about and I asked him to be specific.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Since McKee has been a string correspondent for The Times. I believe you stated you talked to him about it either in late 1958 or early 1959.

A. Oh, roughly, I guess I've called Don—I don't know, [fol. 531] five or six times or something like that.

Q. About the coverage of news events in Alabama, or about the occurrences of news events?

Mr. Embry: I object to that again, on the basis that it is too remote in point of time, Your Honor.

The Court: Overruled.

Mr. Embry: We except, Your Honor.

The Court: Where are we now?

Mr. Baker: We are on page 51 at line 9, Your Honor.

The Court: What line?

Mr. Baker: Line 9, Your Honor.

The Court: Go ahead.

Mr. Nachman: Read the answer.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

A. Sometimes, I think, once. I believe I called him last week and asked him how long he thought the King trial would go on and what the outlook was. I just talked about it generally with him.

Q. In other words, he helps you keep up with news events in Alabama. Isn't that correct?

A. No.

Q. You don't rely on him at all to keep up with news events in Alabama?

A. I mean he's a friend of mine, you know. I call people on other papers who are not stringers, people I'm friendly with. I consider him more of a friend than a stringer. Take Birmingham, for instance, if I want to know something about Birmingham, I don't call—what's that fellow's name—Chadwick? I've never called Chadwick. I call the people on the newspapers over there.

Q. You frequently then, make calls into Alabama?

A. Not too frequently, no. You asked me before about how Alabama stood as a news state and I said it hadn't been overly newsworthy since I've been down there. There have been some occurrences over there we have covered but many more in Little Rock, Florida, Georgia, Virginia. [fol. 532] Q. Many more?

A. Many more. Particularly Arkansas. My goodness!

Q. Leaving out Arkansas during the period of the school situation there, have there been many more than the other states?

A. What do you mean by many?

Q. It was your phrase.

A. I would say more. I would say more.

Q. I want to know what you meant by it. You would say what?

A. I would say more, yes, to the best of my knowledge.

Q. In which states would you say there have been more?

A. Arkansas.

Q. You're referring to Arkansas during the school crisis there when the troops went in and so on?

A. No, I wasn't there when the troops went in. That was in 1957.

Q. Well, you mentioned Arkansas then?

A. Yes, sir.

Q. During the school situation?

A. That's correct.

Q. Including the Federal Court hearings and so forth?

A. Yes.

Q. What other state has had more news events than Alabama during this period?

A. I spent much more time in Louisiana than I have in Alabama.

Q. Any other state?

A. I don't know. There we get down on a level—I guess they all run about—about the same—Alabama, Georgia, Florida.

Q. Of course Georgia is where you have your principal office?

A. Yes, but that's—that doesn't mean I give Georgia any more coverage than any other state just because I'm here.

Q. I take it it's a convenient geographical location?

A. Good transportation, communication and that sort of thing.

Q. Who pays for these telephone calls into Alabama? Do you charge them to The Times?

A. Yes, sir.

[fol. 533] Q. Do you have anything to do with obtaining subscriptions to the Times?

A. No, sir.

Q. Do you know anything about The Times microfilm edition, and how it's sold?

A. No, sir.

Q. You know there is such an edition?

A. Yes, sir.

Q. Do you know whether that's handled directly with representatives from New York?

A. I don't really know.

Q. You don't know anything about that? Now, in addition to writing spot news stories, so to speak, you also write news analyses, don't you, for the Sunday editorial supplement of The Times?

A. Yes.

Q. News of the Week?

A. News of the Week in Review.

Q. News of the Week in Review?

A. Yes.

Q. And you have written such analyses which have covered Alabama, have you not?

Mr. Embry: We want to object to that, Your Honor. This has nothing to do with respect to where he has been and what he has done while on duty for or acting on behalf of The New York Times Company within Alabama.

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

Mr. Embry: We except.

Mr. Nachman: We are down to the answer at line 19 on page 54.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

A. Covered only Alabama?

Q. No, not only Alabama, but Alabama—

A. Written them on the South.

[fol. 534] Q. Which have included Alabama?

A. Sure.

Q. Have you ever written any on Alabama exclusively?

A. I don't recall that I have, no.

Q. Do you recall one on January 18th, 1959 which related to the Civil Rights Commission hearings?

A. Do you have a copy of it?

Mr. Embry: Then, Your Honor, I made a statement and said, "This is the News of the Week in Review?"

Mr. Nachman: Then I said, Your Honor, "Yes, Section Roman IV."

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

A. What this a long piece? What was it?

Q. I asked you whether you recall writing one which appeared in the January 18th—

A. If you've got a copy, I'll be glad to tell you whether I wrote it or not. Offhand—I can go back to the files and check and give you a yes or no on it.

Q. Your testimony is you don't recall whether you did or not?

A. As far as I know, I don't recall. I did—I think I did one that didn't appear in the paper but it was on—I think that was on the South as a whole.

Mr. Nachman: Then, Your Honor, I said, "We have no further questions." Do you want to take over the reading now, Mr. Embry?

Mr. Embry: Yes. I will read from here.

By Mr. T. Eric Embry: (Reading from deposition.)

Q. Your expense accounts which you have been asked about and which I assume have been paid for the period he has spoken of on the occasions you have testified about on which you went into the State of Alabama on the occasions you have told us about, from whence you submit those [fol. 535] pieces of paper reflecting your expenses to New York for payment by them to you?

A. Where do I usually make them up?

Q. Yes.

A. I usually make them out after I get back home.

Q. Here in Atlanta?

A. Here in Atlanta. Yes, sir.

Q. Have you ever resided in the State of Alabama?

A. Yes, sir.

Q. When?

A. From March of 1950 until December 31, 1950.

Q. Since December 31st, 1950, have you ever had a residence in Alabama?

A. No, sir.

Q. Since the May—July, 1958, have you been a resident of the City of Atlanta, since July, 1958?

A. Yes. Of course, I actually moved my family down here in July, 1958. I think I used my mother-in-law's mailing address here in Atlanta since May of 1958. I was moving around, there was so much happening at that time, I didn't stay anywhere.

Q. When did you take up residence in Atlanta on a permanent basis?

A. July, 1958.

Q. Since that time have you continuously—

A. Yes, sir.

Q. Have you maintained your home and resided in Atlanta?

A. Yes, sir.

Mr. Embry: That was all the questions I had to ask.

Mr. Nachman: I will continue to read now.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. When you have gone to Montgomery on these trips you have described, where do you generally stay?

A. The Jefferson Davis.

Q. You stayed there on all those occasions in Montgomery?

A. Yes, sir.

[fol. 536] Q. And I take it when you went to Clayton and Union Springs you used Montgomery as your base of operation, so to speak?

A. Yes. I stayed—stayed at some motel in a town near Clayton one night and the rest of the time at the Jefferson Davis.

Mr. Nachman: Now, Your Honor, we have the deposition of Mr. Thomas M. Hurley which is considerably shorter. I will continue the reading.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Would you state your name for the Record, Mr. Hurley?

A. Thomas M. Hurley.

Q. Where do you live, Mr. Hurley?

A. Atlanta.

Q. Are you employed by The New York Times?

A. No, sir.

Q. Do you have any relationship or business connections with The New York Times?

A. I'm employed by The New York Times Sales, Inc.

Q. The New York Times Sales, Inc.?

A. That's right, sir.

Q. And that's a separate corporation from The New York Times?

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

Q. I don't suppose you know who owns the stock of The New York Times Sales, Inc.?

A. No, sir.

Q. What are your duties with The New York Times Sales, Inc.?

A. I'm the manager of the Atlanta office of the New York Times Sales, Inc.

Q. Do you happen to know, limiting it to the Southern Region of the country, whether or not the New York Times Sales has other offices, if any?

A. I really don't know that.

Q. Do you have an office in Alabama in Birmingham?

A. No, sir.

Q. Do you have any employees in Birmingham?

[fol. 537] A. No, sir.

Q. Do you know whether they have offices in any of the Southern states other than Georgia?

A. There is an office in Miami, but I wouldn't know how the thing is set up.

- Q. Now, in a general way, what are your duties?
- A. I solicit advertising.
- Q. Throughout the country or just in certain states?
- A. No, sir, in the South.
- Q. Is Alabama included?
- A. Yes, sir.
- Q. And do you go into those states and solicit advertising?
- A. Yes, sir. That's right.
- Q. And you go into Alabama and solicit advertising?
- A. That's right.
- Q. Do you solicit advertising for publications generally or just for The New York Times?
- A. Just for The New York Times.
- Q. And for no other publications?
- A. No, sir.
- Q. Do you know whether the New York Sales, Inc.—or the New York Times Sales, Inc., anywhere in the United States solicits advertising for any publication other than The New York Times?
- A. I don't know.
- Q. You know of no reason why the policies differ with regard to your area than it is elsewhere in the country?
- A. Well, in one other city, they have a publisher's representative who is not connected at all with The New York Times Sales, Inc. That's Detroit.
- Q. Who is the publisher's representative?
- A. Sawyer, Ferguson and Walker.
- Q. Sawyer, Ferguson and Walker also solicit advertising for The New York Times and other publications?
- A. In Detroit.
- [fol. 538] Q. In Detroit?
- A. Yes, sir.
- Q. And nowhere else?
- A. That's right.
- Q. How long have you been employed in this capacity, Mr. Hurley?
- A. I went to work with The New York Times Sales, Inc., on June 8th, 1959.
- Q. So just about a year then?
- A. That's right.

Q. During that period of time—before I ask that, strike that, please ma'am—would you outline in a general way how you go about soliciting an ad for The New York Times and include in that how the ad, after it's contracted for, is made up and sent in to The Times and so on, the general procedure whereby an ad gets from an advertiser to the paper?

A. Generally speaking, I and other salesmen like me, call on the advertisers and advertising agencies. And again generally speaking, the advertiser places advertising in a publication through an advertising agency and the order contract for such advertising goes from the advertising agency to the publication.

Q. Where is the ad made up, in New York or—

A. The actual ad is made up by the advertising agency for the advertiser and it comes into New York in a place or mat form.

Q. And the mat is made up outside of New York?

A. The original mat.

Mr. Baker: Mr. Daly then said, "Well, it assumes that it's made up outside of New York. It would depend on where the advertising agency is that makes it up." Then the answer was, "It could be." Then, Mr. Embry said, "What we mean is if it's an advertising agency outside of New York." Then, Mr. Daly said, "It would probably be made up outside so that was the objection to the question."

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Have you, during the period of time you have worked for this company, solicited advertising in Alabama?

[fol. 539] A. Yes.

Mr. Embry: We want to object to that, Your Honor. We object once again of the time element, Your Honor.

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

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Would you state how a particular ad that you select, any one at random you have solicited successfully, how—trace the procedure from the time you solicit the ad until the time it gets to The New York Times? As I say, select any one as an example. Just a typical example.

A. Well, the Birmingham Committee of One Hundred, for example, the ad is made up by the Sparrow Advertising Agency.

Q. In Birmingham?

A. That's right.

Q. In other words, you solicit The Committee of One Hundred?

A. And the agency.

Q. And the agency?

A. The agency in most cases will—will make up the schedule and decide on which publication the ad will go into subject to the approval of the advertiser.

Q. Do you go first to a representative, let's say, of The Committee of One Hundred, whoever has authority to place advertising for this committee?

A. Not necessarily. I might go to the agency first. In this particular case, I didn't see anybody on The Committee of One Hundred for this purpose.

Q. You go to the agency, Sparrow, and you speak to the agency—

Mr. Embry: Then, Your Honor, I interrupted and I said, "Just a minute! You nodded in the affirmative. Let me instruct you, Mr. Hurley, she is having to look at what she's writing and you will have to actually give an answer rather than nod so the Record will show what the answer was."

[fol. 540] By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. You go call on the agency?

A. I go to both.

Q. You go to both. Sometimes you go directly to the advertiser?

A. That's right.

Q. Let's take that as an example. You go directly to the

advertiser and, I take it, discuss that person's advertising in The Times?

A. That's right.

Q. Then, on the assumption that you work out some sort of agreement about it, how is the agreement formalized?

Mr. Embry: We objected to that then and we do now on the grounds that it doesn't call for any relation as to an actual transaction or an actual event, Your Honor.

The Court: Overruled. I will let it in.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. Let's assume that after such a conversation the advertiser agrees with you he should place an ad in The New York Times. What is the procedure from that point on? Do you make any sort of a contract with him?

A. I personally don't. No.

Q. Does The New York Times Sales, Inc.?

A. I wouldn't know. The order and contract is sent from the agency to New York. It's accepted or rejected.

Q. After you have talked to such a person and it has been decided that this person will place an ad in The Times, what is your next procedure?

A. Well, if they have agreed to put an ad in The Times, I don't do anything else.

Q. Do you notify anybody or does the advertiser notify anybody that such a decision has been made?

A. I report my activities to The New York office.

Q. In the course of your activities, do you agree with the advertiser on the amount of space he will take?

[fol. 541] A. He plans a certain schedule. It might be one ad or might be one a month for six months or something like that.

Q. Does he work out with you that plan?

A. Yes, in some cases.

Q. And, I take it, discusses whether it will be one ad or a series of ads?

A. That's right.

Q. And if a series of ads, at what intervals?

A. That's right.

Q. And over what period of time?

A. That's right.

Q. And do you also discuss whether it will go in a daily issue of The Times or a Sunday issue?

A. Yes, sir.

Q. And if the daily issue, which day?

A. Correct.

Q. Do you discuss the amount of space it will occupy?

A. That's right.

Q. And, I take it, some ads are—maybe I'm incorrect about this—are some ads more expensive than others in terms of their format—that is, is an ad with a drawing or illustration more expensive than an ad with just words in it?

A. No, sir.

Q. That doesn't make any difference?

A. No, sir.

Q. Do you have any discussion about the format of the ad that will go in?

A. No, sir.

Q. That's left to someone other than yourself?

A. I just sell the space only. I have nothing to do with the makeup or the content of the ad.

Q. Do you have with you any display samples or display materials which you show the prospective advertiser?

A. With me now?

[fol. 542] Q. Not now. When you go on a trip to visit—

A. Yes, sir.

Q. And you show him various ads?

A. No, I don't show him ads. I might on some occasions, depending on what we're trying to do. Mostly, I discuss the—why an advertiser should be in The New York Times, or why I think he should be, in terms of what—the people they want to reach.

Q. I take it you have some familiarity with his business or his endeavor so that you can—

A. That's right.

Q. So that you can explain to him why you think it's important for him to advertise in The Times?

A. That's right.

Q. Do you have any sort of statistics to discuss with him as to the advantages of advertising?

A. Yes, sir.

Q. Mr. Hurley, since you've had this employment with The New York Times Sales, Inc., approximately how many ads have you solicited from the State of Alabama—from the State of Alabama, I mean from persons or firms or corporations or the State itself or any municipality or county?

Mr. Embry: We object to that, Your Honor. He does not specify any period of time. We object to it on our time element objection. We object in that it goes back further in point of time than January—

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

Mr. Embry: We except.

Mr. Nachman: Read the answer beginning at line 14 on page 66, Mr. Baker.

A. Well, as far as number of ads that went in the paper, sometimes an ad gets in the paper that I don't solicit. It's like we call "over the transom". Somebody wants to place an ad and it goes in direct, or an agency I might not even know about.

[fol. 543] Q. I mean you yourself have solicited in the manner you have described?

A. I would say maybe three or four.

Q. Three or four during this year. Did you solicit—

Mr. Embry: Then, Your Honor, I said, "You mean a year from 1959?"

Mr. Nachman: Then I continued, Your Honor.

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

Q. From June 8th, 1959, up to the present time, approximately a year. Were you involved in the solicitation of an ad for the State of Alabama during this time?

A. Yes, sir.

Q. I believe that sold for around \$5,200.00, did it not?

A. No, it was less than that.

Q. Do you recall how much it was?

A. Not specifically, no.

Q. Was it a great deal less? By that, I mean more than a thousand dollars less than \$5,200.00?

A. Yes, it was less than \$5,000.

Q. Was it less than \$3,000?

A. No.

Q. More than three and less than five. Do you call on corporations with regard to advertising in the financial section of The Times?

A. Yes, sir.

Q. And do you solicit advertisements there for declaration of dividends—

A. Yes, sir.

Q. Stockholders' meetings and that kind of thing? Does a Mr. Robert Sullivan have any connection with your process?

A. When he's—when he's in the area, he's under my direction actually.

Q. By whom is he employed?

A. I presume he's employed by The New York Times.

Q. As distinguished from The New York Times Sales, Inc.?

A. Yes.

Q. Does he also come into Alabama?

[fol. 544] A. He has been in Alabama once since—

Q. Since your tenure?

A. That's right.

Q. Do you happen to know what the purpose of that visit was and what he did while he was on that visit?

A. Yes, sir. He was in Mobile, Montgomery and Birmingham.

Q. Soliciting advertisements?

A. That's right.

Q. He called on persons there?

A. That's right.

Q. Do you happen to know the approximate date of that trip?

Mr. Embry: We object to that, if the Court please on a time element basis.

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

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

Mr. Nachman: Read the answer at line 14, page 68.

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

A. The latter part of October, 1959.

Q. What is the contractual relationship, if any, between New York Times Sales, Inc., and the Sparrow Advertising Agency in Birmingham, if you know?

A. What is what, sir?

Q. Is there any contractual relationship or business relationship between The New York Times Sales and Sparrow Advertising Agency in Birmingham?

A. It's just another advertising agency that New York Times Sales, Inc., calls on.

Q. I see. In other words, what you do, if I'm correct, is to call on advertisers and also call on advertising agencies?

A. That's right.

Q. And the purpose of calling on advertising agencies, I take it, is to urge them to get their clients to advertise in The New York Times?

A. That's right.

[fol. 545] Q. I take it that your expenses on these trips are paid by The New York Times Sales, Inc.?

A. That's right.

Q. And do you submit a regular form expense account?

A. Yes.

Q. Their main offices are in New York City?

A. Yes.

Q. Do you recall seeing, within the last two weeks, an ad for the City of Decatur, Alabama?

A. I saw an ad from Decatur on the Housing Authority.

Q. Yes. Were you instrumental in obtaining that ad?

A. No, sir.

Q. Do you happen to know how that was obtained?

A. No, sir.

Q. I may have covered this earlier, Mr. Hurley, but if you don't mind my being repetitive, do you know what the relationship is, the business relationship, between The New York Times Company and The New York Times Sales, Inc.?

A. Not really, no, sir.

Q. But I believe you did testify, didn't you, that the New

York Times Sales, Inc., obtains advertisements solely for The New York Times?

A. In my case.

Mr. Nachman: At this time, Mr. Daly said, "You mean by obtain, solicit?"

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

Q. It doesn't solicit advertising for any other publication than The New York Times?

A. No, sir.

Mr. Embry: At this time I said, "As far as you know?"

By Mr. M. R. Nachman, Jr.: (Continues reading from deposition.)

A. As far as I know.

Q. As far as you know, it doesn't?

[fol. 546] A. From my own operation here, I don't.

Q. You don't. And there is nobody else in this area who does; that is, nobody else connected with New York Times Sales, Inc. employed?

A. I have an assistant and a secretary here in Atlanta.

Q. And their procedure is as yours, namely, to solicit for nobody other than The New York Times?

A. That's right.

Q. So it would be fair to say, then, when you go into Alabama to solicit advertising, you solicit advertising only for The New York Times. Is that correct?

A. That's right.

Mr. Nachman: Then, I said, "I believe that's all."

Mr. Embry: Then I began my examination again.

By Mr. T. Eric Embry: (Reading from deposition.)

Q. Since June 8, 1959, if I understand you correctly, and the reason I'm asking is so I'll be sure I understand you, you have been into the State of Alabama on two occasions. Is that right?

A. Personally, I have been. And my assistant twice. There have been four trips from this office.

Mr. Embry: Does the Record show when this was taken? Is this deposition dated?

Mr. Nachman: Yes, it shows. I think it was June 3rd, 1960.

Mr. Embry: Let the Record show, Your Honor, that it was taken on June 3rd, 1960.

The Court: All right. The Record will so note.

By Mr. T. Eric Embry: (Continues reading from deposition.)

Q. Four separate occasions when any representative of The New York Times Sales, Inc. solicited advertising within the State of Alabama?

A. Yes.

Q. Since June 8th, 1959?

A. If you include Mr. Sullivan's trip, it would be five.

[fol. 547] Q. Five different occasions in the year?

A. Well, just a minute, sir. The office here was opened on July 1st.

Q. All right, since July 1st, 1959?

A. Those two trips by me and two by my assistant and one by Mr. Sullivan.

Q. Have you ever at any time, or has anyone in your office on those occasions you have just testified about, ever made a contract or accepted an order for advertising when you were there soliciting advertising in behalf of your employer, The New York Times Sales, Inc., to be placed in The New York Times?

A. No, sir.

Q. From what place do you submit your expense accounts that you have testified about to your employer, The New York Times Sales, Inc.?

A. From what place?

Q. When do you make them up and send them to New York from?

A. Atlanta.

Q. Atlanta, Georgia?

A. That's right.

Q. Do you reside in the City of Atlanta, Georgia?

A. I do.

Q. How long have you resided continuously in the City of Atlanta, Georgia, maintained your residence here?

A. Since about—

Q. From, and prior to, the present day, June 3rd, 1960, back how far?

A. Until December, 1950.

Q. 1950?

A. Yes, sir.

Q. Have you ever been a resident of the State of Alabama?

A. No, sir.

Mr. Embry: Then, Your Honor, I said, "Thank you."

The Court: Does that finish it?

Mr. Embry: No, Your Honor. I will read Lawyer Gray's examination.

[fol. 548] By Mr. T. Eric Embry: (Continues reading from deposition—Lawyer Gray's examination.)

Q. Mr. Hurley, have you or anyone from your office ever solicited any ads from Reverend Ralph D. Abernathy, one of the defendants in this case?

A. No, sir.

Q. Have you or any person in your office ever solicited any advertisement from Reverend Fred L. Shuttlesworth, one of the defendants in this case?

A. No, sir.

Q. The same question with reference to a Reverend S. S. Seay, Sr.?

A. No, sir.

Q. The same question with reference to Reverend J. E. Lowery?

A. No, sir.

Q. Will you tell us whether or not either of those named defendants have approached you or anyone in your office to secure space for any type of advertisement to be carried in The New York Times?

A. No, sir.

Q. Do you have any personal knowledge as to how the ad which appeared on Page 25 of The New York Times of March 29, 1960, how it was obtained?

A. No, sir.

Q. Or who obtained it?

A. No, sir.

Mr. Embry: At this time, Your Honor, Lawyer Gray said, "That's all."

Mr. Nachman: Then I continued to ask some more questions, Your Honor.

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

(Continues reading from deposition.)

Q. Just a couple of more questions, Mr. Hurley. You say you went into Alabama, you and your assistant, on four occasions—you twice and he twice?

A. That's right.

Q. How long a period of time were you or your assistant in Alabama on those occasions?

[fol. 549] A. In my case, I was two days one time and five days another; and in his case, he was one day on one occasion and two days on another.

Q. Do you happen to know how long Mr. Sullivan was in Alabama?

A. I would say around, probably a little over a week.

Q. What is the name of your assistant?

A. Mr. Frank Monger.

Q. Now, who, exactly is Mr. Sullivan in terms of his relationship with The New York Times Sales, Inc.?

A. Who is he?

Q. Yes, what relationship does he have with The New York Times Sales, Inc., or The New York Times?

A. He's an advertising representative.

Q. Of the paper?

A. That's right.

Q. And he's employed by the paper itself?

A. I really don't know. I think he is.

NEW YORK TIMES ASSIGNMENT OF ADDITIONAL GROUNDS
OF OBJECTIONS

Mr. Embry: Under the stipulation and agreements had throughout the hearing on the Motion to Quash in the L. B. Sullivan case wherein it was agreed that counsel for The New York Times Company could assign any additional grounds of objections to questions propounded to the various witnesses and to the introduction of documentary evidence that they saw fit so to do, such stipulation being for the purpose of saving the Court's time on the original hearing, the defendant, The New York Times Company, wishes to and does assign the following additional grounds of objection. To each objection made originally to questions propounded to the witnesses and the introduction of documentary evidence, that the questions called for a mental operation of the witness and not facts and that the questions called for an answer which does not tend to prove or disprove whether Don McKee and John Chadwick were agents of The New York Times Company so that purported service upon McKee would constitute valid service upon this defendant. It does not tend to prove whether or not the Times did business in Alabama or whether the cause of action attempted to be stated in the [fol. 549a] complainant's cause accrued from or was incident to the doing of business or performance of work or service in Alabama by The New York Times Company or its agents, servants or employees and that these same grounds of objection apply to the introduction of the various exhibits offered by the Plaintiff. Further grounds of objection to questions propounded to the various witnesses as well as to the introduction of documentary evidence are that the question and the evidence sought to be adduced by an answer thereto and the documents would not be material or legal evidence such as would authorize a construction by the Court of Section 199 (1) of Title 7, Code of Alabama, 1940, that would permit the Court to assert jurisdiction over the person of The New York Times Company, a corporation, and to admit such evidence for such purpose would be such a misapplication of the law as would deprive this defendant of its property without

due process of law in contravention or violation of the Fourteenth Amendment of the Constitution of the United States and in contravention of Article I, Section 6, of the Constitution of Alabama 1901, and would deny to this defendant equal protection of the law in contravention or violation of the Fourteenth Amendment of the Constitution of The United States and would constitute an abridgement of freedom of the press in contravention or violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Inter-State Commerce in contravention or violation of Article I, Section 8 of the Constitution of the United States and such questions and the evidence sought to be adduced therefrom and such documents would be illegal and immaterial as a basis for the Court construing or holding that Don McKee was an agent of this defendant upon whom service of process might be had so as to support a holding by the Court that any purported service upon him would subject this defendant to the jurisdiction of this Court and the admission of such evidence and the holding on the basis of such evidence that he was an agent so as to subject this defendant to the jurisdiction of this Court, would deprive this defendant of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States and in violation of Article I, Section 6 of the Constitution of Alabama, 1901, and would deny to this defendant equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States and would abridge freedom of the press in violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Inter-State commerce in violation of Article I, Section 8 of the Constitution of the United States.

Mr. Nachman: Then, Your Honor, I said, "That's all." We offer this in evidence, if the Court please.

(Depositions of Claude F. Sitton and Thomas M. Hurley taken before Burma Denny, Notary Public and Deposition Commissioner at 1504 Healey Building, Atlanta, Georgia, Friday, June 3, 1960 in the matter of L. B. Sullivan versus The New York Times Company, a corporation, et al. No. 580 and the exhibit attached thereto, offered and received in evidence and identified as Plaintiff's Exhibit No. 315.)

Mr. Baker: At this time, Your Honor, we want to offer into evidence the records furnished us by The New York Times in response to the subpoena duces tecum calling for [fol. 550] their original records showing the sales of The Index of the Digest of The New York Times in Alabama. Our authority for offering them is the case of Woodstock Iron Company against Reid and Partlow, 84 Ala., 495. In that case the Judge said this, "A subpoena duces tecum was issued and served on the secretary of the defendant corporation requiring him to produce all books and papers belonging to the defendant containing any entries or having any records to the coaling contract between the plaintiffs and the defendant. When the case was first called for trial, the defense counsel stated that a book called the coal delivery book had been overlooked and asked that the case stand over until the next day when they gave assurance that it would be brought into Court. The case was postponed again and called for trial the next morning when plaintiff's counsel called for the book and in response thereto defendant's counsel produced the book and offered it in evidence and delivered it to plaintiff's counsel in open Court. The production of the book under such circumstances as a book belonging to the defendant was an admission that it belonged to and was kept by the defendant having been produced in open Court when called for, it was admissible in evidence without further proof or identification." Now, Your Honor, that fits us like a glove. That was a case in 1887, Your Honor. Now, these were subpoenaed and the defendant went to the Supreme Court of Alabama in an attempt not to produce them. All efforts failed and they were produced and de-

livered to the Court or the Clerk and the Clerk has identified them. They were produced as original correct records and under this case without any further identification—we tried to prove them by the only witness that touched on the subject at all and he denied any knowledge of them. We think we are entitled to offer them in evidence. Having been produced by the defendant it is an admission by them that they are a part of these original records kept in the usual course of business.

Mr. Embry: If the Court please, I listened to his reading of the facts in that case and I think that under the facts in that case there is a distinguishing difference. Apparently from the opinion of the Court in that case there had occurred in the trial of the cause some evidence which [fol. 551] sufficiently identified that which they required by subpoena duces tecum and had asked that someone bring in a witness—now, Your Honor, there has been a distinction in the law of Alabama that I happen to be familiar with with respect to the issuance of a subpoena duces tecum by one party to the other—those documents or other documentary evidence sought to be produced upon notice or motion heard before the Court where the Court ordered it produced. Judge McElroy dealt with this a number of times. They say when you issue a subpoena duces tecum, when you issue that subpoena, it makes the other side—it makes that evidence admissible. In other words, I may have a piece of evidence and he subpoenas me to bring it in and I—

The Court: I understand the question on subpoena duces tecum. He has got to bring the paper to Court and then it is a question of law as to whether it is admissible or not. Is that the point?

Mr. Embry: That's right, Your Honor. There is still that same question of law involved. Besides that—that actually belabors what is before Your Honor. There is no evidence from which these documents could be shown to have any evidentiary value or shed any light on any issue in the case. Aside from their not having been identified, Your Honor, there is no evidence as to which department record they are or what they purport to be and they do

not show on their face what they are supposed to be. We have been all through that a number of times.

The Court: Well, let me see one of them and if I see anything there that I ought not to remember, I will erase it from my mind.

Mr. Baker: They are not a thing in the world, Your Honor, but a group of cards showing the Index was sold and indicated by these separate cards. These are account cards. I might point out that they themselves in direct examination to Mr. McKee brought out the extent and the distribution of The New York Times Index and The New York Times microfilm service in Alabama.

Mr. Embry: Your Honor, Mr. McKee's testimony was [fol. 552] from a financial approach. He testified from the books of finance, the books of accounts as to what the distribution of that thing was and he told them in his cross examination—he told them that they were not records of the Comptroller's office and they were not.

Mr. Baker: There is no question but that they were produced by the defendant pursuant to the motion to produce.

The Court: I think they are admissible. I will let them in and give you an exception to each separate card.

Mr. Embry: All right, Your Honor. We object on the specific grounds that the exhibits numbered—well, they haven't been numbered as yet by the Court Reporter but we would like to object to each one separately and severally being offered in evidence and reserve an exception to the Court's ruling.

The Reporter: They are numbered 316 to 333, sir.

Mr. Embry: We object to the introduction of each one of these separately and severally on the grounds that they have not been identified. They have not been shown to be admissible or to contain evidence that would shed any light on the issue of the defendant corporation doing business in the State of Alabama during a period of time relevant to the inquiry before the Court on the question of whether or not The New York Times Company was doing business in the State of Alabama at or about the time of attempted service in April of 1960 and on the further ground that the records themselves disclosed that these exhibits, Numbered 316 through 333 show on their face

that they cover a period of time extending as far back as 1955. They are incompetent, irrelevant and immaterial with regard to the issues involved in the Motion to Quash. They do not tend to prove or disprove any of the grounds of the motion or to prove or disprove whether or not this defendant is subject to the jurisdiction of the Court in this case.

The Court: I will let them in and you may have an exception.

Mr. Embry: We except to the Court's ruling and to each exhibit separately and severally.

[fol. 553] (Eighteen account cards, pertaining to Index, offered and received in evidence and identified as Plaintiffs' Exhibits 316 through 333, inclusive.)

Mr. Baker: On the same theory and based on the same case, Your Honor, thirteen records—thirteen cards showing the sale to customers in the State of Alabama of microfilm sets of The New York Times.

The Court: Well, that would be the same objections, same ruling and same exception, wouldn't it?

Mr. Embry: Your Honor, we object to each of these exhibits numbered 334 through and including 346 separately and severally on the same grounds assigned to the immediate preceding exhibits just offered into evidence identified as 316 through 333, inclusive. We object to them separately and severally understanding that Your Honor has indicated that he will admit them and we except to the ruling of the Court in so admitting them.

(Thirteen Account Cards pertaining to microfilm, offered and received in evidence and identified as Plaintiff's Exhibits 334 through and including 346.)

Mr. Nachman: Your Honor, a point has been raised about my affidavit, that the affidavit itself does not recite that I was a member of the firm of attorneys signed to the Complaint as attorneys for the Plaintiff and I will ask does the Court take judicial knowledge or should I state that I was a member of the firm of Steiner, Crum and Baker—

[fol. 554] Mr. Baker: Go ahead and take the witness stand. There is another question I want to ask you anyhow.

The Court: I think the Records of the Court will indicate that you were and are a member of the firm.

(Off the Record discussion between counsel.)

PAUL D. FULLER, having been duly sworn, was called as a witness for the Plaintiffs and testified as follows:

Direct examination.

By Mr. Calvin M. Whitesell:

Q. This is Mr. Paul D. Fuller?

A. Yes, sir.

Q. What is your occupation, Mr. Fuller?

A. General Manager of the Montgomery Chamber of Commerce.

Q. Do you live in Montgomery, sir?

A. Yes, sir.

Q. How long have you been Manager of the Chamber of Commerce?

A. For twenty-five years the 1st of next April.

Q. In that position, Mr. Fuller, have you had occasion in the last eighteen months to be contacted by The New York Times or their representative for the solicitation of ads?

Mr. MacLeod: Just a minute, Mr. Fuller, please. I would like a chance to interpose my objection. I object to that question. In the first place, he asked what happened in the last eighteen months and that would be too remote to prove or disprove the question of whether or not the New York Times was doing business in this State on or about April of 1960. In the next place it is objectionable because he asked Mr. Fuller if he had been contacted by an agent or representative—

Mr. Loeb: I believe he used the word "representative".

[fol. 555] Mr. MacLeod: Representative calling on him and that would be a conclusion as to who is a representa-

tive of The New York Times and invades the province of the Court and I believe he could ask the question—

The Court: Well, let's leave out the word agent because that's a question of law. Otherwise, I think the question is good and I give you an exception.

Mr. MacLeod: We except.

The Witness: I have been contacted by representatives of The New York Times both over the telephone and in person.

Mr. MacLeod: I move to exclude the last part of his answer, Your Honor, as not being responsive to the question.

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

Mr. MacLeod: We except.

By Mr. Calvin M. Whitesell: (Continuing)

Q. Are you acquainted with the name of Thomas M. Hurley?

A. Yes. Mr. Hurley has called on me.

Mr. Whitesell: Do you want to object to that, Mr. MacLeod?

Mr. MacLeod: I would like to move to exclude the part of his answer where he said Mr. Hurley called on him as not being responsive to the question.

Mr. Whitesell: I was going to ask him that in the next question—

The Court: I will let it in. If he doesn't connect it up—

Mr. MacLeod: We except.

By Mr. Calvin M. Whitesell: (Continuing)

Q. Has Mr. Hurley called on you?

A. Yes. He called on me and left his card. I was out and he left a note that he would call back and he called back later in the day.

Q. Did you have a conversation—

[fol. 556] Mr. MacLeod: Just a minute. I would like to move to exclude that and I would like a chance to question the witness on Voir Dire for just a minute about that answer if it is all right.

Mr. Baker: Your Honor, we are going to object to his questioning the witness on Voir Dire at this time—

The Court: Let him go ahead.

By Mr. Roderick M. MacLeod, Jr.:

Q. Do you know of your own knowledge—were you present when some unknown or some unidentified gentleman called at your place of business and left a business card? Were you present at that time?

A. I was not present when he left his card but I was present when he came back—

Q. You didn't see who left the card there, did you?

A. No, I couldn't swear he left it but—

Q. You say someone called you on the phone later?

A. Yes. I had several telephone calls from New York—

Q. Did you recognize the voice of the person who called you over the telephone?

A. No, I did not. He represented himself as from The New York Times—

The Court: Well, now, did I understand you to say that later on in the day somebody came representing some newspaper and talked with you?

The Witness: He came back—

The Court: What newspaper did he say he was from?

The Witness: The New York Times. This man left his card—

The Court: Was it the same man?

The Witness: Yes, I found the card at my office—

The Court: I think that testimony is competent. I will give you an exception.

Mr. MacLeod: We except, Your Honor.

[fol. 557] By Mr. Calvin M. Whitesell: (Continuing)

Q. Mr. Fuller, the man who left his card came back later that day, did he not?

A. Yes, he came back later that day.

Q. And identified himself to you?

A. That's right.

Q. As Thomas Hurley?

A. As Thomas Hurley. Yes, sir.

Q. A representative of The New York Times.

A. Of the New York Times. Yes, sir.

Q. And did he at that time solicit from you advertising in The New York Times?

A. He did.

Mr. MacLeod: Your Honor, I object to the "solicit from him advertising from The New York Times." That calls for a conclusion on the part of the witness—

The Court: I think everybody knows what the word solicit means. I will let it in and give you an exception.

Mr. MacLeod: We except.

By Mr. Calvin M. Whitesell: (Continuing)

Q. Have you at any time from the period January 1st, 1959 to April 1960 had telephone calls by long distance from people who held themselves out as representatives of The New York Times to solicit advertising from you?

Mr. MacLeod: If the Court please, I object to that. In the first place, it calls for a period of time that is too remote and too far removed from the day of purported service in this case to have any bearing on the question of whether or not this defendant was doing business in the State at that time and secondly, it is objectionable because it calls for hearsay testimony and it calls for him to relate what was said in a telephone conversation by someone whom he did not know and the call was placed from the other end of the line to him and he could not possibly know who it was calling and we think it is ob-[fol. 558] jective on that ground.

Mr. Whitesell: Your Honor, I am trying to limit it to the exact period and scope of time that they have placed on this matter—

The Court: Well, I understand that but the fellow could call you up and say that I represent a distillery company or something and you don't know who he is and you have just heard his voice. Is that admissible?

Mr. Whitesell: What I want to know, Your Honor, is did they identify themselves to him—

The Court: Well, supposing the fellow on the other end of the line says, "I'm Governor Patterson, or something like that?" Unless you have got something to connect it up—now, like the fellow with the card where he came back later on in the afternoon or if a man calls up and fifteen minutes later he comes in—

Mr. Whitesell: Did these people identify themselves to you by name, Mr. Fuller?

Mr. MacLeod: Your Honor, I object to that.

The Court: Yes. I sustain the objection. I just don't see how a fellow could call you up on the telephone and say I am so and so and—

Mr. Whitesell: You mean, Your Honor, that if Mr. Thomas Hurley in Atlanta called him and said—

The Court: Well, if he didn't know Thomas Hurley's voice or didn't know anything about him, then I don't see how he could.

By Mr. Calvin M. Whitesell: (Continuing)

Q. Did Mr. Thomas M. Hurley call you?

A. I don't know—

The Court: He said he doesn't know.

The Witness: I don't recall who it was that called me.

By Mr. Calvin M. Whitesell: (Continuing)

Q. Have you received in the mail during the period from January 1st, 1959 to April, 1960 brochures and other matter [fol. 559] which solicited advertisements from you in the New York Times?

Mr. MacLeod: Your Honor, I object to that first on the grounds that it calls for a period of time too remote to have any relevancy or pertinency or to shed any light on the question of whether this defendant was doing business in the State at the time of the purported service of process. I object on the further ground that anything he received in the mail would not be admissible and have no bearing on the fact as to whether or not The New York Times was doing business in this state and he couldn't have known who sent it from New York.

The Court: Well, to be consistent, I will have to let it in. Let me overrule your objection and give you an exception.

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

Mr. Beddow: Your Honor, may we get in one more ground of objection?

The Court: Go ahead.

Mr. MacLeod: One other ground, Your Honor. Whatever he received in the mail would in itself be the best evidence of what its contents were and what it purported to be.

By Mr. Calvin M. Whitesell: (Continuing)

Q. You can read, can't you, Mr. Fuller?

A. Yes, sir.

Q. Did you read these things that came to you in the mail?

A. Yes, sir.

The Court: Do you have them now?

The Witness: No, sir. I threw them in the waste basket.

Mr. MacLeod: Your Honor, we move to exclude the statement of the witness as not responsive to any question—

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

Mr. MacLeod: We except.

By Mr. Calvin M. Whitesell: (Continuing)

Q. Did you take an ad in The New York Times for the [fol. 560] Chamber of Commerce for the City of Montgomery?

A. I did.

Q. Would you state for the Court when that was?

A. In the latter part of the Folsom administration they had a special Alabama edition in a section of The New York Times.

The Court: What was it about?

The Witness: It was advertising the State of Alabama. We took an ad and as I recall it, it cost us about \$400 but it was pretty much on pressure from the State Department—

Mr. MacLeod: Your Honor, I hate to interrupt the witness but all of that is, of course, completely immaterial—

The Court: When did the Folsom administration go out?

The Witness: It went out in January of 1959.

Mr. MacLeod: Your Honor, I move to exclude his testimony. It is testimony of a period of time that too remote from the time of the purported—

The Court: Well, I have been ruling against you on that. Let me let that in and give you an exception.

Mr. MacLeod: We except.

Mr. Whitesell: In the latter part of 1958—

The Witness: I can dig up my files and find out exactly when it was if you want me to.

The Court: Well, we will take judicial notice as to when he went out of office. Go ahead.

By Mr. Calvin M. Whitesell: (Continuing)

Q. Did you pay them for that ad?

A. I did. I paid the advertising agency. I paid the Lynn Advertising Agency.

Q. You paid the Lynn Advertising Agency?

A. Yes, sir.

Q. They placed the ad for you?

A. They placed the ad for us.

Q. Did a representative of The New York Times come [fol. 561] to Montgomery and go over this ad with you in your office?

A. They did.

Q. Prior to the time—

Mr. Beddow: If the Court please—just a minute! I would like the Court to instruct the witness not to answer the questions until we have a chance to put in our objection. I would like Your Honor to instruct him not to answer these questions before we have a chance to object—

The Court: Well, he doesn't know whether you are going to object or not but—

Mr. Beddow: Well, we were going to object but he answered the question—

The Court: Well, make your objection.

The Witness: If you were going to object, I wouldn't have answered—

Mr. Beddow: Let's get the Record straight, Your Honor. Will you—

The Court: Well, he will pause until the objection is made.

Mr. Beddow: Your Honor, will you exclude that answer—

The Court: I will exclude the answer and if you want to re-ask it then you may get in your objection.

Mr. Beddow: All right, sir. That's what I wanted.

The Court: Go ahead.

By Mr. Calvin M. Whitesell: (Continuing)

Q. Did a representative of The New York Times come to your office and discuss the placing of that ad that you have discussed placing in the paper with you?

Mr. Beddow: Now, just a minute—

The Court: Yes. Hold up and let Mr. Beddow make his objection.

Mr. MacLeod: Your Honor, we object to that on the [fol. 562] grounds that it is shown by his own testimony that it is too remote on the question of the issues before the Court and secondly, it calls upon him to decide who is a representative of The New York Times and it calls for a conclusion on the part of the witness and invades the province of the Court.

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

Mr. MacLeod: We except.

The Court: Go ahead and answer the question if you can.

The Witness: He did come in my office and discussed the placing of the ad with me and we told him we would handle it through the Lynn Advertising Agency.

By Mr. Calvin M. Whitesell: (Continuing)

Q. And you did so.

A. We did so. Yes, sir.

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

Cross examination.

By Mr. Roderick M. MacLeod, Jr:

Q. Mr. Fuller, let me ask you this. This ad you have talked about was placed in a special Alabama advertising supplement, was it not?

A. A special Alabama supplement, yes.

Q. To refresh your recollection that was sometime about October or November of 1957 when the work was done and the order made, was it not?

A. About 1958.

Q. Isn't it a fact, sir, that that supplement appeared in The Times on February 7th, 1958?

A. I am not just sure in my mind when it was placed but it was sometime in the latter part of 1958.

Q. Did you have an advertising agency representing you on that occasion?

A. I did.

Q. What was the name of that agency?

A. The William R. Lynn Advertising Agency.

Q. Is that located in Montgomery, Alabama?

[fol. 563] A. Yes, sir.

Q. Did you make a payment to the Lynn Advertising Agency for that ad?

A. Yes. They sent us a bill and a copy of the ad and we paid it. We paid it to him and he got his fifteen percent.

Q. You delivered your order for the ad through the Lynn Advertising Agency in Montgomery. Is that correct?

A. We did.

Q. You did not deliver it to a representative or any person who you thought was a representative of The New York Times, did you?

A. We discussed it with a representative of The New York Times—

Q. But you put the order through the Lynn Advertising Agency.

A. Yes. Frankly, we put it through them because he could get fifteen percent on it and he was handling our advertising and it didn't cost us any more and we kept fifteen per cent of it in Montgomery.

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

[fol. 563a] Reporter's and Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 1683]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
At Law

Case No. 27416

L. B. SULLIVAN, Plaintiff,

vs.

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

Transcript of Proceedings on Merits

Before: Hon. Walter B. Jones, Circuit Judge, Presiding, at the Court House, Montgomery, Alabama, Tuesday, November 1, 1960, Wednesday, November 2nd, 1960 and Thursday, November 3rd, 1960.

APPEARANCES:

For the Plaintiff: (L. B. Sullivan)

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

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

For the Defendant: (The New York Times)

Messrs. Lord, Day & Lord, Attorneys at Law, New York, N. Y. By: Thomas F. Daly, Esq., and Ronald S. Diana, Esq.

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

For the Defendants: (Ralph D. Abernathy, Fred L. Shutesworth, S. S. Seay, Sr., and J. E. Lowery)

Fred D. Gray, Esq., Montgomery, Alabama; Solomon S. Seay, Jr., Esq., Montgomery, Alabama, and Vernon Z. Crawford, Esq., Mobile, Alabama.

[fol. 1684]

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: What says the Plaintiff in the case of L. B. Sullivan versus The New York Times et al.?

Mr. Nachman: The Plaintiff is ready, Your Honor.

Mr. Embry: We are ready, Your Honor, but we have Plea No. 6 for Your Honor to pass on.

The Court: Were any demurrers filed?

Mr. Nachman: We have filed demurrers to that plea and also the pleas submitted to Your Honor on Friday.

The Court: Let me see the demurrers to refresh my recollection. Was one of them in regard to the New York Practice Act?

Mr. Nachman: Yes, Your Honor.

The Court: I believe the demurrer is good to that one.

Mr. Nachman: The other defendants are pleading in short by consent, Your Honor.

Lawyer Gray: That is correct, Your Honor. We plead in short by consent.

Mr. Embry: Your Honor, we ask to be permitted to examine the jurors for information of counsel under the statute. If the plaintiff doesn't desire to do it, we would like to, Your Honor.

Mr. Nachman: You mean examine the jurors through questions submitted to the Court?

Mr. Embry: I would like to examine them under voir dire, Your Honor, under the statute we have the right—

The Court: Well, let me see them for a minute. Do you have the questions?

Mr. Embry: No, sir. I have just got my notes.

The Court: Are they in shorthand or are they legible? Let me see them for a minute.

Mr. Embry: All right, Your Honor. I don't know whether they will make any sense to you or not though.

Mr. Nachman: Will these questions be asked by the Court or will they be asked by Mr. Embry?

Mr. Embry: Well, I will want to ask the questions—

The Court: I will let the lawyer ask them. It will save [fol. 1685] the Court from doing it.

Mr. Nachman: Well, are you going to examine them as a group or individually—

Mr. Beddow: We would like to challenge them twelve at the time, Your Honor. That will save time, Your Honor.

The Court: All right. Go ahead.

Mr. Nachman: Your Honor, some of these questions we don't think are proper unless Your Honor permits it—

(Off the Record Discussion Between Court and Counsel.)

Mr. Embry: Your Honor, I would like to state in the Record the questions you are not permitting me to ask of the jurors and I will state it for the Record outside the presence of the jury.

The Court: All right. Proceed.

Mr. Nachman: Your Honor, I assume that after Mr. Embry is through that Your Honor is going to qualify the jury with all the usual questions—

The Court: All the usual questions. Yes. I can do that now if you prefer, Mr. Embry.

Mr. Embry: That will be all right, Your Honor. That will get that out of the way first then.

COURT'S QUESTIONS TO QUALIFY THE JURY

The Court: Gentlemen of the jury, listen carefully to these questions that I am propounding to you because they are addressed individually to each and every juror in this Court Room. We are about to try the damage suit of L. B. Sullivan of Montgomery versus The New York Times Company, a corporation, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery. Is any member of the jury kin to Mr. Sullivan either by blood or

by marriage? Do any of you work for or own any stock in The New York Times Company, a corporation? The other defendants are Ralph D. Abernathy, Fred Shuttleworth, S. S. Seay, Sr., and J. E. Lowery. Does any juror work for them or have any connection with them whatsoever? Now, the lawyers in the case are the firm of Steiner, Crum and Baker, Mr. Nachman, Mr. Sam Rice Baker, Mr. Steiner and Calvin Whitesell. The lawyers for the defendant, The New York Times, are Mr. Roderick Beddow, Mr. Embry, Mr. Thomas Daly of New York, Mr. Diana—

Mr. Nachman: Your Honor, here is a list of the members of the firm of Lord, Day and Lord of New York:

The Court: Yes, gentlemen, are any of you kin to any of these members of the firm of Lord, Day and Lord of New York, Allen Foster, Sherman Baldwin, James S. Hemingway, Herbert Brownell, Louis M. Loeb, Thomas F. Daly, Harry J. Rudick, Kenneth E. Ryan, John D. Garrison, Charles W. Merritt, Garrard W. Glenn, Henry C. Blackiston, Franklin B. Lord, Jr., Edmund P. Rogers, Jr., R. Palmer Baker, Jr., Mason G. Kassel, Peter L. Keene and John W. Castles, III? Are any of you kin to any of these lawyers I have named? The lawyers for the other defendants are Fred Gray of Montgomery, Solomon Seay and V. Z. Crawford of Mobile. Do any of you have any connection with these lawyers? Has anyone of you got any opinion about this case whatsoever? All right. I think they are qualified. You may examine on voir dire.

EXAMINATION OF JURY PANEL ON VOIR DIRE

The Court: Do you want to ask your questions of the jurors on this side of the Court Room first and then the other side? Suppose you get this group first and then the other group.

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

The Court: Gentlemen of the Jury, you twelve on my left here will listen carefully to these questions being propounded to you by counsel for The New York Times. Counsel wants to ask you certain questions here which are permitted by the law of Alabama and I ask you to pay

close attention to them. Gentlemen, this is Mr. Embry, counsel for The New York Times. Go ahead.

Mr. Embry: Gentlemen, these are questions that are not designed to pry into your personal affairs but in selecting a jury an attorney wants to get all of the information he can about prospective jurors. These questions are not designed to embarrass you in any way but it is merely to gather information so that counsel may intelligently select the jury to try this case. I will address myself to you [fol. 1687] twelve gentlemen first. If there is any affirmative response to any of my questions, gentlemen, just raise your hands and indicate what the information is. Now, gentlemen of the jury, my name is Embry as Judge Jones indicated to you. This young man sitting here by my side is Roderick MacLeod and he is a member of my law firm and Mr. Roderick Beddow and we are law partners and we represent The New York Times Company along with Mr. Tom Daly of New York City of the firm of Lord, Day and Lord of general counsel and Mr. Rod Diana who is an associate of his. Now, representing the plaintiff in this case are the firms of Steiner, Crum and Baker. Now, are either of you gentlemen presently represented by or have you been represented by the firm of Steiner, Crum and Baker or the firm of Scott, Whitesell and Scott in the past?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

Mr. Embry: Are either one of you personally acquainted with Mr. L. B. Sullivan, the Plaintiff in this case? Do any of you consider yourself close friends of Mr. Sullivan? Now, gentlemen, this suit that Mr. Sullivan is maintaining here is a suit wherein Mr. Sullivan contends or claims that he was libeled and defamed by an advertisement which appeared in the newspaper, The New York Times, in the issue of March 29th, 1960. I would like to ask whether either of you gentlemen have read that advertisement in The New York Times that Mr. Sullivan complains of in that March 29th issue of The New York Times? Have either of you gentlemen read any news stories in any paper or any publication relating to this litigation growing out of this advertisement of which Mr. Sullivan complains?

(Reply inaudible to the Record by unidentified juror was obtained by Counsel in answer to the above question.)

Mr. Embry: Have either of you gentlemen heard the facts concerning this litigation or the contentions of the [fol. 1688] parties or the contentions being made in the law suit discussed in your presence or has anyone discussed those facts about this law suit or about which this law suit is concerned as contained in this advertisement? Has it been discussed in your presence or has anyone talked to you about it? Now, gentlemen, I would like to ask you this. If the evidence in this case at the close of this case fails to show you that the plaintiff was libeled by this ad of which he complains which you will have before you, would you hesitate for any reason of personal conviction or out of fear or any opinion or sentiment that you have or for any reason whatsoever—would you hesitate to return a verdict in favor of The New York Times at the close of the evidence if the evidence fails to show you that he has been libeled? Would you have any reason or compulsion or any reason whatsoever under those circumstances wherein you would fail to render a verdict in favor of The New York Times? Now, gentlemen, do you have any personal knowledge of the events that purport to be recited in this ad and I direct your attention to those particular events about which there are some recitations in this advertisement concerning a demonstration at the State Capitol in the early part of March or some events that occurred and took place at the Alabama State College?

Mr. Nachman: If the Court please, if they are going to be asking the jurors about the ad, then I think the ad ought to be read to them and not paraphrased by counsel.

Mr. Embry: Your Honor, he is not listening to me. What I asked these gentlemen was whether they had any personal knowledge of these events.

Mr. Nachman: Well, Your Honor, the ad is the basis of the action.

The Court: I will let him ask it and give you an exception to the Court's ruling.

Mr. Embry: Now, gentlemen, when I say personal knowledge, I want to limit that to whether either of you were

present when any of these events took place or whether you have talked to anyone who claimed to have been personally present when these events took place. Now, one of [fol. 1689] you gentlemen has indicated that one of these firms, although not representing you personally, you indicated that they did represent the company for whom you work and I will direct this question to all of you gentlemen if I may. Now, if it is a fact that either of these law firms on the plaintiff's side of the case represents any business with which you are connected or in which you are employed, would that fact embarrass you in sitting on this case and having to return a verdict one way or the other in this case? Has anyone ever spoken to you about the facts in this case or spoken in your presence about the facts of this case? I will ask you if either of you presently hold or have you held a public office either appointive or elective on Montgomery County? Are either of you a member of —I may not have the terminology correct—the Reserve Police in Montgomery or the Reserve Police force or the Citizens' Reserve of the City of Montgomery or are either of you a special deputy sheriff of Montgomery County or do you hold any honorary deputy commission in Montgomery County? Have either of you gentlemen at any time, in the past or the present, have you sold any goods or services or products of any kind to the City of Montgomery in connection with the operation of your business?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

Mr. Embry: Are either of you presently or have you been in the past or any member of your family at present or in the past an employee of the City of Montgomery?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

Mr. Embry: Now, gentlemen, I want to ask you this general question. Do you have any feeling or sentiment based upon any point of view or position that you under-[fol. 1690] stand or have learned or has been told to you that The New York Times may have assumed or taken that would affect any public matter, political or otherwise,

that would tend to prevent you from returning a verdict in its favor if the evidence fails to disclose that the plaintiff is entitled to a verdict in this case? In other words, what I am asking you, is there any point of view of that newspaper with which you may or may not disagree and in the event that you sit on this case and the fact in the event you did disagree with its position or its point of view in regard to some matter, would that fact prevent you from returning a verdict in its favor in the event that the evidence fails to disclose that Mr. Sullivan is entitled to a verdict? Have you gained any knowledge or any information from any source upon which you have formed a judgment or an opinion which would prevent you from returning a verdict in favor of The New York Times in the event that the evidence shows you that they would be entitled to a verdict? Now, gentlemen, this is my last question. Are either of you gentlemen personally acquainted with either of these witnesses subpoenaed in behalf of the plaintiff in this case?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

(Questions on Voir Dire Propounded to Second Group of Jurors.)

Mr. Embry: Gentlemen, these questions I am going to ask you are not questions that are directed to you in an attempt to embarrass you or to probe into your private lives. I am merely trying to get information for my use in attempting to select a jury. Are either of you gentlemen represented by the firm of Steiner, Crum and Baker or the firm of Scott, Whitesell and Scott? If I may, I will address myself to both groups of jurors. Have you as an individual or have either of you gentlemen of the jury or as an employer or a business with which you are connected been represented by the firm of Steiner, Crum and [fol. 1691] Baker?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

Mr. Embry: Are either of you gentlemen personally acquainted with Mr. L. B. Sullivan, the plaintiff in this case?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

Mr. Embry: Now, have either of you gentlemen read this advertisement that is the basis of Mr. Sullivan's Complaint and about which he is maintaining this law suit which was run in the March 29th issue of The New York Times newspaper? Have either of you gentlemen read that ad? Have you read any news comment, news stories or anything that purported to relate to what that ad contained or what it was about in any other publication, either local newspaper or magazine or some other media, either television or radio?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

Mr. Embry: Have either of you gentlemen read anything about it anywhere but in The Advertiser? Have either of you gentlemen heard the facts or what purported to be the facts about which this law suit is brought and maintained discussed by anyone or has anyone else discussed these facts or purported facts in your presence at any time? Gentlemen, at the close of this case, if the evidence fails to show you that the plaintiff has been libeled by this advertisement, is there any reason that you would hesitate to return a verdict in favor of The New York Times in that event? Do you have any personal knowledge either by having been present or having someone tell you who claimed to have been present about the events or occurrences that took place in the early part of March in and around the Capitol with some students from this Alabama State College and also an event or occurrence which took place out at this Alabama State College campus? Were any of you gentlemen present on either of those occasions or has anybody talked to you about what happened who claimed to have been present when any of these demonstrations took place?

(A reply inaudible to the Record by an unidentified juror was obtained by Counsel in answer to the above question.)

Mr. Embry: Would the fact that two or three of you gentlemen indicated to me that one or the other of the

plaintiff's law firms represents some company with which you have a business connection—in that event, would there be any embarrassment occasioned to you by having to sit on this case by the fact that this firm of lawyers of Steiner, Crum and Baker and Scott, Whitesell and Scott may represent some business with which you have a connection? Would you be embarrassed to have to sit on a case under those circumstances? Has anyone spoken to you directly about this case or about anything concerning this case? Do either of you gentlemen hold a public office either by appointment or election now or have you in the past?

(A reply inaudible to the Record by an unidentified juror was obtained by Counsel in answer to the above question.)

Mr. Embry: Are either of you a member of the Reserve Police of Montgomery or either of you a special deputy sheriff of Montgomery County or hold an honorary Commission as a special deputy?

(A reply inaudible to the Record by an unidentified juror was obtained by Counsel in answer to the above question.)

[fol. 1693] Mr. Embry: Do either of you gentlemen now have or have you had a contract with the City of Montgomery or have you in the past sold any goods or furnished any services or do you presently sell any goods or furnish any services to the City of Montgomery in connection with your business?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

Mr. Embry: Are either of you or any member of your family employees of the City of Montgomery presently or have you been in the past? Gentlemen, do either of you have any opinion, judgment or sentiment which you have formed or based upon on what you conceive to be a point of view of The New York Times about any public matter, political or otherwise, about some position they have taken about any public or political matter that would tend to prevent you from rendering a verdict in its favor if the evidence fails to show that Mr. Sullivan is entitled to a verdict otherwise? Have you read anything in the local

press or any other publication, local or national, either newspaper or magazine which has caused you to form a judgment or opinion about The New York Times or about the merits of this case with Mr. Sullivan? Have you gained any information of any kind from any source upon which you have formed an opinion or feeling or sentiment which would tend to prevent you from returning a verdict in favor of The New York Times in this case? Are either of you gentlemen presently acquainted with Dr. Frank Stewart, the State Superintendent of Education or Willie B. Painter, who is with the State Department of Public Safety?

(A reply inaudible to the Record by an unidentified juror was obtained by counsel in answer to the above question.)

[fol. 1694] Mr. Embry: Or William McDonald with The Montgomery Advertiser?

(A reply inaudible to the Record by an unidentified juror was obtained by Counsel in answer to the above question.)

Mr. Embry: Mr. Charles Moore of The Montgomery Advertiser? Are any of you acquainted with him? Harry Kaminsky? Are any of you acquainted with him? How about Billy Parks who operates a gasoline business?

(Replies inaudible to the Record by unidentified jurors were obtained by Counsel in answer to the above question.)

Mr. Embry: All right. Thank you very much, gentlemen.
The Court: All right, proceed, gentlemen.

Mr. Embry: Your Honor, may we state these questions into the Record outside of the presence of the jury that Your Honor has not permitted us to ask so that we may get a ruling on them?

The Court: Gentlemen of the jury, we will recess for ten minutes at this time.

(The following was dictated into the Record by Mr. Embry of Counsel for The New York Times Outside the Presence of the Jury.)

Mr. Embry: Mr. Reporter, let the Record show that these are the questions which the Court has indicated. it would

not permit counsel for The New York Times to propound to the jurors in an examination of the jurors on Voir Dire under the statute for information of counsel concerning matters that might affect their interest in the case. I believe it is covered by Title 30 of the Code of Alabama, 1940, Section 52. This is the first question. No. 1. I will ask you gentlemen even though at the close of this case that you [fol. 1695] may find a certain statement contained in the advertisement made the basis of the plaintiff's complaint in this case in his cause of action are not accurate or correct but the evidence discloses that the advertisement did not refer to the plaintiff, do you entertain any conviction, opinion or pre-disposition of mind which would compel you to return a verdict in favor of the plaintiff or which would prevent your returning a verdict in favor of the defendant, The New York Times Company, a corporation? No. 2. Have any of you gentlemen ever been a plaintiff in a law suit in this Court any number of times, that is to say, have you filed a suit seeking recovery of money from another person, firm or corporation? No. 3. I will ask you gentlemen if at the close of the evidence in this case and the evidence shows that The New York Times Company was not actuated by malice in publishing this paid advertisement, would you refuse to award damages to punish The New York Times, that is to say, would you refuse to award punitive damages in this case? No. 4. Is there any reason, without disclosing that reason to me, that would tend to embarrass you or embarrass you in any way or cause you to hesitate to return a verdict in favor of The New York Times Company, a corporation, in this case? Now, those are the questions I wanted to ask and the Court would not permit me to ask.

Lawyer Gray: Let the Record show that the attorneys for the other defendants adopt the same objection to the Court's ruling on these questions and we reserve separately an exception. We except to the Court's denying and refusing to permit the jurors to be questioned with reference to the first item hereinabove referred to by the attorneys for The New York Times.

Mr. Embry: Mr. Reporter, let the Record show that the Court has denied us permission to ask these questions and we note an exception for the Record.

Lawyer Gray: We note an exception for the Record also.
[fol. 1696] (At This Point, Opening Statements Were Presented to the Jury)

[fol. 1697]

COLLOQUY RE AND INTRODUCTION OF EXHIBITS

Mr. Nachman: If the Court please, we would like to introduce this ad and we want to let Mr. Whitesell read it into evidence, if the Court please. If it is agreeable with counsel we will just introduce this one page No. 25 which is the March 29th, 1960, issue of The New York Times and we ask that the Reporter identify it as Plaintiff's Exhibit No. 347.

(Page 25 of the Tuesday, March 29th, 1960 issue of The New York Times being an ad entitled "Heed Their Rising Voices," offered and received in evidence and identified as Plaintiff's Exhibit No. 347.)

Mr. Whitesell: I will stand right here facing the jury while I read it, if the Court please.

The Court: Go ahead.

Mr. Whitesell: The ad is entitled, "Heed Their Rising Voices." It is the Tuesday, March 29th, 1960 issue of The New York Times, page 25 and in the upper right hand corner it says, "The growing movement of peaceful mass demonstrations by Negroes is something new in the South, something understandable. Let Congress heed their rising voices, for they will be heard." The New York Times editorial Saturday, March 19th, 1960. The ad read as follows: "As the whole world knows by now, thousands of Southern Negro students—

Lawyer Crawford: Your Honor, we would like to object to the reading of that ad unless the counsel who reads it will read what is said and as I recall from reading that ad there is nothing on there that is spelled N-i-g-g-e-r-s. It is spelled N-e-g-r-o and I am sure he is well aware of it and is deliberately—

The Court: Read it just like it is.

Mr. Whitesell: Your Honor, I am.

The Court: You are not interpolating anything?

[fol. 1698] Mr. Whitesell: No, sir, Your Honor.

The Court: Go ahead and read it then.

Mr. Whitesell: He is objecting to the way I pronounce N-e-g-r-o.

The Court: Well, pronounce it—

Mr. Whitesell: I have been pronouncing it that way all my life—

The Court: Go ahead. Proceed.

Mr. Whitesell: The ad reads as follows: "As the whole world knows by now, thousands of Southern Negro students are engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U. S. Constitution and the Bill of Rights. In their efforts to uphold these guarantees, they are being met by an unprecedented wave of terror by those who deny and negate that document which the whole world looks upon as setting the pattern for modern freedom.

In Orangeburg, South Carolina, when 400 students peacefully sought to buy doughnuts and coffee at lunch counters in the business district, they were forcibly ejected, tear-gassed, soaked to the skin in freezing weather with fire hoses, arrested en masse and herded into an open barbed-wire stockade to stand for hours in the bitter cold.

In Montgomery, Alabama, after students sang "My Country, 'Tis of Thee" on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.

In Tallahassee, Atlanta, Nashville, Savannah, Greensboro, Memphis, Richmond, Charlotte, and a host of other cities in the South, young American teen-agers, in face of the entire weight of official state apparatus and police power, have boldly stepped forth as protagonists of democracy. Their courage and amazing restraint have inspired millions and given a new dignity to the cause of freedom.
[fol. 1699] Small wonder that the Southern violators of the Constitution fear this new, non-violent brand of free-

dom fighter even as they fear the upswelling right-to-vote movement. Small wonder that they are determined to destroy the one man who, more than any other, symbolizes the new spirit now sweeping the South—the Rev. Dr. Martin Luther King, Jr., world famous leader of the Montgomery Bus Protest. For it is his doctrine of non-violence which has inspired and guided the students in their widening wave of sit-ins; and it is this same Dr. King who founded and is president of the Southern Christian Leadership Conference—the organization which is spearheading the surging right-to-vote movement. Under Dr. King's direction the Leadership Conference conducts Student Workshops and Seminars in the philosophy and technique of non-violent resistance.

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. Obviously, their real purpose is to remove him physically as the leader to whom the students and millions of others—look for guidance and support, and thereby to intimidate all leaders who may rise in the South. Their strategy is to behead this affirmative movement, and thus to demoralize Negro Americans and weaken their will to struggle. The defense of Martin Luther King, spiritual leader of the student sit-in movement, clearly, therefore, is an integral part of the total struggle for freedom in the South.

Decent-minded Americans cannot help but applaud the creative daring of the students and the quiet heroism of Dr. King. But this is one of those moments in the stormy history of Freedom when men and women of good will must do more than applaud the rising-to-glory of others. The America whose good name hangs in the balance before a watchful world, the America whose heritage of Liberty these Southern Upholders of the Constitution are defending, is our America as well as theirs.

[fol. 1700] We must heed their rising voices—yes—but we must add our own.

We must extend ourselves above and beyond moral support and render the material help so urgently needed by those who are taking the risks, facing jail, and even death in a glorious re-affirmation of our Constitution and its Bill of Rights.

We urge you to join hands with our fellow Americans in the South by supporting, with your dollars, this Combined Appeal for all three needs—the defense of Martin Luther King—the support of the embattled students—and the struggle for the right-to-vote.” Beneath that it says, “Your Help is Urgently Needed Now!” Beneath that there appears an entire list of signatures.

Lawyer Gray: Your Honor, we object to that. There is no list of signatures on the ad. They are printed names.

Mr. Whitesell: That's right. They are printed names then.

The Court: Read what is printed on there.

Mr. Whitesell: All right, Your Honor. They read as follows: “Stella Adler, Raymond Pace Alexander, Harry Van Arsdale, Harry Belafonte, Julie Belafonte, Dr. Algernon Black, Marc Blitzstein, William Branch, Marlon Brando, Mrs. Ralph Bunche, Diahann Carroll, Dr. Alan Knight Chalmers, Richard Coe, Nat King Cole, Cheryl Crawford, Dorothy Dandridge, Ossie Davis, Sammy Davis, Jr., Ruby Dee, Dr. Philip Elliott, Dr. Harry Emerson Fosdick, Anthony Franciosa, Lorraine Hansbury, Rev. Donald Harrington, Nat Hentoff, James Hicks, Mary Hinkson, Van Hefflin, Langston Hughes, Morris Jushewitz, Mahalia Jackson, Mordecai Johnson, John Killens, Eartha Kitt, Rabbi Edward Klein, Hope Lange, John Lewis, Viveca Lindfors, Carl Murphy, Don Murray, John Murray, A. J. Muste, Frederick O’Neal, L. Joseph Overton, Clarence Pickett, Shad Polier, Sidney Poitier, A. Philip Randolph, John Raitt, Elmer Rice, Jackie Robinson, Mrs. Eleanor Roosevelt, Bayard Rustin, Robert Ryan, Maureen Stapleton, Frank Silvera, Hope Stevens, George Tabori, Rev. Gardner C. Taylor, Norman Thomas, Kenneth Tynan, Charles White, [fol. 1701] Shelley Winters, Max Youngstein.” Directly

below that it says, "We in the south who are struggling daily for dignity and freedom warmly endorse this appeal." Below that there appears a list of names. "Rev. Ralph D. Abernathy, Montgomery, Alabama, Rev. Fred L. Shuttlesworth, Birmingham, Alabama, Rev. Kelley Miller Smith, Nashville, Tennessee, Rev. W. A. Dennis, Chattanooga, Tennessee, Rev. C. K. Steele, Tallahassee, Florida, Rev. Matthew D. McCollom, Orangeburg, South Carolina, Rev. William Holmes Borders, Atlanta, Georgia, Rev. Douglas Moore, Durham, North Carolina, Rev. Wyatt Tee Walker, Petersburg, Virginia, Rev. Walter L. Hamilton, Norfolk, Virginia, I. S. Levy, Columbia, South Carolina, Rev. Martin Luther King, Sr., Atlanta, Georgia, Rev. Henry C. Bunton, Memphis, Tennessee, Rev. S. S. Seay, Sr., Montgomery, Alabama, Rev. Samuel W. Williams, Atlanta, Georgia, Rev. A. L. Davis, New Orleans, Louisiana, Mrs. Katie E. Whigham, New Orleans, Louisiana, Rev. W. H. Hall, Hattiesburg, Mississippi, Rev. J. E. Lowery, Mobile, Alabama, Rev. T. J. Jemison, Baton Rouge, Louisiana." Underneath that appears these words, "COMMITTEE TO DEFEND MARTIN LUTHER KING AND THE STRUGGLE FOR FREEDOM IN THE SOUTH, 312 West 125th Street, New York 27, New York. UNiversity 6-1700" Beneath that it says, "Chairmen: A Philip Randolph, Dr. Gardner C. Taylor; Chairman of Cultural Division: Harry Belafonte, Sidney Poitier; Treasurer: Nat King Cole; Executive Director: Bayard Rustin; Chairmen of Church Division: Father George B. Ford, Rev. Harry Emerson Fosdick, Rev. Thomas Kilgore, Jr., Rabbi Edward E. Klein; Chairman of Labor Division: Morris Iushewitz." Appearing at the bottom right hand column it says, "Please mail this coupon today." Beneath that it says, "Committee to Defend Martin Luther King and The Struggle for Freedom in the South. 312 West 125th Street, New York 27, New York. UNiversity 6-1700. I am enclosing my contribution of \$..... for the work of the Committee. Name
..... Please Print. Address City
..... Zone State"
In a little box beneath that it says, "I want to help." In another little box it says, "Please send further information." [fol. 1702] Beneath that it says, "Please make checks payable to: Committee to Defend Martin Luther King."

Mr. Nachman: If the Court please, at this time we would like to introduce into evidence the interrogatories and the answers to the interrogatories which we propounded to The New York Times with the exception, of course, of the ones which Your Honor sustained the objections.

Mr. Embry: Might I suggest that the ad which has been introduced be marked as an exhibit?

Mr. Nachman: That has already been done, Mr. Embry. It is Plaintiff's Exhibit No. 347.

Mr. Embry: All right. Now, Your Honor, would you let us look at these interrogatories and see what, if any, objections we have to them?

The Court: Yes. Go ahead.

Mr. Nachman: Gentlemen of the jury, these are questions that we propounded in written form to the defendant, The New York Times Company, a corporation, before this trial began and I am going to read the questions and Mr. Steiner will read the answers aloud that were made to the interrogatories. We will read them aloud. Please state your correct corporate name, address and official position of person who is answering these interrogatories.

Mr. Steiner: The New York Times Company, a corporation; Harding F. Bancroft, 229 West 43rd Street, New York, New York, Secretary of the corporate defendant.

Mr. Nachman: Please state all the details, facts, and circumstances under which the advertisement on which this suit is based came to be printed in the New York Times in the issue of March 29, 1960, on page 25. In answering this question, please give the names, addresses and official position of each and every person who had any connection with the handling of the advertisement and state exactly and in detail what was done by each.

Mr. Steiner: On or about March 25, 1960, one John Murray brought to The New York Times Plant at 229 West [fol. 1703] 43rd Street in the City of New York the original copy from which the advertisement referred to in this question was formed. This copy was delivered to one Gerson Aronson, an employee of this defendant, whose title or position with this defendant is a salesman in the National Advertising Department. Mr. Aronson delivered the original of this copy to this defendant's Production Department

after making a thermafax copy of such copy, which said thermafax copy was placed on the desk of one D. Vincent Redding, who is an employee of this defendant and whose position is that of Manager of this defendant's Advertising Acceptability Department. The Production Department sent the original of such copy to the composing room of this defendant's plant, where some time during the period from about March 25, 1960 to the time of its insertion on March 29, 1960, it was set in type. During this interim of time this defendant's Mr. Redding approved said copy for insertion as a paid advertisement in this defendant's newspaper. This was all done pursuant to what is called an advertising insertion order for this ad by Union Advertising Service of 302 Fifth Avenue, New York, New York. Said Union Advertising Service was billed by this defendant according to the terms and conditions of said insertion order and was paid by said Union Advertising Service for the publication of said advertisement. Mr. D. Vincent Redding, who has been previously identified in the foregoing answers, in checking the advertisement inquired about, ascertained that the same was endorsed by a large group of individuals among whom were persons whose general reputation for truth, integrity and honesty was known to Mr. Redding to be good and on the basis of this he had no reason to believe that anything contained in the ad was false and as the advertisement made no attacks of a personal character upon any individual and otherwise met the advertising acceptability standards promulgated by this defendant he, accordingly, approved it.

Mr. Nachman: Please state exactly and in detail what investigation was made by any persons for and on behalf of The New York Times to determine the correctness of the assertions contained in said advertisement prior to its publication. In answering this question please give the [fol. 1704] name and address of every person who made any investigation for or on behalf of The New York Times and state his connection with The New York Times and state exactly what was done by each such person. Attach to the answers to these interrogatories copies of any written statements that any such person may have made to The New York Times regarding the result of such an investigation.

Mr. Steiner: See last paragraph of preceding answer No. 2. No written statement was made to this defendant regarding that which was done as answered in preceding answer No. 2.

Mr. Nachman: Please state whether or not The New York Times, prior to the publication of the advertisement involved in this suit, carried any news stories in its paper or received in its files any news coverage or reports from news services or other news gathering media concerning any of the events or occurrences referred to in said advertisement, and if you answer affirmatively, please attach to your answers to this interrogatory the original or a true and correct copy of each and every said news story, news account, report, or communication appearing in The New York Times or received by The New York Times or made known to The New York Times prior to the publication of said advertisement on March 29, 1960.

Mr. Steiner: The New York Times, prior to the publication of the advertisement referred to and insofar as this defendant is able to determine from its records, had received from its reporters, string correspondents and the news services to which it subscribes news stories relating to certain of the events or occurrences referred to in the advertisement. These stories appeared in defendant's newspapers on the dates of February 18, 1960, March 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 23, 27, 30, 1960, and April 1, 1960. The actual news stories are equally within the knowledge of the plaintiff inasmuch as the same were produced by this defendant in response to this plaintiff's motion to produce same and were introduced into evidence in this cause on a hearing of this defendant's motion to quash service of process herein.

[fol. 1705] Mr. Nachman: Please attach to your answer to this interrogatory the original or a true and correct photostatic copy of the documents or document forming the basis of the format from which this advertisement was composed and on which it was based. Please attach to your answer to this interrogatory every document, writing, or authorization from any of the signers of the advertisement authorizing The New York Times to publish their names in said advertisement.

Mr. Steiner: Attached is the copy in this defendant's possession which has been referred to in the preceding answer to interrogatory numbered 2 of the document forming the basis of the format from which this advertisement was composed. In the regular course of business the original of this document was not kept by this defendant and no longer exists as it is not customary on the part of this defendant to keep such documents in its files. The thermafax copy of the authorization for the use of the names attached to said advertisement is attached hereto and likewise the original of such was not kept by this defendant. Exhibits "A" and "B" respectively attached hereto.

Mr. Nachman: Is it agreeable with counsel that we do not at this time read Exhibit "A" as that is the ad and has already been read?

Mr. Embry: That's all right.

Mr. Nachman: Attached to this is the typewritten format which made up the ad which has already been introduced.

Mr. Embry: Well, let the Record show that attached to these answers is a copy of a copy. And there is a typographical error there.

Mr. Nachman: But the content is the same as the ad already introduced into evidence. Go ahead and read Exhibit "B".

Mr. Steiner: This is Exhibit "B". It reads as follows: "A PHILLIP RANDOLPH, 217 West 125th Street, New York 27, N. Y. March 23, 1960.

[fol. 1706] Mr. Jerry Aaronson
New York Times
Times Square
New York, New York

Dear Mr. Aaronson:

This will certify that the names included on the enclosed list are all signed members of the Committee to Defend Martin Luther King and the Struggle for Freedom in the South. Please be assured that they have all given me permission to use their names in furthering the work of our Committee.

Sincerely,

A. Philip Randolph, Chairman"

Lawyer Gray: Your Honor, I would like to see that letter before we proceed.

Mr. Nachman: Here it is.

Lawyer Gray: Your Honor, we would like the Record to show and for the jury to understand that the letter refers to Exhibit "B" which says, "This will certify that the names included on the enclosed list are all signed members of the Committee to Defend Martin Luther King and the Struggle for Freedom in the South." I would like the jury to know that that is simply a list of names here similar to that which appears on the ad and this list is not signed just as the ad is not signed.

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

Mr. Nachman: Did the New York Times receive from the plaintiff a demand for retraction, by letter dated April 8, 1960? If you answer affirmatively, please attach the original or a true and correct copy of said demand for retraction.

Mr. Steiner: Yes. This defendant did receive from plaintiff a demand for retraction by letter dated April 7, 1960, a copy of which is attached hereto as Exhibit "C".

Mr. Nachman: Read Exhibit "C".

Mr. Steiner: This is Exhibit "C" and it is on City of Montgomery stationery. It is dated March 8th, 1960 and is addressed to New York Times Company, Times Building, [fol. 1707] 229 West 43rd Street, New York, New York. It reads as follows: "Gentlemen: You will hereby take notice that under and by virtue of the laws of Alabama, I demand that you publish a retraction of certain false and defamatory matter published by you in the New York Times of Tuesday, March 29, 1960, on page 25, published under the heading, "Heed Their Rising Voices," and particularly the following false and defamatory matter therein contained,

"In Montgomery, Alabama, after students sang 'My Country 'Tis of Thee' on the State Capitol steps, their leaders expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

"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."

The foregoing matter, and the publication as a whole, charge me with grave misconduct and of improper actions and omissions as an official of the City of Montgomery.

I further demand that you publish in as prominent and as public a manner as the foregoing false and defamatory material contained in the foregoing publication, a full and fair retraction of the entire false and defamatory matter so far as the same relates to me and to my conduct and acts as a public official of the City of Montgomery, Alabama. Very truly yours, L. B. Sullivan, Commissioner." On the left hand side at the bottom of the letter is the words "Registered Mail, Return Receipt Requested."

Mr. Nachman: Did The New York Times or its attorneys make any reply to said demand for retraction from the plaintiff dated April 8, 1960? If you answer affirmatively, [fol. 1708] please attach a true and correct copy of said reply.

Mr. Steiner: Yes. The attorney for this defendant made reply to said demand, a copy of which is attached hereto as Exhibit "D". This is Exhibit "D". It is dated April 15th, 1960 and addressed to Hon. L. B. Sullivan, Commissioner, City of Montgomery, Montgomery, Alabama. It reads as follows, "Dear Mr. Commissioner: Your letter of April 8 sent by registered mail to The New York Times Company has been referred for attention to us as general counsel. You will appreciate, we feel sure, that the statements to which you object were not made by The New York Times but were contained in an advertisement proffered by The Times by responsible persons. We have been investigating the matter and are somewhat puzzled as to how you think the statements in any way reflect on you. So far, our investigation would seem to indicate that the statements are substantially correct with the sole exception that we

find no justification for the statement that the dining-hall in the State College was "padlocked in an attempt to starve them into submission." We shall continue to look into the subject matter because our client, The New York Times, is always desirous of correcting any statements which appear in its paper and which turn out to be erroneous. In the meanwhile you might, if you desire, let us know in what respect you claim that the statements in the advertisement reflect on you. Very truly yours, Lord, Day and Lord." Blind carbon copies were sent to Mr. Dryfoos, Mr. Garst and Mr. Redding.

Mr. Nachman: After receipt of said demand for retraction from the plaintiff, dated April 8, 1960, did The New York Times make any investigation of the correctness of the statements contained in said advertisement? If you answer affirmatively, please state the name of the person or persons making the investigation, the connection of each with The New York Times, the results of said investigation, and attach to your answers to this interrogatory the originals or true and correct copy of any and all reports, communications, advice, or other writings, informing or apprising you of the results of said investigation.

[fol. 1709] Mr. Steiner: Now, it indicates here that they refused to answer.

Mr. Embry: Hold it just a minute, please. That's all right, Your Honor. We don't object to it.

Mr. Steiner: You want me to read the answer as it is in—

Mr. Embry: Go ahead.

Mr. Steiner: An investigation was made by Messrs. Don McKee and Claude F. Sitton, a stringer and correspondent, respectively, for The New York Times Company. The results of their investigation as embodied in their telegraphic reports are attached to these interrogatories as Exhibits A and B. This is Exhibit "A". There are a lot of telegraphic symbols here that are meaningless to me but it says, "Montgomery, Alabama, April 14, Robert Garst, Assistant Managing Editor, The New York Times, New York." It reads as follows: "Re Info Request: Alabama State College sources are Dr. H. Council Trenholm, President, and Dr. Levi Watkins, Director of the Business Office

which issues meal tickets, controls food and dormitory accommodations. Dr. Ternholm: "Absolutely no truth to the charge that the dining hall was 'padlocked' to 'starve students into submission.' I don't understand through what source, malicious or otherwise, that statement came." "Trenholm further refutes reference to 'Entire student body refusing to re-register,' factually incorrect. Dr. Watkins (Personal Interview and he has Records to back up this): Gave background to situation: Quarter ended on Friday, March 4, pre-registration was Mar. 2-5. Standard procedure for students to register officially with business office by March 10." There were some more telegraphic symbols at this point but this is still Montgomery, Alabama, continued. Under standard rules students required to have meal tickets (actually privilege card for both meals and dorms), which are valid by quarter. Temporary cards issued up through March 9th. No further cards issued except on basis of actual registration." It continues to read as follows: "Meal courtesies were extended to all (repeat all) students through Sunday, March 6." (Two days after Winter quarter ended.) The business office remained open [fol. 1710] all day Saturday and Sunday (March 5 & 6) to enable students to either register or make arrangements for privilege cards." As to "Entire student body" refusing to register as protest, college records show 1,182 of the approximately 1,900 students had pre-registered prior to the quarter's end March 4. On Monday (March 7), first day of the supposed protest, 214 students followed through on registration; on Tuesday, 194 more did so and by Wednesday a total of 803 had taken steps toward permanent registration. Dr. Watkins said emphatically the dining hall was never "padlocked"—except for being locked up at night as usual, no students who wanted meals were refused; those who had no privilege cards could have bought meals." At this point there are more telegraphic symbols but it is still Montgomery, Alabama. "A number of students, who during the week simply stayed on and took no steps to register,—those people didn't eat as far as the dining hall was concerned." (If students don't register, they aren't considered students.) "It is conceivable that some students who for their own reasons did not choose

to re-register or to request temporary campus living accommodations prior to their decision to register, were without college meal service," said Watkins. "The college presumed to serve those students who had actually registered for the quarter or who requested living accommodations, including meal service, which were available with or without the actual payment of fees and tuition prior to the deadline," he continued. There were about seventy-five students who never re-registered but who were given both meal and room privileges, Watkins said. Any number of student witnesses can be produced to prove the falsity of the "padlock" statement, he said. As to the expulsion of students, this was on grounds of their insubordination in refusing to stop demonstrations on orders of Trenholm and other officials—this is the official stand of the college." There are more telegraphic symbols but it is still Montgomery, Alabama. It reads as follows: "As to truckloads of police, and so forth, city police entered the campus only after a mob of students had threatened the building and grounds custodian Negro who tried to prevent an on-campus demonstration on orders of the President. A college police officer fired his [fol. 1711] pistol into the air in an effort to quiet the mob before a passing city patrol car intervened. The police were actually seeing that orders of the officials were carried out. As to King's police record here: Montgomery police files show two arrests on January 26, 1956, he was arrested for speeding, released on bond, convicted and fined ten dollars which he appealed and later paid, and on September 3rd, 1958, he was arrested for loitering, released on his own bond, fined fourteen dollars which was paid by the Police Commissioner. In neither case was he jailed. King has been twice arrested by Montgomery County Sheriff's officer: On February 22nd, 1956, for violation of State Boycott Law, and on February 29th, 1960, on charge of Income Tax Return falsification." There are more telegraphic symbols and it is still Montgomery, Alabama. It reads as follows: "Total of four arrests. As to demonstrations, on Sunday March 6, several hundred Negroes, including some students, attempted march to capitol in direct violation of police warning against it: Police proceeding on basis of preserving order, I.E., averting race riot, well within legal rights.

Contrary to statements, City-County-State Police averted riot and saved lives no doubt of Negroes who at one point appealed to state public safety director for instructions and advice on how to leave the scene. Not one Negro was arrested during near-riot or attempted demonstrations." It is signed, "Don McKee, Montgomery, Alabama." Now, this is Exhibit "B". The address is Atlanta and on the right hand side appears the words, "For Loeb, General Counsel." It reads as follows: "Sitton (telephoned) May 5th. Following is chronology of events in Montgomery, Alabama, surrounding the demonstrations of Alabama State College students: February 25th: Some thirty Alabama State College students sought service at a lunch counter in the Montgomery County Court House. They were refused. February 27th: A large number of students marched from the college campus to the First Baptist Church (Negro) in downtown Montgomery, where they held a prayer meeting and pep rally. February 29th: Governor John Patterson relented somewhat from a position taken in an earlier public statement that all student participants in the February 25 demonstration should be expelled. How-[fol. 1712] ever, he strongly implied that such action should be taken in the case of the leaders." This is page 2. "March 1st: A thousand students marched from the Alabama State College campus to the State Capitol, where they held a demonstration on the Capitol steps. State officials watched the event. The students said the Lord's prayer in unison and sang the National Anthem before marching back to the campus. March 2: The State Board of Education, of which the Governor is chairman, met and ordered the expulsion of the nine student leaders of the demonstration. March 5: City Police Commissioner L. B. Sullivan announced that no further demonstrations would be tolerated. March 6: Authorities narrowly averted a riot as adult Negroes and a few students sought to march from the Dexter Avenue Baptist Church (Negro) to the Capitol, two blocks away, to hold a prayer meeting on the Capitol steps. The demonstration was designed to protest the expulsion of the nine student leaders. March 7: Alabama State College students stayed away from classes in a strike in sympathy with those expelled. However, virtually all of them returned to

class after a day. Even those expelled were allowed to come back and complete examinations then in progress. March 8: Students met at a church near the campus, held a pep rally and distributed signs and then marched on the campus. The superintendent of grounds ordered them to leave, which they refused to do. There was considerable confusion, with students dancing around the campus in conga lines. Some became rowdy. A campus guard fired his gun into the air several times in an attempt to disperse them and the superintendent of grounds called the police. At this point the students left the campus but as they marched across the street the police arrived and arrested thirty-two of them on charges of disorderly conduct and failing to obey police officers. They were later convicted and fined \$200 each and costs. Paragraph 3 of the advertisement, which begins, "In Montgomery, Alabama, after students sang" and so forth, appears to be virtually without any foundation. The students sang the National Anthem. Never at any time did police "ring" the campus although on three occasions they were deployed near the campus in large numbers. Probably a majority of the student body was [fol. 1713] at one time or another involved in the protest but not the "entire student body". I have been unable to find anyone who has heard that the campus dining room was padlocked. Apparently students who refused to attend classes and also to sign a list requesting meal tickets were barred from the dining hall. However, even those taking part in the strike were admitted to the dining hall if they had signed a pre-registration application for the spring quarter or a request for temporary meal tickets. In reference to the 6th paragraph, beginning: "Again and again the Southern violators" and so forth. Dr. King's home was bombed during the bus boycott some four years ago. His wife and child were there but were not (repeat not) injured in any way. King says that the only assault against his person took place when he was arrested some four years ago for loitering outside a courtroom. The arresting officer twisted King's arm behind the minister's back in taking him to be booked. King says he has been arrested only three times in Montgomery—one time on a speeding charge,

one time on a charge of violating the state's anti-boycott law and once for loitering. He was arrested in Atlanta several months ago at the request of Montgomery County authorities on an indictment charging him with two counts of perjury in a state income tax case. Conviction for perjury in Alabama carries a maximum penalty of five years imprisonment. He is, of course, charged with two counts. End—Sitton. 5:02 P. M., May 5."

Mr. Nachman: If you have answered that any investigation was made, please advise whether you received any report, verbally or by telephone or otherwise than in writing, and if you answer affirmatively, please state the substance of said verbal or telephonic reports, including the names of the persons who made the report and their connection with The New York Times.

Mr. Steiner: The report of Claude F. Sitton, attached hereto as Exhibit B, had been previously telephoned to the individual named thereon. The substance of said telephonic report was as appears in Exhibit B.

Mr. Nachman: Did you in response to plaintiff's demand dated April 8, 1960, publish a retraction in your newspaper? [fol. 1714] If you answer affirmatively, please attach the original or a true and correct copy of said retraction.

Mr. Steiner: No.

Mr. Nachman: Did you in response to a demand from any person other than the plaintiff publish a retraction or apology, or anything of a similar nature which had reference to the advertisement involved in this suit? If you answer affirmatively, please attach the original or a true and correct copy of said retraction and state the circumstances under which it was made. Please explain why said retraction was made but no retraction was made on the demand of the plaintiff.

Mr. Steiner: Yes. This defendant published a retraction with reference to the advertisement referred to in this suit in response to a demand from Governor John Patterson of the State of Alabama. It did so although in its judgment no statement in said advertisement referred to John Patterson either personally or as the Governor of the State of Alabama, nor referred to this plaintiff or any of the plaintiffs in the companion suits. The defendant, however, felt

that on account of the fact that John Patterson held the high office of Governor of the State of Alabama and that he apparently believed that he had been libeled by said advertisement in his capacity as Governor of the State of Alabama, the defendant should apologize. A photostatic copy of this retraction is attached hereto as Exhibit "E". The retraction is self explanatory. This is Exhibit "E". It reads as follows: "The advertisement containing the statements to which Governor Patterson objects was received by The Times in the regular course of business from and paid for by a recognized advertising agency in behalf of a group which included among its subscribers well-known citizens. The publication of an advertisement does not constitute a factual news report by The Times nor does it reflect the judgment or the opinion of the editors of The Times. Since publication of the advertisement, The Times made an investigation and consistent with its policy of retracting and correcting any errors or misstatements which may appear in its columns, herewith retracts the two para-[fol. 1715] graphs complained of by the Governor. The New York Times never intended to suggest by the publication of the advertisement that the Honorable John Patterson, either in his capacity as Governor or as *ex officio* Chairman of the Board of Education of the State of Alabama, or otherwise, was guilty of "grave misconduct or improper actions and omissions." To the extent that anyone can fairly conclude from the statements in the advertisement that any such charge was made, The New York Times hereby apologizes to the Honorable John Patterson therefor.

Mr. Nachman: "In Montgomery, Alabama, after students sang, 'My Country, 'Tis of Thee' on the Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear gas ringed the Alabama State College campus."

Mr. Embry: Didn't Judge Jones rule that that part should not be asked?

Mr. Nachman: Yes. That's why I skipped the top part.

Mr. Embry: All right. Go ahead.

Mr. Nachman: "When the entire student body protested to state authorities by refusing to re-register, their dining

hall was padlocked in an attempt to starve them into submission. Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with 'perjury'—a *felony* under which they could imprison him for *ten years.*" Please state if you contend that any of the foregoing facts, statements, or occurrences are true.

Mr. Embry: Just a minute now.

Mr. Steiner: Shall I read Answer 12 in the Supplemental Answers?

Mr. Nachman: Yes. Go ahead.

Mr. Steiner: All of the knowledge of this defendant with respect to the truth or falsity of the statements contained in the advertisement referred to are contained in the documents [fol. 1716] attached hereto as Exhibits A and B and the news stories previously referred to in this defendant's answer to interrogatory 4 herein. Said hearsay documents and news stories speak for themselves. Defendant reserves the right to supplement its answers to this interrogatory should relevant facts come to its attention between the date of filing hereof and the trial of the pending action.

Mr. Nachman: Please state which of the following departments or offices of The New York Times read, passed upon, or considered in any way the advertisement which is the basis of this suit and which appeared in the March 29, 1960, issue of The New York Times: publication office staff; advertising censorship department; advertising department. Give the names and addresses of the persons in any of these departments or in any other department or office of The New York Times who considered, passed upon, or read this advertisement.

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

Mr. Nachman: Please attach as an answer to this interrogatory any written statement of principles or policies of The New York Times in regard to advertising censorship, and specifically attach a true and correct copy of the "New York Times Advertising Index Expurgatory."

Mr. Steiner: We know of no such thing as is called "New York Times Advertising Index Expurgatory". However, we attach hereto the booklet "The New York Times Advertising Acceptability Standards", marked Exhibit "F", which we presume you are seeking. This is exhibit "F".
"THE NEW YORK TIMES ADVERTISING ACCEPTABILITY STANDARDS. The New York Times endeavors to exclude misleading, inaccurate and fraudulent advertisements and unfair competitive statements in advertising. The chief purpose of this policy of The Times is to protect the reader and to maintain the high standards of decency and dignity in its advertising columns which The Times has developed over the years." Following is a list of several classes of advertising The Times does not accept. No. 1. Fraudulent or deceptive advertisements. No. 2. Offers of something of value for nothing; advertisements that make false, unwarranted or exaggerated claims. No. 3. Adver-[fol. 1717] tisements that are ambiguous in wording and which may mislead. No. 4. Attacks of a personal character. No. 5. Advertisements that reflect adversely on other advertisers or their goods. No. 6. Advertisements holding out the prospect of large guaranteed dividends or excessive profits. No. 7. Advertisements that are indecent, vulgar, suggestive or otherwise offensive to good taste. No. 8. Matrimonial offers. No. 9. Medical advertising of products containing habit-forming or dangerous drugs; offers of free medical treatment; advertising that makes exaggerated remedial, relief or curative claims. No. 10. Advertisements of fortune telling, dream interpretations, individual horoscopes and nativity writings. No. 11. Any other advertising that may cause money loss to the reader, or injury in health or morals, or loss of confidence in reputable advertising and honorable business, or which is regarded by The New York Times as unworthy. In addition, there are statements in other classes of advertising which The Times does not accept, as, for example, unwarranted promises of employment in school advertising, or the claim that any cosmetic will cure wrinkles or banish freckles. The Times does not accept any advertising whatsoever of an individual or of a firm which it has reason to believe to be of undesirable character. The text of every advertisement ordered

for insertion in The Times is read first by the Publication Office staff, or in the case of Classified Advertising by the copy passers in that department. In addition, practically every display advertisement is read by the staff of the Advertising Acceptability Department. When statements are discovered which that Department believes ought to be changed or eliminated, the advertiser or its advertising agency is notified. Investigations are frequently made by the Advertising Acceptability Department to develop further information or to determine the accuracy of statements. The recognized agencies of investigation, such as the National and New York Better Business Bureaus are consulted and frequently are asked to shop an advertisement. Reports of commercial fact-finding agencies are utilized for their background information concerning business firms. In many classifications advertisers in The Times must fill out questionnaires. These classifications include: Financial, which has one questionnaire for securities dealers and one [fol. 1718] for advisory services: Book Exchange, Business Opportunities, Camps, Education, Garden, Mail Order, Mortgages and Stamps and Coins. In the case of financial advertising all announcements are first submitted to a special committee on financial advertising to advise the Advertising Acceptability Department. New financial advertisers must fill out questionnaires and The Times also obtains reports on them from commercial and governmental agencies. 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. Another function of the Advertising Acceptability Department is to pass upon those questions which cannot be set forth in a code of rules but which have to do with advertising which may be offensive to good taste. The Times frequently requires changes in copy and illustrations in advertising which are distasteful or salacious. RETAIL ADVERTISING. The following regulations apply to retail advertising: No. 1.

General Statements. Untrue, deceptive or misleading statements or illustrations are not acceptable. No. 2. Competitive Claims Which Refer to Quality of Price. A. Statements or representations which refer to the goods, price, service or advertising of any competitor are not acceptable. B. Statements which claim to undersell competitors are not acceptable. No. 3. Competitive Claims on Policy or Business Methods. A. Statements which make or imply, comparisons must confine those comparisons to the individual advertiser's own merchandise, services, prices or business methods. B. Statements of fact, if generally known, and susceptible of definite proof are acceptable. No. 4. "Bait Offers" "Bait" offers of merchandise wherein the customer is denied a fair opportunity to purchase, are not acceptable. Some examples follow of expressions in advertisements which are not acceptable and the changes required to make them acceptable." On the left is "NOT ACCEPTABLE" and on the right "Acceptable as Revised." "NOT ACCEPTABLE. The lowest price ever offered." [fol. 1719] As revised, "The lowest price we ever offered." "The best buy in town." As revised, "One of the best buys in town." "Will surpass anything you could possibly find." As revised, "Will surpass anything we could possibly offer." "Unrivaled in fine quality." As revised, "Unexcelled in fine quality." "Unprecedented value (or quality)." As revised, "Exceptional value (or quality)." "Unheard of prices." As revised, "Amazingly low prices." "The finest coat we have ever seen." As revised, "The finest coat we have ever sold." "We give you the most for your dollar." As revised, "We give you exceptional value for your dollar." "Superior to any you've seen at this price." As revised, "Superior to what you'd expect to find at this price." "The outstanding value in men's footwear." As revised, "An outstanding value in men's footwear." "We believe you will find these values greater than elsewhere." As revised, "We believe you will find these values unsurpassed." "MEDICAL ADVERTISING. When advertising of any preparation is offered which advertises medication or treatment, The Times asks the opinion of medical consultants, including those in its own Medical Department and the recognized local and national medical bureaus of information. These