

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962 1963

No. 606 39

NEW YORK TIMES COMPANY, PETITIONER,

vs.

L. B. SULLIVAN.

No. 609 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

No. 606

NEW YORK TIMES COMPANY, PETITIONER,
vs
L B SULLIVAN

No. 609

RALPH D ABERNATHY, ET AL., PETITIONERS,
vs
L B SULLIVAN

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

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[fol. 1]
**IN CIRCUIT COURT OF MONTGOMERY COUNTY,
ALABAMA**

ORGANIZATION OF COURT

The State of Alabama
Montgomery County

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled L. B. Sullivan vs. The New York Times Co., a Corp., Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery.

[fol. 2]
IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

No. 27416

L. B. SULLIVAN,

vs.

**THE NEW YORK TIMES Co., a Corp., RALPH D. ABERNATHY,
FRED L. SHUTTLESWORTH, S. S. SEAY, SR., and J. E.
LOWERY.**

SUMMONS AND COMPLAINT—April 19, 1960

The State of Alabama
Montgomery County

To Any Sheriff of the State of Alabama—Greeting:

You are hereby commanded to summon The New York Times Company, a Corporation, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery to appear before the Circuit Court of Montgomery County, in and for said County, at the place of holding the same, within thirty days from the service of this summons and complaint, then and there to demur or plead to the com-

plaint of L. B. Sullivan. And you are hereby commanded to execute this process instanter and make return as required by law.

Witness my hand this 19 day of April, 1960.

John R. Matthews, Clerk.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

COMPLAINT—Filed April 19, 1960

Count I

Plaintiff claims of the defendants the sum of Five Hundred Thousand Dollars (\$500,000.00) as damages, for that plaintiff avers that defendants falsely and maliciously published in the City of New York, State of New York, and in the City of Montgomery, Alabama, and throughout the State of Alabama of and concerning the plaintiff, in a publication entitled The New York Times, in the issue of March 29, 1960, on page 25, in an advertisement entitled, "Heed Their Rising Voices" (a copy of said advertisement being attached hereto and made a part hereof as Exhibit "A"), false and defamatory matter of charges reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama, and imputing improper conduct to him, and subjecting him to public contempt, ridicule and shame, and prejudicing the [fol. 3] plaintiff in his office, profession, trade, or business, with an intent to defame the plaintiff, and particularly the following false and defamatory matter therein contained:

"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. 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.*"

And plaintiff further avers that more than five days before the bringing of this action plaintiff made a written demand for a full and fair public retraction of the aforesaid false and defamatory matter or charges upon defendants and each of them; and defendants, and each of them, have failed or refused to publish a full and fair retraction of such charges or matter in as prominent and public a place or manner as the aforesaid charges or matter occupied as aforesaid;

And plaintiff further avers that he has suffered damage, and embarrassment to his character and reputation, personally and as a public official of the City of Montgomery, Alabama; that he has been subjected to public ridicule and shame; that he has been injured and damaged in the lawful pursuit of his office, profession, trade or business, as a proximate result of the aforesaid false and defamatory publication by the defendants; and plaintiff further claims punitive damages; hence this suit.

Count II

Plaintiff claims of the defendants the sum of Five Hundred Thousand Dollars (\$500,000.00) as damages, for that plaintiff avers that defendants falsely and maliciously published in the City of New York, State of New York, and in the City of Montgomery, Alabama, and throughout the State of Alabama, of and concerning the plaintiff, in a publication entitled The New York Times, in the issue of March 29, 1960, on page 25, in an advertisement entitled, "Heed Their Rising Voices" (a copy of said advertisement being attached hereto and made a part hereof as Exhibit "A"),

false and defamatory matter or charges reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama, and imputing improper conduct to him, and subjecting him to public contempt, ridicule, and shame, and prejudicing the plaintiff in his office, profession, trade, or business, and [fol. 4] 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 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."

"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 'offences.' And now they have charged him with 'perjury'—a *felony* under which they could imprison him for *ten years*."

And plaintiff further avers that more than five days before the bringing of this action plaintiff made a written demand for a full and fair public retraction of the aforesaid false and defamatory matter or charges upon defendants and each of them; and defendants, and each of them, have failed or refused to publish a full and fair retraction of such charges or matter in as prominent and public a place or manner as the aforesaid charges or matter occupied as aforesaid;

And plaintiff further avers that he has suffered damage and embarrassment to his character and reputation, personally and as a public official of the City of Montgomery, Alabama; that he has been subjected to public ridicule and shame; that he has been injured and damaged in the lawful

pursuit of his office, profession, trade, or business, as a proximate result of the aforesaid false and defamatory publication by the defendants; and plaintiff further claims punitive damages, hence this suit.

Scott, Whitesell & Scott, By: Calvin Whitesell;
Steiner, Crum and Baker, By: M. R. Nachman, Jr.;
Attorneys for Plaintiff.

Plaintiff demands trial by jury in this cause.

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

State of Alabama
Montgomery County

Before me, Bernice S. Osgoode, a Notary Public in and for said County, in said State, personally appeared M. R. Nachman, Jr., who is known to me, and who, being first duly [fol. 5] sworn, deposes and says as follows:

That defendant The New York Times Company, a corporation, is a non-resident of the State of Alabama; that it is not qualified under the Constitution and laws of the State of Alabama as to doing business in the State of Alabama; that it has actually done and is now doing business or performing work or services in the State of Alabama; that this cause of action has arisen out of the doing of such business or as an incident thereof by the said defendant in the State of Alabama, and that by the doing of such business or the performing of such work or services this defendant, in accordance with the Constitution and laws of the State of Alabama, is deemed to have appointed the Secretary of State of Alabama, or her successor or successors in office, to be the true and lawful attorney or agent of this nonresident defendant, upon whom process may be served in this action which has accrued from the performing of such work or services, or as an incident thereof, by this nonresident defendant, acting through its agents, servants, or employees.

And affiant further avers that process should be served upon this defendant, to-wit, The New York Times Company,

in the manner prescribed by the laws of Alabama, and particularly in the manner prescribed by Title 7, Sec. 199 (1), Code of Alabama 1940 as amended.

Affiant further avers that the residence and the last known address of this defendant is as follows: The New York Times Company, Times Building, 229 West 43d Street, New York, New York.

M. R. Nachman, Jr.

Sworn to and subscribed before me, this the 18th day of April, 1960, as witness my hand and official seal.

Bernice S. Osgoode, Notary Public, Montgomery County, Alabama.

Filed in office this 19 day of April, 1960.

John R. Matthews, Clerk.

[fol. 6]

EXHIBIT "A" TO COMPLAINT

HEED THEIR RISING VOICES

"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."

—New York Times Editorial
Saturday, March 19, 1960

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 would 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 truck-loads 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.

Small wonder that the Southern violators of the Constitution fear this new, non-violent brand of freedom 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 this same Dr. King who founded and is president of the Southern Christian Leadership Conference [fol. 7] —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 . . .

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.

YOUR HELP IS URGENTLY NEEDED . . . NOW ! !

Stella Adler	Dr. Algernon Black
Raymond Pace Alexander	Marc Blitzstein
Harry Van Arsdale	William Branch
Harry Belafonte	Marlon Brando
Julie Belafonte	Mrs. Ralph Bunche

Diahann Carroll	Ossie Davis
Dr. Alan Knight Chalmers	Sammy Davis, Jr.
Richard Coe	Ruby Dee
Nat King Cole	Dr. Phillip Elliott
Cheryl Crawford	Dr. Harry Emerson Fosdick
Dorothy Dandridge	
[fol. 8]	
Anthony Franciosa	L. Joseph Overton
Lorraine Hansbury	Clarence Pickett
Rev. Donald Harrington	Shad Polier
Nat Hentoff	Sidney Poitier
James Hicks	A. Philip Randolph
Mary Hinkson	John Raitt
Van Heflin	Elmer Rice
Langston Hughes	Jackie Robinson
Morris Lushewitz	Mrs. Eleanor Roosevelt
Mahalia Jackson	Bayard Rustin
Mordecai Johnson	Robert Ryan
John Killens	Maureen Stapleton
Eartha Kitt	Frank Silvera
Rabbi Edward Klein	Hope Stevens
Hope Lange	George Tabori
John Lewis	Rev. Gardner C. Taylor
Viveca Lindfors	Norman Thomas
Carl Murphy	Kenneth Tynan
Don Murray	Charles White
John Murray	Shelley Winters
A. J. Muste	Max Youngstein
Frederick O'Neal	

We in the south who are struggling daily for dignity and freedom warmly endorse this appeal

Rev. Ralph D. Abernathy
(Montgomery, Ala.)

Rev. Fred L. Shuttlesworth
(Birmingham, Ala.)

Rev. Kelley Miller Smith
(Nashville, Tenn.)

Rev. W. A. Dennis
(Chattanooga, Tenn.)

Rev. C. K. Steele
(Tallahassee, Fla.)

Rev. Matthew D. McCollom
(Orangeburg, S. C.)

Rev. William Holmes Borders
(Atlanta, Ga.)

Rev. Douglas Moore
(Durham, N.C.)

Rev. Wyatt Tee Walker
(Petersburg, Va.)

Rev. Walter L. Hamilton
(Norfolk, Va.)

I. S. Levy
(Columbia, S.C.)

Rev. Martin Luther King
(Atlanta, Ga.)

Rev. Henry C. Bunton
(Memphis, Tenn.)

Rev. A. L. Davis
(New Orleans, La.)

Rev. J. E. Lowery
(Mobile, Ala.)

Rev. S. S. Seay, Sr.
(Montgomery, Ala.)

Mrs. Katie E. Whickham
(New Orleans, La.)

Committee to defend Martin Luther King and the Struggle for Freedom in The South

312 West 125th Street,
New York 27, N. Y.
University 6-1700

I am enclosing my contribution of \$..... for the work of the Committee.

Name
Please Print

Address

City

Zone State

I want to help

Please send further information.

Please make checks payable to: "Committee to Defend Martin Luther King"

Rev. T. J. Jenison
(Baton Rouge, La.)

Rev. Samuel W. Williams
(Atlanta, Ga.)

Rev. W. H. Hall
(Hattiesburg, Miss.)

COMMITTEE TO DEFEND MARTIN LUTHER KING
AND THE STRUGGLE FOR FREEDOM IN
THE SOUTH

312 West 125th Street, New York 27, N. Y.,
UNiversity 6-1700

Chairmen: A. Philip Randolph, Dr. Gardner C. Taylor;
Chairmen of Cultural Division:

Harry Belafonte, Sidney Poitier, Shelley Winters; Treasurer; [fol. 9] 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.

. ;

Filed in office this 19 day of April, 1960.

JOHN R. MATTHEWS, Clerk.

Executed by serving three copies of the within Summons and Complaint on Betty Frink as Secretary of State of Ala., for Deft. New York Times, 4-21-60.

Also a copy on Don McKee, as Agent 4-21-60 for the New York Times and further executed by serving a copy on defendant Ralph D. Abernathy, 4-28-60 Also on S. S. Seay, Sr., 4-21-60.

M. S. BUTLER, SHERIFF

By: Romeo & Mathis, D. S.

Executed this 16 day of May, 1960 by serving a copy of the within on J. E. Lowery.

RAY D. BRIDGES, Sheriff

By: J. Payne, D.S.

Executed this the Apr 22 1960 day of — 195— by leaving a copy of the within with Fred L. Shuttlesworth.

HOLT A. McDOWELL, Sheriff
Jefferson County, Alabama

By: Thomas Hoffey, D. S.

CERTIFICATE OF SERVICE

May 24, 1960

L. B. SULLIVAN, Plaintiff
IN THE CIRCUIT COURT OF
MONTGOMERY, ALABAMA

vs

CASE No. 578

THE NEW YORK TIMES COMPANY, a
Corporation, et al, Defendants

STATE OF ALABAMA
MONTGOMERY COUNTY

Before me, Nancy H. Turner, a Notary Public in and for said State-at-Large, personally appeared Bettye Frink, Secretary of State of the State of Alabama, who is known to me and who being duly sworn, deposes and says that in her official capacity as Secretary of State of the State of Alabama, she, on the 21 day of April, 1960 sent by registered mail in an envelope addressed as follows:

[fol. 10]

"The New York Times Company
Times Building
229 West 43d Street
New York, New York"

"Registered Mail—
Return Receipt Requested

bearing sufficient and proper prepaid postage, a notice bearing her signature and the Great Seal of the State of Alabama in words and figures as follows:

"The New York Times Company
Times Building
229 West 43d Street
New York, New York

You will take notice that on April 21, 1960 the Sheriff of Montgomery County, Alabama, served upon me, in my official capacity, Summons and Complaint and Affidavit in a case entitled: L. B. SULLIVAN, Plaintiff, vs THE NEW YORK

TIMES COMPANY, a Corporation, et al, Defendants in the
CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
CASE No. 578

a true copy of which Summons and Complaint and Affidavit are attached hereto and the said service upon me as Secretary of State of the State of Alabama has the force and effect of personal service upon you, said service being under provisions of Title 7, Section 199 (1) of the 1940 Code of Alabama and Supplement thereto.

WITNESS MY HAND and the Great Seal of the State of Alabama this the 21 day of April, 1960

(Signed) BETTYE FRINK
Bettye Frink, Secretary of State

Enclosures (2)

Affiant further says that the notice above set out which was so mailed in the envelope addressed as above set forth had attached to it a true copy of the Summons and Complaint and Affidavit in the above-styled cause.

Affiant further says that on May 16, 1960 she received the "Return Card" showing "RECEIPT" by the designated addressee of the aforementioned matter at New York, N. Y. Times on Apr. 23, 1960 /Square Sta. 95 Rec'd. 1960.

BETTYE FRINK
Affiant, Bettye Frink,
Secretary of State

Sworn to and subscribed before me, this the 24 day of May, 1960.

NANCY H. TURNER
Notary Public, State-at-Large
My Commission expires: 10/17/62
Enclosures—"Return Receipt" and
Copy of Process

cc: Messrs. Steiner, Crum & Baker
Attorneys at Law
First National Bank Building
Montgomery, Alabama

[fol. 11]

RETURN RECEIPT CARD

L. B. SULLIVAN VS THE NEW YORK TIMES COMPANY, a Corporation et al

#1—INSTRUCTIONS TO DELIVERING EMPLOYEE

Deliver ONLY Addressee

Show address where delivered

(Additional Charges required for these services)

NEW YORK 36 N. Y.

C 96

12:30 PM

TIMES SQUARE STATION

RETURN RECEIPT

Received the numbered article described on other side

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

N. Y. TIMES

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

G. ALFION

Date Delivered

Apr. 23, 1960

Address Where Delivered (only if requested in item #1)

POST OFFICE DEPARTMENT

Official Business

PENALTY FOR PRIVATE USE to Avoid
Payment of Postage \$300

RECEIVED May 16, 1960

—Return to:

SECRETARY OF STATE

Secretary of State Montgomery, Alabama
Postmark of delivering office
New York, N. Y.,
Times Square Station No. 95
1960
May 11—11 AM

Registered No.
54307

[fol. 12]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
No. 27416

[Title omitted]

DEMURRER OF S. S. SEAY, SR.—Filed May 20, 1960

Now comes S. S. Seay, Sr., one of the defendants in the above entitled cause and demurs to the Complaint filed in the above entitled cause, and separately and severally demurs to each count thereof, and as grounds of demurrer assigns the following separately and severally:

1. That it does not state a cause of action.
2. That no facts alleged upon which relief sought can be granted.
3. That there is a misjoinder of party defendants.
4. That there is a misjoinder of causes of actions.
5. No facts are alleged to show that this defendant published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint.
6. No facts are alleged to show that this defendant caused to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.

7. For ought that appears from the Complaint, this defendant did not publish or cause to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.

8. There is no allegation in said Complaint that this individual defendant published or caused to be published the advertisement referred to and attached to the Complaint.

9. For that it affirmatively appears from said Complaint and from Exhibit "A" attached thereto, that this defendant in fact did not publish or cause to be published the advertisement referred to in said Complaint.

10. The allegations that this defendant falsely and maliciously published in the City of New York, State of New York, and in the City of Montgomery, Alabama, of and concerning the plaintiff, in a publication entitled "The New York Times", in the issue of March 29, 1960, on page 25 in an advertisement, "Heed Their Rising Voices" is a conclusion of the pleader with no facts alleged in support thereof.

11. For that no facts are alleged to show that this defendant did any act or acts which could be reasonable interpreted as imputing improper conduct to the plaintiff and [fol. 13] subjecting plaintiff to public contempt, ridicule and shame.

12. For that the allegation that this defendant did any act or acts which would be reasonably interpreted as imputing improper conduct to the plaintiff is a conclusion of the pleader and unsupported by any facts.

13. That said Complaint and no count thereof connects the plaintiff in any way with the alleged libelous matter stated in the Complaint.

14. That the said alleged libelous matter does not designate by innuendo or otherwise that the matter complained of applied to the plaintiff in this cause.

15. That the allegations that this defendant published in the City of New York, State of New York, and in the City

of Montgomery, Alabama and throughout the State of Alabama, false and defamatory matters reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama is a conclusion of the pleader and no facts are alleged to substantiate said allegations.

16. That there is no causal connection between this defendant and the alleged libelous matter stated in the Complaint.

17. That there is no causal connection between this defendant, the alleged libelous matter stated in the Complaint and the plaintiff.

18. That the allegations of the Complaint and each count thereof are the mere conclusion of the pleader without facts alleged in support thereof.

19. That it affirmatively appears from the allegations of the Complaint that this defendant had no connection with the publication of the alleged libelous matter.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Attorneys for
the Defendant.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 14]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

No. 27416

[Title omitted]

DEMURRER OF FRED L. SHUTTLESWORTH
—Filed May 20, 1960

Now comes Fred L. Shuttlesworth, one of the defendants in the above entitled cause and demurs to the Complaint filed in the above entitled cause, and separately and severally demurs to each count thereof, and as grounds of demurrer assigns the following separately and severally:

1. That it does not state a cause of action.
2. That no facts alleged upon which relief sought can be granted.
3. That there is a misjoinder of party defendants.
4. That there is a misjoinder of causes of actions.
5. No facts are alleged to show that this defendant published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint.
6. No facts are alleged to show that this defendant caused to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.
7. For ought that appears from the Complaint, this defendant did not publish or cause to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.
8. There is no allegation in said Complaint that this individual defendant published or caused to be published the advertisement referred to and attached to the Complaint.
9. For that it affirmatively appears from said Complaint and from Exhibit "A" attached thereto, that this defendant in fact did not publish or cause to be published the advertisement referred to in said Complaint.
10. The allegations that this defendant falsely and maliciously published in the City of New York, State of New York, and in the City of Montgomery, Alabama, of and concerning the plaintiff, in a publication entitled "The New York Times", in the issue of March 29, 1960, on page 25, in an advertisement entitled, "Heed Their Rising Voices" is a conclusion of the pleader with no facts alleged in support thereof.
11. For that no facts are alleged to show that this defendant did any act or acts which could be reasonably interpreted as imputing improper conduct to the plaintiff and subjecting plaintiff to public contempt, ridicule and shame.

[fol. 15] 12. For that the allegation that this defendant did any act or acts which would be reasonable interpreted as imputing improper conduct to the plaintiff is a conclusion of the pleader and unsupported by any facts.

13. That said Complaint and no count thereof connects the plaintiff in any way with the alleged libelous matter stated in the Complaint.

14. That the said alleged libelous matter does not designate by innuendo or otherwise that the matter complained of applied to the plaintiff in this cause.

15. That the allegations that this defendant published in the City of New York, State of New York, and in the City of Montgomery, Alabama and throughout the State of Alabama, false and defamatory matters reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama is a conclusion of the pleader and no facts are alleged to substantiate said allegations.

16. That there is no causal connection between this defendant and the alleged libelous matter stated in the Complaint.

17. That there is no causal connection between this defendant, the alleged libelous matter stated in the complaint and the plaintiff.

18. That the allegations of the Complaint and each count thereof are the mere conclusion of the pleader without facts alleged in support thereof.

19. That it affirmatively appears from the allegations of the Complaint that this defendant had no connection with the publication of the alleged libelous matter.

Respectfully Submitted,

Fred D. Gray, Solomon S. Seay, Jr., Attorneys for
the Defendant.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 16]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEMURRER OF RALPH D. ABERNATHY
—Filed May 22, 1960

Now comes Ralph D. Abernathy, one of the defendants in the above entitled cause and demurs to the Complaint filed in the above entitled cause, and separately and severally demurs to each count thereof, and as grounds of demurrer assigns the following separately and severally:

1. That it does not state a cause of action.
2. That no facts alleged upon which relief sought can be granted.
3. That there is a misjoinder of party defendants.
4. That there is a misjoinder of causes of actions.
5. No facts are alleged to show that this defendant published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint.
6. No facts are alleged to show that this defendant caused to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.
7. For ought that appears from the Complaint, this defendant did not publish or cause to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.
8. There is no allegation in said Complaint that this individual defendant published or caused to be published the advertisement referred to and attached to the Complaint.
9. For that it affirmatively appears from said Complaint and from Exhibit "A" attached thereto, that this defendant in fact did not publish or cause to be published the advertisement referred to in said Complaint.
10. The allegations that this defendant falsely and maliciously published in the City of New York, State of New

York, and in the City of Montgomery, Alabama, of and concerning the plaintiff, in a publication entitled "The New York Times", in the issue of March 29, 1960, on page 25, in an advertisement entitled, "Heed Their Rising Voices" is a conclusion of the pleader with no facts alleged in support thereof.

11. For that no facts are alleged to show that this defendant did any act or acts which could be reasonably interpreted as imputing improper conduct to the plaintiff and subjecting plaintiff to public contempt, ridicule and shame.

12. For that the allegation that this defendant did any act or acts which would be reasonably interpreted as imputing improper conduct to the plaintiff is a conclusion of the pleader and unsupported by any facts.

13. That said Complaint and no count thereof connects [fol. 17] the plaintiff in any way with the alleged libelous matter stated in the Complaint.

14. That the said alleged libelous matter does not designate by innuendo or otherwise that the matter complained of applied to the plaintiff in this cause.

15. That the allegations that this defendant published in the City of New York, State of New York, and in the City of Montgomery, Alabama, and throughout the State of Alabama, false and defamatory matters reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama is a conclusion of the pleader and no facts are alleged to substantiate said allegations.

16. That there is no causal connection between this defendant and the alleged libelous matter stated in the Complaint.

17. That there is no causal connection between this defendant, the alleged libelous matter stated in the Complaint and the plaintiff.

18. That the allegations of the Complaint and each count thereof are the mere conclusion of the pleader without facts alleged in support thereof.

19. That it affirmatively appears from the allegations of the Complaint that this defendant had no connection with the publication of the alleged libelous matter.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Attorneys for Defendant.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 18]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEMURRER OF J. E. LOWERY—Filed June 15, 1960

Now comes J. E. Lowery, one of the defendants in the above entitled cause and demurs to the Complaint filed in the above entitled cause, and separately and severally demurs to each count thereof, and as grounds of demurrer assigns the following separately and severally:

1. That it does not state a cause of action.
2. That no facts alleged upon which relief sought can be granted.
3. That there is a misjoinder of party defendants.
4. That there is a misjoinder of causes of action.
5. No facts are alleged to show that this defendant published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint.
6. No facts are alleged to show that this defendant caused to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.
7. For ought that appears from the Complaint, this defendant did not publish or cause to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.

8. There is no allegation in said Complaint that this individual defendant published or caused to be published the advertisement referred to and attached to the Complaint.

9. For that it affirmatively appears from said Complaint and from Exhibit "A" attached thereto, that this defendant in fact did not publish or cause to be published the advertisement referred to in said Complaint.

10. The allegations that this defendant falsely and maliciously published in the City of New York, State of New York, and in the City of Montgomery, Alabama, of and concerning the plaintiff, in a publication entitled "The New York Times", in the issue of March 29, 1960, on page 25, in an advertisement entitled "Heed Their Rising Voices" is a conclusion of the pleader with no facts alleged in support thereof.

11. For that no facts are alleged to show that this defendant did any act or acts which could be reasonably interpreted as imputing improper conduct to the plaintiff and subjecting plaintiff to public contempt, ridicule and shame.

12. For that the allegation that this defendant did any act or acts which would be reasonably interpreted as imputing improper conduct to the plaintiff is a conclusion of the pleader and unsupported by any facts.

[fol. 19] 13. That said Complaint and no count thereof connects the plaintiff in any way with the alleged libelous matter stated in the Complaint.

14. That the said alleged libelous matter does not designate by innuendo or otherwise that the matter complained of applied to the plaintiff in this cause.

15. That the allegations that this defendant published in the City of New York, State of New York, and in the City of Montgomery, Alabama and throughout the State of Alabama, false and defamatory matters reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama is a conclusion of the pleader and no facts are alleged to substantiate said allegations.

16. That there is no causal connection between this defendant and the alleged libelous matter stated in the Complaint.

17. That there is no causal connection between this defendant, the alleged libelous matter stated in the Complaint and the plaintiff.

18. That the allegations of the Complaint and each count thereof are the mere conclusions of the pleader without facts alleged in support thereof.

19. That it affirmatively appears from the allegations of the Complaint that this defendant had no connection with the publication of the alleged libelous matter.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Attorneys for
Defendant.

Vernon Z. Crawford

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 20]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

INTERROGATORIES TO DEFENDANT THE NEW YORK TIMES
COMPANY—Filed June 16, 1960

Comes plaintiff L. B. Sullivan, and pursuant to the provisions of Title 7, pp. 477 et seq., Code of Alabama of 1940, propounds the following interrogatories to the defendant The New York Times Company.

1. Please state your correct corporate name and the name, address and official position of the person who is answering these interrogatories.

2. Please state all the details, facts, and circumstances under which the advertisement on which this suit is based came to be inserted in the New York Times in the issue of March 29, 1960, on pg. 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.

3. Please state exactly and in detail what investigation was made by any person for or on behalf of the New York Times to determine the correctness of the statements contained in said advertisement, prior to its publication. In answering this question, please give the 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 statement which any such person may have made to the New York Times regarding the results of such an investigation.

4. Please state whether or not the New York Times, prior to the publication of the advertisement involved in this suit, carried any news stories in its paper, or received in its files any news coverage or reports from its reporters, news services, or other news gathering media concerning any 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.

5. 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.

[fol. 21] 6. 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 origi-

nal or a true and correct copy of said demand for retraction.

7. 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, please attach a true and correct copy of said reply.

8. 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 copies of any and all reports, communications, advice, or other writings, informing or apprising you of the results of said investigation.

9. 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.

10. Did you in response to plaintiff's demand dated April 8, 1960, publish a retraction in your newspaper? If you answer affirmatively, please attach the original or a true and correct copy of said retraction.

11. 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.

12. Is the following matter contained in the advertisement made the basis of this suit, true:

"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. 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 [fol. 22] 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 each and every fact, statement, or occurrence contained in the foregoing quotation which you say is true; and which are not true. Please state further and fully every source of information upon which you rely for your contention, if you contend that any of the foregoing facts, statements, or occurrences are true.

13. 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.

14. 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."

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

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

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

18. Give all of the facts in your possession which tend in any manner to substantiate the matter quoted in Interrogatory No. 12, and include with this answer the names of persons, and if documentary substantiation is claimed, true [fol. 23] and correct copies of such documents.

19. State your gross income during the year 1959 and for the first six months of 1960, and your net earnings for the same period. State your assets, liabilities, and net worth for the year 1959.

Steiner, Crum & Baker, By: M. R. Nachman, Jr.
Scott, Whitesell & Scott, By: Calvin M. Whitesell,
Attorneys for Plaintiff.

State of Alabama
Montgomery County

Before me, Bernice S. Osgoode, a Notary Public in and for said County, in said State, personally appeared M. R. Nachman, Jr., who is known to me, who being by me first duly sworn upon oath deposes and says that he is one of the attorneys for the plaintiff in the above entitled cause, and as such is authorized to make this affidavit; that the answers

of the defendant, The New York Times Company, a corporation, to the foregoing interrogatories will be material testimony for the plaintiff in the trial of this case.

M. R. Nachman, Jr.

Sworn to and subscribed before me on this the 16th day of June, 1960, as witness my hand and official seal.

Bernice S. Osgoode, Notary Public, Montgomery County, Alabama.

Executed by serving a copy of the within interrogatories on Beddow, Embry and Beddow, as attorneys of record for The New York Times Co. by leaving a copy with Eric Embry, atty. agt. this June 21, 1960.

Holt A. McDowell, Sheriff, Jefferson Co.

I hereby certify that a copy of the within interrogatories were mailed by Registered Mail, Return Receipt Requested, to the New York Times Co., Inc., a corp., New York, New York, on this the 17th day of June, 1960.

John R. Matthews, Clerk.

[File endorsement omitted]

[fol. 24]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION TO PRODUCE—Filed May 31, 1960

Comes the plaintiff in the above entitled cause and moves this Court for an order requiring the defendant The New York Times Company, a corporation (hereinafter referred to in this motion as "the Times",) to produce the following books, documents, and writings in its possession, custody, control or power, which contain evidence pertinent to the issues in the above styled cause, and which more specifically relate to questions raised and to be presented to this Court by the said defendant's motion to quash, and plaintiff further moves this Court for an order that the same be produced in the office of the Clerk of this Court by the 20th day of June, 1960:

(1) All issues of the New York Times for the following dates: Feb. 11, 12, 17, 18, 22, 23, 25, 26, 28, 29, 1956; March 1, 2, 4, 6, 7, 3, 10, 11, 13, 16, 18, 30, 1956; April 8, 1956, 11, 12, 13, 14, 15, 29, 1956; May 5, Feb. 16, 1956; August 28, 1956, October 22, 1956; December 2, 1956; January 8, 12, 22, 24, 28, 29, 1956; February 1, 14, 24, 27, 1956; March 14, 19, 20, 21, 22, 23, 24, 25, 26, 29, 31, 1956; April 3, 24, 25, 26, 27, 1956; May 10, 11, 26, 1956; June 2, 3, 6, 20, 23, 28, 30, 1956; July 3, 12, 1956; August 7, 13, 24, 26, 1956; September 8, 18, 19, 20, 22, 1956; October 4, 11, 14, 27, 30, 1956; November 3, 14, 15, 16, 18, 20, 1956; December 3, 7, 10, 16, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 1956; January 1, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 26, 17, 18, 21, 22, 24, 28, 29, 31, 1957; February 11, 13, 14, 19, 21, 22, 25, 26, 28, 29, 1957; March 3, 5, 7, 10, 11, 11, 17, 19, 22, 23, 1957; April 5, 17, 24, 1957; May 2, 4, 7, 16, 17, 22, 31, 28, 31, 1957; June 1, 15, 22, 24, 27, 1957; July 7, 14, 17, 27, 31, 1957; August 16, 17, 21, 25, 1957; September 6, 8, 13, 19, 28, 1957; October 18, 25, 26, 1957; November 2, 6, 7, 8, 14, 27, 28, 30, 1957; December 1, 15, 18, 19, 29, 1957; January 3, 6, 19, 20, 25, 1958; Feb. 2, 1958; March 1, 18, 29, 1958; April 10, 1958; May 7, 8, 31, 1958; June 4, 5, 22, 1958; August 29, 1958; September 11, 1958; October 22, 24, 30, 1958; November 5, 13, 14, 16, 1958; December 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 1958; January 6, 7, 10, 11, 13, 14, 15, 16, 18, 20, 23, 27, 29, 1959; February 7, 14, 21, 24, 19, 1959; March 7, 8, 14, 22, 27, 1959; May 2, 5, 30, 1959; July 7, 10, 23, 24, 28, 1959; August 1, 8, 23, 1959; September 9, 1959; October 30, 1959; November 24, 29, 1959; December 1, 22, 1959; January 24, 1960; February 7, 9, 12, 26, 27, 1960; March 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 22, 23, 24, 29, 30, 1960; April 1, 3, 8, 9, 12, 13, 1960.

(2) All documents, letters, telegrams, writings, or other [fol. 25] correspondence between the said defendant and the following persons:

Don McKee, Montgomery, Alabama
Maurice W. Castel, Jr., Mobile, Alabama
John R. Chadwick, Birmingham, Alabama
Charles R. Murphy, Montgomery, Alabama
William H. McDonald, Montgomery, Alabama
G. C. Long, Montgomery, Alabama

(3) All writings or other documents constituting applications for employment, or contracts of employment, or any business arrangement with the individuals specified in the preceding paragraph as so-called "string-correspondents", or with any other persons who are residents of the State of Alabama and who have been so-called "string correspondents" for the Times since 1956.

(4) All documents or other writings constituting a statement of rules and regulations from the Times to any "string correspondents" in the State of Alabama during the last four years, regarding the nature of the duties of these "string correspondents".

(5) All writings, letters, written communications or other documents constituting correspondence between Mr. Harold A. Faber, of the Times and any resident of Alabama since January 1, 1956.

(6) Copies of all checks, vouchers, and receipts, and any other papers or documents in connection with the payment by the Times to any of the persons named in paragraph 2 of this motion, or any other so-called "string correspondents", resident in Alabama, since January 1, 1956.

(7) All documents and writings constituting expense accounts or statements of expenses submitted for or in behalf of the following individuals, or any other agents, servants, or employees of the Times relating to expense incurred by them in the State of Alabama since January 1, 1956:

Clarence Dean	Claude Sitton
Wayne Phillips	George Barrett
Harrison Salisbury	Peter Kihss
John Popham	I. Plenn
Thos. M. Hurley	

(8) Copies of all checks, vouchers, or other documents representing payments by any persons, (natural or artificial, including the State of Alabama and any county or municipality thereof), who were or are residents of Alabama, in connection with any advertising by them in the Times since January 1, 1956.

(9) Copies of all documents constituting contracts or business arrangements by any person (natural or artificial, including the State of Alabama and any county or municipality thereof), who were or are residents of Alabama, executed in connection with any advertising by them in the Times since January 1, 1956.

(10) Copies of all documents or other writings constituting the statement of all receipts by the Times from advertising by persons described in the preceding paragraph of this motion, in the Times, since January 1, 1956.

(11) Copies of all writings or other documents evidencing the total receipts by the Times from the sale of its newspaper in Alabama for the year 1959 and the first five months of 1960.

(12) Copies of all written material mailed into the State of Alabama by the Times for the purpose of obtaining subscriptions to its newspaper from Alabama residents since January 1, 1956.

(13) Copies of all written material mailed into the State of Alabama by the Times constituting solicitation of subscriptions to its microfilm edition by any persons (natural or artificial, including the State of Alabama and any county or municipality thereof), who were or are residents of Alabama.

(14) Copies of all documents or other advertising matter sent from the Times to any person in Alabama (natural or artificial, including the State of Alabama and any county or municipality thereof), who are or were residents of Alabama, in connection with the sale of New York Times Index, since January 1, 1956.

(15) All documents, records, books, accounts, and letters, relating to the sale, shipment, or delivery, including receipts, records of subscriptions and of collections, and payments of and for publications of the said defendant, as the foregoing documents relate to any such sale, shipment or delivery, of such publications in the State of

Alabama for the year 1959, and for the first five months of 1960.

(16) All documents which constitute records of sales of the said defendant's publications in the State of Alabama for the year 1959 and for the first five months of 1960.

(17) All documents, books, papers, accounts, letters, or other documents, relating to all business arrangements and transactions between the said defendant and any other person, firm, or corporation, regarding the sale, shipment, delivery and distribution of the said defendant's publications in the State of Alabama for the year 1959, and for the first five months of 1960.

(18) All documents, records, letters, or other papers relating to the solicitation of business on behalf of the said defendant and its publications in the State of Alabama since January 1, 1956, including such documents as relate to the solicitation of advertising from Alabama.

(19) Copies of all documents, records, books, accounts, letters, vouchers, checks, or other records of payments of [fol. 27] the said defendant to any person, firm, or corporation, with reference to the sale, shipment, delivery, distribution, or any of the defendant's publications in the State of Alabama, or relating to any advertising from persons, firms, or corporations in Alabama (including the State of Alabama and any county or municipality or any other subdivision thereof), or by any such person to the said defendant, arising out of any contractual relations between such person and the said defendant, for the year 1959 and the first five months of 1960.

(20) All records, documents, books, letters, accounts, or other papers relating to the employment by the said defendant of any persons in the State of Alabama for the years 1956 through 1959 and for the first five months of 1960; and any checks or other vouchers evidencing payment to any residents of the State of Alabama for the years 1956 through 1959 and for the first five months of 1960.

(21) All records, documents, books, letters, accounts, papers, checks or vouchers, evidencing payment, directly or indirectly, to said defendant by residents of the State of Alabama (including the State of Alabama and any county, municipality, or other subdivision thereof), or by the said defendant to the State of Alabama, for the years 1956, through 1959 and for the first five months of 1960.

Steiner, Crum & Baker, By: M. R. Nachman, Jr.;
Scott, Whitesell & Scott, By: Calvin Whitesell;
Attorneys for Plaintiff.

AFFIDAVIT OF M. R. NACHMAN, JR.

State of Alabama
Montgomery County

Before the undersigned Bernice S. Osgoode, a Notary Public in and for the County of Montgomery, State of Alabama, personally appeared M. R. Nachman, Jr., who is known to me, and who, being first duly sworn, deposes and says under oath that he is one of the attorneys of record for plaintiff in the foregoing cause; that the New York Times Company has in its possession and under its control or custody, the foregoing books, documents, records, papers, vouchers, checks, receipts, correspondence, letters and other documents; that these documents are normally kept by this defendant in the regular course of its business, and are in the possession, custody, or control of said defendant; that the documents specified in the foregoing motion are pertinent to the issues in this case and are necessary and material and essential to the proper presentation of plaintiff's case and in successfully meeting [fol. 28] the defenses which are anticipated, more particularly those defenses raised in this defendant's motion to quash. It is apparent that the foregoing documents will reveal the nature and extent of the business done by this defendant in the State of Alabama, and the revenues and profits which it derives from its business transactions in this state. These documents contain material directly pertinent to the question of the nature and extent of the

business done by this defendant, and contain material which is pertinent and necessary in meeting the anticipated defense which this defendant has sought to raise.

The information contained in the foregoing materials cannot be had from other sources available to the plaintiff. This information is by its nature within the exclusive knowledge of defendant, and exclusively within its possession, custody, and control. The material contained in the foregoing documents will enable the plaintiff to present his case in such a manner as to facilitate proof and progress of the trial of this cause, including a hearing on the motion and dilatory pleadings which this defendant has sought to make.

M. R. Nachman, Jr.

Sworn to and subscribed before me, this the 30th day of May, 1960.

Bernice S. Osgoode, Notary Public, Montgomery County, Alabama.

Certificate of Service (omitted in printing).

Please Take Notice that the foregoing motion will be presented to the Hon. Walter B. Jones, Presiding Judge of the Circuit Court of Montgomery County, Alabama, on June 7, 1960 at 12:00 Noon.

M. R. Nachman, Jr., Of Counsel.

[File endorsement omitted]

[fol. 29]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

RULING OF COURT ON PLAINTIFF'S MOTION TO PRODUCE,
FILED MAY 31, 1960—June 9, 1960

This matter comes on for hearing on the motion of plaintiff, L. B. Sullivan, for an order requiring the defendant, the New York Times Company, a corporation, one of the defendants in the above styled cause, to produce certain

books, documents, writings, issues of the New York Times, letters, telegrams, correspondence, checks, vouchers, receipts, and other writings specified in paragraphs 1 through 21 of plaintiff's said motion.

The matter was submitted to the Court upon the said motion to produce of the plaintiff, and the affidavit of M. R. Nachman, Jr., one of the attorneys for the plaintiff, whose affidavit was attached to the said motion.

Counsel for all of the parties were present at the hearing on the said motion, and the Court heard arguments of counsel for the plaintiff and counsel for the defendant, The New York Times Company.

After consideration of the motion, and the said affidavit, and argument of counsel, the Court is of the opinion that the said motion to produce is meritorious; that the written materials specified in paragraphs 1 through 21 of the motion are necessary and material to the issues in this cause, and more specifically relate to the questions raised and to be presented to this Court by the said defendant's motion to quash; that the written materials specified in paragraphs 1 through 21 are necessary and material, in that they will reveal the nature and extent of the business done by this defendant in the State of Alabama; that the said written materials specified in paragraphs 1 through 21 are normally kept by this defendant in the regular course of its business, and are in the possession, custody, or control of the said defendant; that the information contained in these materials cannot be had from other sources available to the plaintiff, and are by their nature within the exclusive knowledge of this defendant and exclusively within its custody, possession or control.

Wherefore, premises considered, it is Considered, Ordered and Adjudged by the Court that the defendant, The New York Times Company produce in the Office of the Clerk of this Court on or before Noon, June 30th, 1960, all of the books, papers, documents, and other written materials specified in paragraphs 1 through 21 of the plaintiff's motion to produce, filed in this Court, except that paragraph 2 is limited to the period of time since January 1, 1956 to date of service. Said documents shall remain in the custody of the Clerk of this Court, subject

to the further orders of this Court. And to this ruling the defendant, New York Times Co., duly excepts.

Done in Montgomery, this the 9th day of June, 1960.

Walter B. Jones, Circuit Judge Presiding.

[File endorsement omitted]

[fol. 30]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

EXCEPTION TO COURT'S RULING ON PLAINTIFF'S MOTION
TO PRODUCE—Filed June 16, 1960

Comes the defendant, The New York Times Company, a corporation, and excepts to the ruling of the Court of the 9th day of June, 1960, granting plaintiff's motion to require defendant to produce those documents and instruments as are set forth in said motion of plaintiff of the 31st day of May, 1960, and prays the Court to enter this defendant's exception to said ruling on the minutes of the Court.

Beddow, Embry and Beddow, By: P. E. Embry,
Attorneys for defendant, The New York Times
Company, a corporation, Appearing Specially.

[File endorsement omitted]

[fol. 31]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION FOR EXTENSION OF TIME—Filed June 29, 1960

Comes The New York Times Company, a corporation, and without submitting itself to the jurisdiction of the Circuit Court of Montgomery County, Alabama, and without waiving in any wise its limited appearance therein objecting to the jurisdiction thereof by the filing of this motion and filing this motion strictly and only in connection with matters arising out of and in connection with this defendant's special appearance objecting to the jurisdiction of this court respectfully shows unto the court as follows:

1. That on the 9th day of June, 1960, Honorable Walter B. Jones, as Judge of this Honorable Court, entered an order requiring this defendant to produce in the office of the Clerk of this Court on or before noon June 30, 1960, certain books, papers, documents and other written materials, which order was issued in pursuance of the motion to produce filed by the plaintiff on the 31st day of May, 1960.

2. That the aforesaid order entered on the 9th day of June, 1960, ordered this defendant to produce a great number of documents, many of which are difficult to locate and difficult to assemble in form for production, and they must be transmitted a great distance and it has been impossible for this defendant to comply with the order of the court within the time specified.

Wherefore Premises Considered, this defendant respectfully moves this Honorable Court to grant unto it an extension of time for the production of the aforesaid books, papers, documents and other written material.

Beddow, Embry and Beddow, By: Roderick M. MacLeod, Jr., Attorneys for the New York Times Company, a Corporation, appearing specially.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 32]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ORDER OF COURT EXTENDING TIME FOR PRODUCTION
OF DOCUMENTS—June 29, 1960

This matter again coming on to be heard is submitted on the motion for an extension of time to produce documents and papers heretofore ordered produced by the New York Times Company and there are present at the hearing counsel of record for the plaintiff and counsel for the defendant. Upon consideration of same, the Court is of the opinion that it would be reasonable to extend the

time for production of documents until 12 o'clock noon Monday, July 11th, 1960.

Done, this the 29th day of June, 1960.

Walter B. Jones, Circuit Judge Presiding.

[File endorsement omitted]

[fol. 33]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION TO QUASH SERVICE OF PROCESS—Filed May 20, 1960

Comes the New York Times Company, a corporation, named as one of the defendants in the above styled cause, by its attorneys, and appearing solely and specially for the purpose of filing this its motion to quash attempted service of process in this cause and for no other purpose and without waiving service of process upon it and without making a general appearance and expressly limiting its special appearance to the purpose of quashing the attempted service of process upon it in this case alleges the following, separately and severally:

1. On, to-wit, April 26, 1960, The New York Times Company, a corporation received by registered mail in New York City, New York, a summons and complaint and affidavit of the Honorable Betty Frinke, Secretary of State of the State of Alabama, attached thereto, in a cause entitled "L. B. Sullivan, plaintiff, vs. The New York Times Company, a corporation, et als, Defendants, in the Circuit Court of Montgomery County, Alabama, No. 578", all as more fully appears from the records and papers on file in said cause in this Honorable Court.

2. On, to-wit, April 21, 1960, a summons and complaint in that cause entitled "L. B. Sullivan, Plaintiff, vs. The New York Times Company, a corporation, et als, Defendants, In the Circuit Court of Montgomery County, Alabama, No. 578", was served upon one Don McKee by the Sheriff of Montgomery, Alabama, Honorable M. S. Butler, and said Sheriff's return was in substance as follows, "also a copy on Don McKee as agent for the New York Times

4/21/60 M. S. Butler"; and this defendant alleges that the said Don McKee, at the time of the service of said summons and complaint upon him, at the time of the filing of said summons and complaint in this cause, and at the time of the accrual of any alleged or purported cause of action set forth in said summons and complaint, was not an officer, agent or other person by law or in fact or by statutes of the State of Alabama provided, a proper person upon whom service of process can be made so as to subject this defendant to the jurisdiction of this Honorable Court.

3. The New York Times Company, a corporation, is a foreign corporation, organized and existing under the laws of the State of New York, with its principal place of business at The Times Building, 229 West 43rd Street, New York, New York, and said corporation is not qualified and has not heretofore been qualified, is not and has not been licensed, is not and has not been authorized to do business in Alabama; does not have an agent for service of process upon it in Alabama, and did not have at the time of the service of the process as is described in preceding paragraphs 1 [fol. 34] and 2 herein; has no office or place of business situated in, or employee, agent or servant, in the State of Alabama, and did not have at the time of the service of process as is described in the preceding paragraphs 1 and 2 herein; is not doing business in Alabama or in Montgomery County, Alabama, and was not doing business in Alabama or in Montgomery County at the time of the service of process as described in preceding paragraphs 1 and 2 herein.

4. The New York Times Company, a corporation, is a foreign corporation, organized and existing under the laws of the State of New York, with its principal place of business at The Times Building, 229 West 43rd Street, New York, New York. Said corporation is not qualified and has not heretofore been qualified, is not and has not been licensed, is not and has not been authorized to do business in Alabama; does not have an agent for service of process upon it in Alabama, and did not have at the time of the service of the process as is described in preceding paragraphs 1 and 2 herein, at the time of the accrual of the

alleged cause of action set forth in the summons and complaint filed in this cause nor at the time of the filing of said summons and complaint in this cause; is not doing business in Alabama or in Montgomery County, Alabama, and was not doing business in Alabama or in Montgomery County, Alabama, at the time of the service of process as described in preceding paragraphs 1 and 2 herein, at the time of the accrual of the alleged cause of action set forth in the summons and complaint filed in this cause nor at the time of filing of said summons and complaint in this cause.

5. The New York Times Company, a corporation, has not at any time pertinent to the alleged cause of action or the purported service of process in this cause done business in the State of Alabama or in Montgomery County, Alabama.

6. The New York Times Company, a corporation, is not amenable to service of process in the State of Alabama, and was not at any time pertinent to the alleged cause of action or the purported service in this cause and has not waived service of due process herein by voluntary appearance or otherwise.

7. The cause of action alleged in plaintiff's complaint did not accrue from the doing of any business or the performing of any work or service or as an incident thereto by the defendant, The New York Times Company, a corporation, or its agent, servant or employee in the State of Alabama.

8. The defendant, The New York Times Company, a corporation, is a non-resident corporation of the State of Alabama, and is not qualified under the Constitution and laws of the State of Alabama to do business in said State and the defendant has not done any business or performed [fol. 35] any character of work or service in this state so as to appoint the Secretary of State of Alabama its true and lawful attorney or agent upon whom process may be served in this action so as to subject this defendant to the jurisdiction of this Court.

9. The affidavit of M. R. Nachman, Jr., attached to the complaint filed in this cause purporting to set forth facts

authorizing service of process on the defendant, The New York Times Company, a corporation, by service upon the Secretary of State of Alabama as provided for in Title 7, Section 199 (1) Code of Alabama, 1940 as amended, does not appear to have been made by the party to the cause or his agent or attorney.

10. It does not appear that there is on file in the Office of the Secretary of State of Alabama a certificate or statement under oath by the plaintiff or his attorney that the provisions of Title 7, Section 199 (1) Code of Alabama, 1940, as amended are applicable to this case.

11. It does not appear that there is on file in the cause an affidavit made by the plaintiff or his agent or attorney stating facts showing that Title 7, Section 199 (1) Code of Alabama, 1940, as amended, is applicable to this cause.

12. There is not on file in this cause, nor is there attached to the writ or process purporting to have been served on the defendant, The New York Times Company, a corporation, an affidavit made by the plaintiff or his agent or attorney stating facts showing that the provisions of Title 7, Section 199 (1) of the Code of Alabama of 1940, as amended, are applicable to this cause.

13. Don McKee, upon whom service of process was made, as is described in paragraph 2 herein was not an officer, agent, servant or employee of The New York Times Company, a corporation at the time of service of process upon him as described in paragraph 2 herein, nor at the time of the accrual of any alleged cause of action set forth in the complaint in this cause, nor at the time of the filing of the summons and complaint in this cause.

14. The New York Times Company, a corporation, is a foreign corporation within the meaning of the laws of the State of Alabama and not qualified under the Constitution and Laws of the State of Alabama to do business in said State. On April 21, 1960 and on April 26, 1960, it did not do and prior thereto had not done any business or performed any character of work or service in the State of Alabama out of which any alleged cause of action as set forth in the complaint in this cause accrued.

15. The New York Times Company, a corporation, is a foreign corporation within the meaning of the laws of the State of Alabama and not qualified under the Constitution and laws of the State of Alabama to do business in said [fol. 36] State. On April 21, 1960, it did not do and prior thereto had not done any business or performed any character of work or service in this state out of which any alleged cause of action as set forth in the complaint in this cause accrued.

16. The New York Times Company, a corporation, is a foreign corporation within the meaning of the laws of the State of Alabama and not qualified under the Constitution and laws of the State of Alabama to do business in said State. On April 26, 1960, it did not do and prior thereto had not done any business or performed any character of work or service in this state out of which any alleged cause of action as set forth in the complaint in this cause accrued.

17. The New York Times Company, a corporation, is not subject to the jurisdiction of this Honorable Court in this cause for this court to assume jurisdiction of said defendant in this cause would deny to defendant due process of law in contravention of the 14th Amendment to the Constitution of the United States.

18. The New York Times Company, a corporation, is not subject to the jurisdiction of this Honorable Court in this cause and for this court to assume jurisdiction of said defendant in this cause of action would deny to defendant due process of law in contravention of the 5th Amendment to the Constitution of the United States.

19. The New York Times Company, a corporation, is not subject to the jurisdiction of this Honorable Court in this cause and for this court to assume jurisdiction of said defendant in this cause of action would deny to defendant due process of law in contravention of the 1st Amendment to the Constitution of the United States.

20. The New York Times Company, a corporation, is not subject to the jurisdiction of this Honorable Court in this

cause and for this court to assume jurisdiction of said defendant in this cause of action would deny to defendant due process of law in contravention of Article 1, Section 13 of the Constitution of Alabama of 1901.

21. Under the Constitution and laws of the United States, The New York Times Company, a corporation, is not amenable to process in the State of Alabama for and on account of the fact that the said corporation was not doing business in said State of Alabama at the time of any service of process in this cause as described in preceding paragraphs 1 and 2 herein, or at the time of the accrual of the alleged cause of action set forth in the complaint in this cause or at the time of the filing of said complaint.

22. The service of process in the manner and mode in [fol. 37] which same was attempted to be served upon this defendant as is described in preceding paragraph 1 and 2 herein constitutes a denial of due process of law under the Constitution and laws of the United States.

23. The service of process in the manner and mode in which same was attempted to be served upon this defendant as is described in preceding paragraph 1 and 2 herein constitutes a denial of due process of law under the Constitution and laws of the State of Alabama.

24. The New York Times Company, a corporation, has not, either on April 21, 1960 or April 26, 1960, or at the time of the accrual of any alleged cause of action as set forth in the complaint in this cause or at the time of the filing of said complaint, done any business or performed any character or work or service in the State of Alabama such as would bring the said corporation within the meaning and purview of the provisions of Title 7, Section 199 (1) Code of Alabama, 1940, as amended, as relied upon by the plaintiff in this cause to make said corporation amenable to process of this Honorable Court.

25. The New York Times Company, a corporation, has not, either on April 21, 1960 nor April 26, 1960, or at the time of the accrual of any alleged cause of action as set forth in the complaint in this cause, or at the time of the filing

of said complaint, done any business or performed any character of work or service in the State of Alabama out of which the alleged cause of action set forth in the complaint in this cause accrued within the meaning and purview of the provisions of Title 7, Section 199 (1) Code of Alabama, 1940, as amended, as relied upon by the plaintiff in this cause to make said corporation amenable to process of this Honorable Court.

26. The Sheriff's return of the purported service of process on Don McKee is insufficient to show valid service upon the defendant, The New York Times Company, a corporation, or its agent, servant or employee.

27. The Sheriff's return of the purported service on Don McKee affirmatively shows that the said Don McKee was served as agent of the New York Times and not as agent of this defendant.

Wherefore, The New York Times Company, a corporation, appearing specially for this purpose and no other moves the Court as follows:

1. That service of process as described in preceding paragraph 1 of this motion be quashed as to the New York Times Company, a corporation.

2. That service of process as described in preceding paragraph 2 of this motion be quashed as to The New York Times Company, a corporation.

3. That purported service of process upon The New York Times Company, a corporation, of April 21, 1960, described in preceding paragraph 2 herein and that purported service of process of April 26, 1960, upon said [fol. 38] defendant as described in preceding paragraph 1 herein be quashed and that said defendant be stricken as a party hereto.

4. That this action be dismissed as to The New York Times Company, a corporation.

5. That this court dismiss this action as to The New York Times Company, a corporation, for lack of jurisdiction of the person of the said The New York Times Company, a corporation.

6. That this Court dismiss this action as to The New York Times Company, a corporation, for lack of jurisdiction of the subject matter of said action.

Beddow, Embry and Beddow, By: P. Eric Embry,
Attorneys for The New York Times Company, a
corporation, appearing specially for the sole purpose
of the filing of this motion.

State of Alabama
Jefferson County

Comes Roderick M. MacLeod, Jr., who first being duly sworn deposes and says that he has knowledge of the facts set forth in the above and foregoing motion and the same are true and that he, as attorney, for the New York Times Company, a corporation, is authorized to make this affidavit.

This 19th day of May, 1960.

Roderick M. MacLeod, Jr.

Sworn to and subscribed before me this 19th day of May, 1960.

Mary B. Weatherly, Notary Public.

CERTIFICATE OF SERVICE

I, Roderick M. MacLeod, Jr., of counsel for defendant, The New York Times Company, a corporation, appearing specially for the purpose of the filing of this the above and foregoing motion to quash hereby certify that I have delivered a copy of the above and foregoing motion to Messrs. Scott, Whitesell and Scott and Messrs. Steiner, Crum and Baker, attorneys for plaintiff in this cause, by delivering a copy of said motion by hand to each of said respective firms of attorneys at their respective offices at the Bell Building and at the First National Building in the City of Montgomery, Alabama, this the 20th day of May, 1960.

Roderick M. MacLeod, Jr., Of Counsel.

[File endorsement omitted]

[fol. 39]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

AMENDMENT TO MOTION TO QUASH SERVICE OF PROCESS
—Filed July 25, 1960

Comes the New York Times Company, a corporation, and appearing solely and specially for the purpose as is set forth in its original motion to quash service of process heretofore filed in this cause, and without waiving service of process and expressly limiting its special appearance to the purpose of amending its motion to quash by adding thereto the following numbered grounds to said motion, separately and severally:

28. The provisions of Title 7, Section 199 (1) of the Code of Alabama 1940, as amended, are invalid, null and void for that the same are in contravention of due process of law under the Fourteenth Amendment to the Constitution of the United States.

29. For that to subject the defendant, The New York Times Company, a corporation, under the facts set forth in the affidavit of M. R. Nachman, Jr., attached to the complaint in this cause, to the jurisdiction of this Court by virtue of the provisions of Title 7, Section 199 (1) of the Code of Alabama, 1940, as amended, would be violative of the provisions of the Fourteenth amendment to the Constitution of the United States by denying defendant due process of law.

30. For that to subject the defendant The New York Times Company, a corporation, to the jurisdiction of this Court under the facts set forth in the affidavit of M. R. Nachman, Jr., attached to the complaint in this cause would be to place an unreasonable burden upon interstate commerce or to place an unreasonable burden upon the commerce of the several states.

31. For that to subject the defendant, The New York Times Company, a corporation, to the jurisdiction of this Court would place an undue burden upon interstate commerce and deny to this defendant due process of law as

guaranteed to it by the provisions of the Fourteenth amendment to the Constitution of the United States.

Beddow, Embry & Beddow, By: P. Eric Embry,
Attorneys for the New York Times Co., a corporation appearing specially and for the sole purpose for filing this amendment.

State of Alabama
Jefferson County

Comes Roderick M. MacLeod, Jr., who first being duly sworn deposes and says that he has knowledge of the facts set forth in the above and foregoing amendment to defendant's motion to quash and the same are true, and that he as attorney for The New York Times Company, a corporation [fol. 40] is authorized to make this affidavit.

This the 25th day of July, 1960.

Roderick M. MacLeod, Jr.

Sworn to and subscribed before me this 25th day of July, 1960.

P. Eric Embry, Notary Public

CERTIFICATE OF SERVICE

I, Roderick M. MacLeod, Jr., of counsel for defendant, The New York Times Company, a corporation, appearing specially for the purpose of filing the above and foregoing amendment to defendant's motion to quash hereby certify I have delivered a copy of same to Messrs. Scott, Whitesell and Scott and Messrs. Steiner, Crum and Baker, Attorneys for plaintiff in this cause by delivering a copy of said amendment by hand to the Honorable M. R. Nachman, Jr., in open Court on this the 25th day of July, 1960.

Roderick M. MacLeod, Jr., Of Counsel.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ORDER AND OPINION ON MOTION TO QUASH—August 5, 1960

Plaintiff, a resident of Montgomery, Alabama, has sued defendant, The New York Times Company, a corporation, and Others, in this Court for an allegedly libelous publication specified in the complaint. The matter is now before this Court on the motion, and amended motion, of the defendant, The New York Times Company (hereinafter referred to as the "Times"), to quash the service of process upon it. Other defendants are not involved in these motions.

Service was obtained on the Times by serving the Secretary of the State of Alabama pursuant to the provisions of Title 7, Section 199 (1), Code of Alabama, 1940, as amended, and by personal service on one Don McKee, as agent for the New York Times. Without dispute, the Secretary of State has performed all acts required of her under the provisions [fol. 41] of this section regarding notification to the Times.

General Appearance

This motion, and its amendment, purport to be a special appearance for the sole purpose of quashing service of process. However, ground 6 of the prayer of this motion asks this Court to "dismiss this action as to The New York Times Company, a corporation, for lack of jurisdiction of the subject matter of said action". Clearly, this ground goes beyond the question of jurisdiction of this Court over the person of the defendant. Plaintiff's attorneys make a threshold argument in opposition to the Times' motion that this defendant has made a general appearance in this case, and has thereby waived any defects in service of process, and has submitted its corporate person to the jurisdiction of this Court.

Plaintiff's contention is sound.

This defendant cannot assert that it is not properly before this Court, and in the same breath argue that if it is, this Court has no jurisdiction of the subject matter of the action.

The Supreme Court of Alabama in *Blankenship v. Blankenship*, 263 Ala. 297, 303, 82 So. 2d 335, has recently held that a party's appearance in a suit for any purpose other than to contest the Court's jurisdiction over the person of such party, is a general appearance in the cause. See also *Thompson v. Wilson*, 224 Ala. 299, 300, 140 So. 139, where an objection to the jurisdiction of the Court to hear and determine the matter in controversy on grounds other than proper personal service on the defendant was considered a general appearance.

The Alabama rule is the majority one. See Annotation, 25 A. L. R. 2d. 835, 838. And the rule is applicable "notwithstanding an express statement by the defendant that he appears specially or solely for the purpose of making the objection", 25 A.L.R. 2d. at 840. The matter was succinctly put by the Court of Appeals of New York in *Jackson v. National Grange Mutual Liability Co.*, 299 N.Y. 333, 87 N.E. 2d. 283, 284:

"under its special appearance, the defendant company could do nothing but challenge the jurisdiction of the Justice's Court over its person . . . Hence by its attempt to deny jurisdiction of the subject of the action, the company waived that special appearance and submitted its person to the jurisdiction of the Court."

While its assertion of lack of jurisdiction of this Court over the subject matter of this action would be sufficient to constitute a general appearance, the Times has gone further and taken other steps in this cause inconsistent with its asserted special appearance. It sought to invoke the [fol. 42] original jurisdiction of the Supreme Court of Alabama by applying for the extraordinary writ of mandamus to review the order of this Court directing it to produce certain documents. The petition was presented to the Supreme Court and briefed on grounds other than lack of jurisdiction over the person of this defendant. This defendant sought to have the Supreme Court, by extraordinary writ, vacate an order of this Court on non-jurisdictional grounds—that is, grounds totally unrelated to its special appearance in the Alabama courts.

Such action, too, has been held to be inconsistent with a special appearance, and, accordingly, a waiver of the same. *Vaughan v. Vaughan*, 267 Ala. 117, 121, 100 So. 2d. 1:

“Respondent . . . by not limiting her appearance and by including non-jurisdictional as well as jurisdictional grounds in her motion to vacate . . . has made a general appearance and has thereby waived any defect or insufficiency of service. (Citations)”

These acts in the Supreme Court, all inconsistent with its special appearance, strengthen the conclusion of this Court that the Times has appeared generally in this cause.

Validity of Substituted Service

In view of the foregoing holding that the Times has made a general appearance in the cause, and has waived its special appearance, it is not essential to a decision on this defendant's motion to consider the matter of whether service of process on the Times is valid. But, in view of the voluminous testimony of this latter question, and in view of the manifold contacts with the Times maintains with the State of Alabama, it seems appropriate to explain why this Court considers that the Times is amenable to process and suit in the Alabama courts regardless of its general appearance.

Our statute, Title 7, Section 199 (1) Alabama Code 1940, accords with widespread legislation of recent origin designed to afford state residents the opportunity of maintaining suit against foreign corporations, which, while maintaining significant business contract within the State, nevertheless do not qualify to do business as provided by state law. This Alabama statute makes such an unqualified foreign corporation subject to suit here if it does business in this state, and if the cause of action sued on arises out of or is incident to the business done in Alabama. The scope of our statute has been defined in *Boyd v. Warrent Paint Co.*, 254 Ala. 687, 688, 49 So. 2d. 599:

“In determining the question, we are not here concerned with state law, since it is not controlling. The

issue is regarded in this jurisdiction as a federal question [fol. 43] of whether subjection of the defendant to this sovereignty comports with federal due process. *Ford Motor Co. v. Hall Auto Co.*, 226 Ala. 385, 147 So. 603; *St. Mary's Oil Engine Co. v. Jackson Oil & Fuel Co.*, 224 Ala. 152, 138 So. 834. As was said in *Ford Motor Co. v. Hall Auto Co.*, *supra*: 'It is recognized that the federal authorities are controlling on questions entering into the inquiry and ascertainment of the facts (1) of doing business, and (2) of authorized agency on which process must be served, or (3) those of due process, equal protection, and interstate commerce. * * * , 226 Ala. 387, 147 So. 605.'

Thus, the Alabama statute allows this suit against the Times in Alabama if the suit is not prohibited here by the due process clause (Amendment 14) of the Constitution of the United States. Moreover, the *Boyd* case, *supra*, makes clear that under this due process inquiry that there is "subsumed the question of whether the action was based on a liability arising out of the local activities, it naturally being less burdensome to subject a corporation to defense of actions so arising than those arising elsewhere". 254 Ala., at 691.

In order to consider in context the business activities of the New York Times in Alabama, the Court adopts the outline of the essential business functions of a newspaper contained in *Consolidated Cosmetics v. D. A. Publishing Co.*, 186 F. 2d. 906, 908 (7th Cir. 1951):

"The functions of a magazine publishing company obviously include gathering material to be printed, obtaining advertisers and subscribers; printing, selling and delivering the magazines for sale. Each of these, we think, constitutes an essential factor of the magazine publication business. Consequently, if a nonresident corporation sees fit to perform any one of those essential functions in a given jurisdiction, it necessarily follows that it is conducting its activities in such a manner as to be subject to jurisdiction."

The key question is whether The New York Times, by virtue of its business activities in Alabama maintains sufficient contacts with this State so that suit against it here accords with traditional concepts of fairness and the orderly administration of the laws "which it was the purpose of the due process clause to insure". *International Shoe Co. v. Washington*, 326 U. S. 310, 319.

In the foregoing context, the Court considers the activities of the Times in this State. Plaintiff has submitted evidence not only as to the year 1960. His evidence, in an attempt to establish a continuing pattern of such activities, extends from the year 1956 to the present.

To gather news for the Times, eleven admittedly regular staff correspondents have spent 153 days in Alabama. The results of their efforts are revealed in part by the 59 staff news stories in evidence which contain the by-lines of these correspondents. Their news gathering activities have been coordinated and correlated by the Times National News Editor, Harold Faber, who testified in this case; and by the [fol. 44] southern regional correspondent, who is regularly assigned to cover news events in this state, among others in the southern region. This present correspondent, Claude Sitton, gave a deposition in this case. He came into Alabama and covered news events in Montgomery in March, 1960, relating to certain "demonstrations", which form the basis of a portion of the publication now in suit; and he came into Alabama in May, 1960 on assignment to cover the perjury trial of one Martin Luther King, which event is also the subject of a portion of this publication.

Another regular staff correspondent, Harrison Salisbury, entered Alabama on assignment from the witness, Faber, in April, 1960, and gathered news in Birmingham, Montgomery and Andalusia for subsequent publication in the Times.

In addition to the news gathering activities of its staff correspondents, the Times maintains three so-called "string-correspondents", who reside in Montgomery, Birmingham, and Mobile. The stated purpose of such "stringers" in this state is to have them available for news stories of note in the area of their residence—subject to call by the Times. The testimony shows that the Times has made an active

effort to maintain a "stringer" at these three places in Alabama at all times; has commented upon the value of the services which they have performed; and has actively sought their replacement upon the resignation of any one of them. The testimony is clear that present "stringers" McKee and Chadwick have performed valuable services for the Times' staff correspondents over and above the stories which the stringers themselves sent in for publication. And they performed such services in April, 1960. Moreover, "stringer" McKee was entrusted with the delicate task of investigating the facts involved in the instant complaint when the plaintiff demanded that the Times retract the publication.

Obviously, the Times considers the news gathering activities of these staff correspondents and "stringers" a valuable and unique complement to the news gathering facilities of the Associated Press and other wire services of which the Times is a member. The stories of the "stringers" appear under the "slug" "Special to the New York Times", and there were 59 such "specials" in the period from January 1, 1956, through April, 1960. The staff stories and the "specials" are copyrighted and sold by the Times to other newspapers. Thus, the following rule of law, stated in 30 A.L.R. 2d. at page 751, is applicable:

"A foreign newspaper corporation which not only employs reporters in another state to obtain news for its own newspaper, but also sells to other newspapers the news thus obtained, has been held to be doing business in the state." (Citing authorities.)

[fol. 45] In search of revenues, the Times actively solicits advertising in the State of Alabama. One representative spent over a week soliciting advertising in Montgomery, Mobile and Birmingham. Another representative spent 7 days in Alabama visiting Birmingham, Montgomery and Selma, and a third representative spent three days in Birmingham. All of this business activity occurred in the period from July 1, 1959 through June 3, 1960, after an advertising office was opened in Atlanta, which includes Alabama within its territory. Manager Hurley sold one

ad to the State of Alabama which brought between three and five thousand dollars. In 1958, an ad appearing in the Alabama supplement of February 2 brought over \$28,000 to the Times. According to its own testimony, the Times received between seventeen and eighteen thousand dollars from ads obtained in Alabama from January 1 through April, 1960. Annualized, these revenues would approximate Fifty to Fifty-five Thousand Dollars per year.

A Times witness, Roger Waters, testified that the daily circulation in Alabama was 390 papers per day, and that Sunday circulation was approximately 2,500 papers. This would produce a revenue of \$35,884.55 per year, which, when added to the advertising revenue would give the Times a revenue from business activities in Alabama of over \$85,000 per year.

Papers are sold to individual subscribers and independent dealers and wholesalers. Freight is prepaid in New York, thus making the carrier the agent of the Times. Credit is given for unsold newspapers without physical return of the papers. In these circumstances, title does not pass until actual delivery to the consignee.—Title 57, Section 25, Alabama Code 1940; 2 Williston, *Sales*, Section 279 (b) page 90. In giving credit for return, the Times sometimes requires a certificate from the local freight agent located in Alabama. It thus appears that the Times owns property and handles claims in the State of Alabama.

It has also sold and distributed in the State of Alabama sets of its Microfilm Edition to 13 customers, and the New York Times Index to eighteen.

The Times contends that the cause of action did not arise out of its conduct of business in Alabama. The Court is of the opinion that the cause of action is "an incident thereto" within the language of Title 7, Section 199 (1), Alabama Code, 1940. It is noteworthy that Sitton was assigned to Montgomery by the Times to cover the demonstrations at Alabama State College and the King trial, with which the ad dealt. But, where a corporation is doing business in the State, due process does not require that the cause of action arise out of the business done there.—

Perkins v. Benguet Consolidated Mining Co., 342 U. S. 437, 96 L.Ed. 485; *Bomze v. Nardis Sportswear, Inc.*, 165 F. 2d. [fol. 46] 33 (2d. Cir.—Judge Learned Hand—cited with approval in the *Boyd* case); *Tauza v. Susquehanna Coal Co.*, 220 N.Y. 259, 155 N.E. 915 (Judge Cardozo). And *Boyd*, *supra*, extends the Alabama statute to the permissible limits of Federal due process.

In arriving at its decision, the Court has followed these relevant decisions of the Supreme Court of the United States:

- International Harvester Co. v. Kentucky, 234 U.S. 579, 58 L. Ed. 1479;
- International Shoe Co. v. Washington, 326 U.S. 310, 90 L. Ed. 95;
- Perkins v. Benguet Mining Co., *supra*;
- Polizzi v. Cowles Publications, 345 U.S. 663, 97 L. Ed. 1331;
- McGee v. International Ins. Co., 355 U.S. 220, 2 L. Ed. 2d. 223;
- Scripto v. Carson, 362 U.S. 207, 4 L. Ed. 660.

While it is not necessary to discuss each of those decisions in detail, it is noteworthy that in the McGee case the minimal contact with the State of California which the Supreme Court held sufficient was the delivery by the insurance company by mail of one insurance policy, and the receipt from the insured in California by mail of premiums on this policy.

In the Scripto case, the minimal contact held sufficient was the production in the State of Florida of an annual revenue of about \$42,000 by independent dealers or brokers, who worked for others as well as Scripto. Here, Alabama sent in an annual revenue of over twice that amount, and regular employees of the Times combined their efforts with independent dealers to produce it. See also *W.S.A.Z. v. Lyons*, 254 F. 2d. 242 (6th Cir. 1958).

The Court finds an extensive and continuous course of Alabama business activity—news gathering; solicitation of advertising; circulation of newspapers and other products. These systematic business dealings in Alabama give

the Times substantial contract with the State of Alabama, considerably in excess of the minimal contracts required by the Supreme Court decisions supra. The Times does business in Alabama.

Likewise, the Court finds that to subject the Times to suit in Alabama comports with traditional notions of fair play and the proper administration of justice. Plaintiff resides here, and is a public official of the City of Montgomery. If a reputation has a situs, it is here in Montgomery. The events occurred largely in Montgomery, and witnesses who have knowledge of the truth or falsity of the events as outlined in the advertisement reside in or near Montgomery. Of the four co-defendants, two reside [fol. 47] in Montgomery, one in Birmingham and one in Mobile. The Circuit Court of Montgomery County is the appropriate and convenient forum to try this action.

What was said in the case of *Clements v. MacFadden Publications, Inc.*, 28 F. Supp. 274, 276, is applicable here:

“To carry the present line of holdings to any greater extent than they now exist could easily result in a publication two thousand miles away destroying a man’s reputation, whether he be great or small, and requiring him to come to unfriendly territory, perhaps, to effect his vindication in the courts of justice.”

This Court has always been a staunch advocate and defender of freedom of the press. But this freedom and other safeguards of the due process clause do not command the plaintiff to carry his witnesses, his evidence, his counsel and himself more than one thousand miles to a distant forum to bring his action for alleged damages to his reputation and to try his case. It is, therefore,

Considered, Ordered, and Adjudged by the Court that the motion of the defendant, The New York Times Company, to quash, and its amended motion to quash, be and the same are hereby denied.

Dated, this the 5th day of August, 1960.

Walter B. Jones, Circuit Judge.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT, THE NEW YORK TIMES COMPANY, A CORPORATION,
EXCEPTION TO THE ORDER DENYING ITS AMENDED
MOTION TO QUASH—Filed August 9, 1960

Comes The New York Times Company, a corporation,
and hereby enters its exception to the order, judgment
or decree of this Court of the 5th day of August, 1960,
denying its amended motion to quash service of process.

This, the 8th day of August, 1960.

Beddow, Embry and Beddow, By: P. Eric Embry,
Attorneys for the Defendant, The New York Times
Company, a corporation.

[File endorsement omitted]

[fol. 48]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEMURRER OF DEFENDANT, THE NEW YORK TIMES COMPANY,
A CORPORATION—Filed August 18, 1960

Now Comes the defendant, The New York Times Company, a corporation, in the above styled cause and demurs to plaintiff's complaint and to each Count thereof, separately and severally, and as grounds for said demurrer, sets down and assigns the following, separately and severally:

1. Said Count fails to state a cause of action.
2. For that said Count contains a misjoinder of parties defendant.
3. For that said Count contains a misjoinder of causes of action.
4. For that it does not appear from the allegations of said Count that the plaintiff was the subject or object of any alleged defamatory or libelous material as is set forth in said Count.

5. For that it does not appear from the allegations of said Count that any publication of any alleged false and defamatory matter, or libelous matter was of and concerning the plaintiff in this cause.

6. For that the allegations of said Count affirmatively show that the matter complained of as being defamatory, or libelous, set forth in said Count, is not libelous or defamatory per se.

7. For that it affirmatively appears from the allegations of said Count that the alleged defamatory or libelous matter set forth therein is neither libelous or defamatory per se, nor is the same libelous or defamatory by innuendo.

8. For that the allegations of said Count fail to show wherein plaintiff was defamed or libeled by the publication of all or any part of the matter set forth in said Count as Exhibit "A" therein.

9. For that the allegations of said Count affirmatively show that there is a misjoinder of causes of action in said Count in that plaintiff complains of the publication of false and defamatory matter by this defendant but fails to allege wherein the other defendants to said cause made any publication of any such alleged libelous matter.

10. For that the allegations of said Count fail to allege wherein this plaintiff was spoken of or referred to in the alleged libelous and defamatory statements set forth in said Count and alleged by the plaintiff to have been false and defamatory.

11. For that the allegations of said Count fail to state wherein plaintiff has suffered any damage as a result of any alleged libelous or defamatory matter published by this defendant.

12. For that the allegations of said Count fail to state wherein the plaintiff was referred to in connection with, of, or concerning the matters alleged to have been false [fol. 49] and defamatory and alleged to have been published by this defendant.

13. For that the allegations of said Count wherein plaintiff alleges that this defendant published false and defamatory matter, or charges reflecting upon the conduct of the plaintiff, as set forth in said count, are mere conclusions of the pleader.

14. For that the allegations of said Count wherein plaintiff alleges that this defendant published false and defamatory matter, or charges reflecting upon the conduct of the plaintiff, as set out in said Count, is mere conjecture on the part of the plaintiff.

15. For that the allegations of said Count wherein plaintiff alleges that this defendant published false and defamatory matter of and concerning the plaintiff, are mere conclusions on the part of the pleader.

16. For that the allegations of said Count wherein plaintiff alleges that this defendant published false and defamatory matter of and concerning the plaintiff, is mere conjecture on the part of the plaintiff.

17. For that the allegations of said Count, wherein it is alleged that this defendant published false and defamatory matter of and concerning the plaintiff, fail to disclose what false and defamatory matter was published of and concerning the plaintiff, directly or by inference.

18. For that the allegation of said Count, wherein it is alleged that this defendant published false and defamatory matter of and concerning the plaintiff, fail to disclose what false and defamatory matter was published of and concerning the plaintiff so that same could fairly be inferred to have been published of and concerning the plaintiff.

19. For that the allegations of said Count attempt to join more than one cause of action in said Count against this defendant.

20. For that said Count contains a duplicitry of causes of action.

21. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged

false and defamatory matter alleged to have been published by this defendant and as set out in said Count, reflected upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama.

22. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged false and defamatory matter alleged to have been published by this defendant referred to plaintiff.

23. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged false and defamatory matter alleged to have been published by this defendant referred to plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama.

[fol. 50] 24. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged false and defamatory matter alleged to have been published by this defendant imputed any improper conduct to plaintiff.

23-a. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged false and defamatory matter, alleged to have been published by this defendant, subjected plaintiff to any public contempt.

24-a. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged false and defamatory matter, alleged to have been published by this defendant, subjected plaintiff to ridicule.

25. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged false and defamatory matter, alleged to have been published by this defendant, subjected plaintiff to shame.

26. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged false and defamatory matter, alleged to have been published by this defendant, prejudiced plaintiff in his office, profession, trade or business.

27. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged false and defamatory matter alleged to have been published by this defendant, as set out in said Count referred to or made mention of, or concerned the plaintiff.

28. For that it affirmatively appears from the allegations of said Count that plaintiff has suffered no injury or damage as a result of the publication of any alleged false and defamatory matter as set out in said Count.

29. For that the allegations of said Count fail to disclose wherein plaintiff was subjected to any public ridicule or shame by publication of any alleged false and defamatory matter as set out in said count.

30. For that the allegations of said Count fail to disclose wherein plaintiff was injured and damaged in the lawful pursuit of his office, profession, trade or business.

31. For that the allegations of said Count affirmatively disclose that the alleged false and defamatory matter set out in said Count is not libelous or defamatory per se and said Count fails to allege any special damages alleged to have been suffered by plaintiff as a result of the publication of said alleged libelous and defamatory matter, as set out in said Count.

[fol. 51] 32. For that the alleged false and defamatory matter set out in said Count is not libelous per se, and plaintiff fails to allege wherein same is libelous or defamatory by innuendo.

33. For that the alleged false and defamatory matter set forth in said Count in no wise refers to or is, on its face, published of and concerning the plaintiff and the allegations of said Count fail to disclose wherein the same refers to, or is of and concerning the plaintiff.

34. For that it affirmatively appears that plaintiff has failed to allege any special damages suffered by him as a result, or as a proximate consequence of the publication of the alleged false and defamatory matter set out in said Count.

Beddow, Embry & Beddow, By: P. Eric Embry,
Attorneys for the defendant, The New York Times
Company, a Corporation.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

OBJECTIONS TO INTERROGATORIES—Filed September 16, 1960

Comes the defendant, The New York Times Company, a corporation, and objects to the following interrogatories heretofore propounded to it by the plaintiff and objects to each of the said interrogatories on the separate and several grounds assigned below:

1. Defendant objects to interrogatory No. 8 on the ground that the same calls for the results of an investigation initiated and made by the attorneys for this defendant after the publication of the advertisement complained of and in connection with the preparation of the defense of the action which defendant anticipated might be brought by this plaintiff, and upon the grounds that it calls for a conclusion and for an answer which is the ultimate inquiry before the court and jury in this cause when the interrogatory makes reference to "correctness of statements contained in said advertisement", and upon the further grounds that the interrogatory is not pertinent to the issue or matter in dispute between the parties.

2. The defendant objects to all of interrogatory No. 9, other than that part asking whether or not any report was received by this defendant on the grounds that the same calls for the result of an investigation initiated and made by the attorneys for this defendant after the publication of the advertisement complained of and in connection with the preparation of the defense of the action which defendant anticipated might be brought by this plaintiff, and upon the grounds that said interrogatory calls for defendant [fol. 52] to reveal its witnesses or evidence and upon the grounds that the interrogatory is not pertinent to the issue and matter in dispute between the parties.

3. The defendant objects to interrogatory No. 12 on the ground that the same is incompetent, irrelevant and immaterial and on the ground that there is an invasion of the province of the court and the jury and calls for an answer which would be a conclusion as to the ultimate fact to be determined by the court and jury in this cause on or of the evidence and upon the further ground that it is not pertinent to the issue and matter in dispute between the parties.

4. The defendant objects to interrogatory No. 18 on the ground that it invades the province of the court and the jury, it calls for defendant to reveal the names of witnesses and to reveal its evidence and calls for matter which is the product of attorney's work in the preparation of defense of this cause, it calls for an answer which would constitute a conclusion as to the ultimate question of fact to be determined by the court and jury in this cause, it calls for incompetent, and illegal conclusions on the part of this defendant, and incompetent, irrelevant and immaterial evidence, and is not pertinent to the issue or matter in dispute between the parties.

5. The defendant objects to interrogatory No. 19 upon the grounds that this interrogatory calls for evidence which is incompetent, irrelevant and immaterial and is not pertinent to the issue or matter in dispute between the parties.

6. The defendant objects to attaching a copy of the news stories as called for by interrogatory No. 4 on the grounds that 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, and on further ground that they are not pertinent to the matter or issue in dispute between the parties.

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

[File endorsement omitted]

[fol. 52-A]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

No. 27416

—
L. B. SULLIVAN, Plaintiff,

v.

THE NEW YORK TIMES COMPANY, A Corporation, et al.,
Defendants.
—

MOTION FOR DEFAULT JUDGMENT

Comes the plaintiff, L. B. Sullivan, and moves the Court for default judgment in this cause, pursuant to the provisions of Title 7, paragraph 483, Code of Alabama, and as grounds therefor assigns the following:

1. On, to-wit, June 21, 1960, plaintiff served on Messrs. Beddow, Embry & Beddow, Massey Building, Birmingham, Alabama, as attorneys for the defendant The New York Times Company, certain interrogatories, together with an affidavit of their materiality.

2. Despite the passage of more than sixty days since the service of copy of the aforesaid interrogatories, defendant has answered none of these interrogatories.

Wherefore, premises considered, plaintiff moves this Court, pursuant to its powers contained in Title 7, paragraph 483, Code of Alabama, to direct a judgment by default against the said defendant to be entered.

Steiner, Crum & Baker; Scott, Whitesell & Scott;
Attorneys for Plaintiff.

I hereby certify that a copy of the foregoing motion has been on this day mailed to Messrs. Beddow, Embry & Beddow, Massey Building, Birmingham, Alabama, attorneys for defendant The New York Times Company.

This September 9, 1960.

M. R. Nachman, Jr., Of counsel for Plaintiff.

ORDER

The foregoing motion will be heard at 11 o'clock A.M. on the 19 day of September, 1960.

Walter B. Jones, Judge of Circuit Court.

[fol. 53]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

**ORDER OF THE COURT ON THE QUESTION OF OBJECTIONS TO
INTERROGATORIES AND THE MOTION FOR CONTINUANCE—
September 20, 1960**

This matter is set at this time for the hearing of the objections by the defendant, The New York Times Company, to the interrogatories heretofore propounded to it by the plaintiff and the same having been argued to the Court by counsel for the respective parties and upon consideration of same the Court is of the opinion that the defendant, The New York Times Company, is not required to answer the interrogatory in the first part of No. 12 "Is the following matter contained in the advertisement made the basis of this suit true?" The Court, however, is of the opinion that the defendant, The New York Times Company, should answer the second part of said interrogatory as same appears at the top of Page 3 of said interrogatory.

The Court is further of the opinion that the objections to interrogatories 8, 9, and 18 are not well taken and said objections are separately overruled and the defendant, The New York Times Company, is given until 12 o'clock noon October 4th, 1960 within which to make answer to said interrogatories above named.

The Court notes that the plaintiff withdraws his insistence that the defendant answer Interrogatory No. 19.

The plaintiff also agreed with the defendant that the defendant's objection No. 6 relating to Interrogatory No. 4 was well taken.

It is Ordered by the Court that at 10:00 A.M. Friday, October 28th, 1960, be and the same is hereby designated as the day to settle the pleadings in this action.

The Court is of the opinion that the motion of the defendant, The New York Times Company, for a continuance is not well taken and said motion for a continuance is hereby denied.

Done, this the 20th day of September, 1960.

Walter B. Jones, Circuit Judge Presiding.

[File endorsement omitted]

[fol. 54]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ADDITIONAL DEMURRERS OF DEFENDANT, THE NEW YORK
TIMES COMPANY, A CORPORATION—Filed October 28, 1960

Comes the defendant, The New York Times Company, a corporation, in the above styled cause and further demurs to plaintiff's complaint, and to each count thereof, separately and severally, and as additional grounds for said demurrer to those originally assigned by this defendant sets down and assigns the following, separately and severally:

35. From aught appearing from the allegations of said count plaintiff is not a member nor one of the "police" referred to in the alleged libelous statement set forth in plaintiff's said count.

36. From aught appearing from the allegations of said count plaintiff is not a "southern violator" referred to in the alleged libelous statement set forth in plaintiff's said count.

37. From aught appearing from the allegations of said count plaintiff is not a member of the class of persons allegedly the subject of the alleged libelous statement.

38. From aught appearing from the allegations of said count plaintiff is not a member of the group allegedly the subject of the alleged libelous statement appearing in said count.

39. From aught that appears plaintiff is not a member of the group referred to in the alleged libelous matter set forth in said count, for it is not alleged that plaintiff is a member of the "police" referred to in the alleged libelous matter set forth in said count.

40. For it is not alleged in said count that plaintiff is a "Southern violator" referred to in the alleged libelous matter set forth in said count.

41. For that the allegations of said count affirmatively show that said alleged libelous matter contained or set forth therein do not identify plaintiff as a "Southern violator".

42. For that it affirmatively appears from the allegations of said count that the alleged libelous matter set forth therein do not identify plaintiff as a member of the "police" referred to in said count.

43. For that it affirmatively appears from the allegations of said count that the alleged libelous matter does not identify plaintiff as being a member of or one of "they" as the same is set forth and contained in the alleged libelous matter set out in said count.

44. For aught appearing from the allegations of said count the "police" referred to in the alleged libelous matter set out therein were from a city other than Montgomery, Alabama.

[fol. 55] 45. For aught appearing from the allegations of said count the "police" referred to in the libelous matter set forth therein were campus police of the school named in said matter.

46. From aught appearing from the allegations of said count there are no "Southern violators" in the City of Montgomery, Alabama or elsewhere in the State of Alabama.

47. From aught appearing from the allegations of said count plaintiff, as a member of the Board of Commissioners of the City of Montgomery, Alabama, or as a commissioner of the City of Montgomery, Alabama, has no connection

with the matters and things referred to in the said alleged libelous statement set forth in said count.

48. From aught appearing from the allegations of said count the Board of Commissioners of the City of Montgomery, Alabama has no connection with the matters referred to in the alleged libelous statement set forth in said count.

49. From aught appearing from the allegations of said count, plaintiff, as a member of the Board of Commissioners of the City of Montgomery, Alabama, had no duties or responsibilities in connection with the police of the City of Montgomery, Alabama.

50. From aught appearing from the allegations of said count, plaintiff, as a member of the Board of Commissioners of the City of Montgomery, Alabama, had no duties or responsibilities in connection with the police department of the City of Montgomery, Alabama.

51. For aught appearing from the allegations of said count plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama, had no duty or responsibility in connection with public safety in the City of Montgomery, Alabama.

52. For aught appearing from the allegations of said count, plaintiff, as a member of the Board of Commissioners of the City of Montgomery, Alabama, had no duty or responsibility in connection with the government of the City of Montgomery, Alabama.

53. For aught appearing from the allegations of said count the Board of Commissioners of the City of Montgomery, Alabama was not the governing body of said city at the times and places referred to in said count.

54. For aught appearing from the allegations of said count the Board of Commissioners of the City of Montgomery, Alabama are not "Southern violators".

[fol. 56] 55. For aught appearing from the allegations of said count the general public could have been referred

to in the alleged libelous matter set forth and contained in said count of which plaintiff complains.

56. For aught appearing from the allegations of said count the "police" referred to in the alleged libelous matter set forth in said count is a class or group which is unidentifiable according to the ordinary import of the word as used in the alleged libelous matter set forth in said count.

57. For aught appearing from the allegations of said count the "Southern violators" referred to in the alleged libelous matter set forth in said count is a class or group which is unidentifiable according to the ordinary import of the words as used in the alleged libelous matter set forth in said count.

58. For that the allegations of said count set forth and state more than one publication of the alleged libelous matter complained of therein and, therefore attempts to state more than one cause of action in the same count.

59. For that the allegations of said count allege that publication of said alleged libelous matter was made "in the City of New York, State of New York, the City of Montgomery, Alabama, and throughout the State of Alabama", which sets forth and states more than one alleged publication, and therefore attempts to state more than one cause or action in the same count.

60. For that the allegations of said count affirmatively show that the alleged publication is not libelous per se, and the allegations of said count set forth no special damage.

61. For that the allegation of the alleged publication set forth in said count is, if anything, libelous per quod, and there is no allegation of special damage to the plaintiff contained in said count.

62. For that there is no allegation in said count of conspiracy among the several defendants in this cause.

63. From aught appearing from the allegation of this count each defendant acted independently of each other defendant in this cause.

64. For that the publication of said alleged libelous matter set forth in said count is alleged to have been made in the City of New York, State of New York, and the allegations of said count do not set forth the law or laws of the State of New York.

65. For that the allegations of said count state that the publication of the alleged libelous matter was in the City of New York and the State of New York and the statutory law of that State concerning plaintiff's alleged cause of [fol. 57] action is not set forth in haec verba nor in substance.

66. For that the allegations of said count state that the publication of the alleged libelous matter was in the City of New York and State of New York, and the common law of the State of New York concerning the subject matter of plaintiff's alleged cause of action is not set forth in the manner prescribed by law.

67. For that the alleged publication of the alleged libelous matter is set forth in said count as having been made in the City of New York and the State of New York and the decisional law of the State of New York concerning the subject matter and governing the subject matter of plaintiff's alleged cause of action is not set forth in the manner prescribed by law.

68. For that the allegations of said count show that the place of commission of any alleged tort by this defendant was in the City of New York and the State of New York and the law of that State governing plaintiff's alleged cause of action is not set forth in the manner prescribed by law.

69. From aught appearing from the allegations of said count the subject matter of plaintiff's alleged cause of action is not a tort in the place of its alleged commission, which is alleged to be in the City of New York and the State of New York.

70. From aught appearing from the allegations of said count the matter alleged therein is not sufficient to state a cause of action in the place where the alleged tort is

stated to have been committed by this defendant, which is in the City of New York and the State of New York.

71. For aught appearing from the allegations of said count no cause of action is stated according to the law of the state where the alleged libelous matter was published which is alleged to be in the City of New York and the State of New York.

72. For that the place of commission of the alleged tort according to the allegations of said count is in the City of New York and the State of New York and the common law of that State governing and concerning the plaintiff's alleged cause of action is not set forth in the manner prescribed by law.

73. For that the place of commission of the alleged tort by this defendant is, by the allegation of said count, in the City of New York and the State of New York and the statutory law of that State is not set forth in haec verba nor in substance.

74. For that the allegations of said count affirmatively show that the matter complained of therein as defamatory and libelous by plaintiff is not libelous per se and there are no allegations of special damages to plaintiff set forth [fol. 58] therein and plaintiff claims in said count both punitive and compensatory damages.

75. For that no extrinsic facts are alleged in said count to show that the matter complained of by plaintiff was libelous of plaintiff.

76. For that no extrinsic facts are alleged in said count to show that the matter complained of by plaintiff was libelous of plaintiff and further that no facts showing any special injury or damage to plaintiff are set forth therein.

77. For that the allegations of said count affirmatively show that the alleged defamatory words complained of in said count contain no direct reference to the plaintiff and no facts are alleged to show that the same in fact refer to the plaintiff.

78. For that the allegations of said count do not state extrinsic facts showing that the alleged defamatory words contained therein are degrading or would tend to injure the plaintiff's reputation by imputing to him some incapacity or lack of due qualification to fill the public office held by plaintiff or charge him with any positive past misconduct which injuriously affects him in his public office, or charge him with the holding of principles which are hostile to the maintenance of government.

79. For that the allegations of said count contain a misjoinder of causes of action in that the alleged cause of action set forth therein attempts to charge this defendant with the commission of an intentional wrong while sounding in case merely against the other defendants sued therein.

80. For that the allegations of said count affirmatively show that the alleged defamatory matter complained of therein is not libelous per se, and the allegations of said count fail to set up or state extrinsic facts to show that the matter complained of was in fact libelous of the plaintiff, nor are any facts alleged showing any special damage or injury to the plaintiff by such alleged defamatory matter.

81. For that the allegations of said count, if taken as true, could not authorize the submission to a jury of the question of whether plaintiff was libeled and suffered any injury or damage therefrom, for as a matter of law the allegation of said count, if proved, could not constitute a cause of action for libel, for so to do would be violative of and contrary to the First Amendment to the Constitution of the United States and constitute an abridgement of the freedom of the press.

82. For that the allegation of said count fails to state a cause of action for libel against this defendant, and if the allegations of said count were proved would not constitute a cause of action for libel against this defendant, [fol. 59] and if construed so to do would be contrary to the Constitution of the United States and the First Amend-

ment thereto and be and constitute an abridgement of the freedom of the press.

Beddow, Embry and Beddow, By: P. Eric Embry,
Attorneys for The New York Times Company, A
Corporation.

[File endorsement omitted]

[fol. 60]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

AMENDED DEMURRERS OF DEFENDANT, RALPH D. ABERNATHY
—Filed October 28, 1960

Now comes Ralph D. Abernathy, one of the defendants in the above entitled cause and amends his Demurrsers to the Complaint heretofore filed in the above entitled cause and separately and severally amends his Demurrsers to each count thereof by adding the additional grounds of Demurrer separately and severally as follows: to-wit items 19-67 inclusive, said items read as follows:

19. That it affirmatively appears from the allegations of the Complaint that this defendant had no connection with the publication of the alleged libelous matter.

20. That the alleged libelous matter as set out in each count of the Complaint in paragraph form is taken out of the context in which it appeared in the paid advertisement, and that said paragraphs are not successive paragraphs, but that several paragraphs intervene and there are no facts alleged in the count showing any connection between the first paragraph which is alleged to be libelous and the second paragraph which is alleged to be libelous, as appears on the face of Exhibit A attached to the Complaint.

21. Said count avers no facts entitling the plaintiff to recover of the defendant.

22. The allegation of damage as contained in said count is a mere conclusion of the pleader, not supported by the facts alleged.

23. The allegations of said count do not in and of themselves entitle the plaintiff to recover.

24. Said count does not aver sufficient facts entitling the plaintiff to recover of the defendant the damages alleged.

25. Said count is vague, indefinite and uncertain as to what publication the plaintiff alleges is libelous.

26. Said count does not sufficiently allege facts to inform the defendant of the alleged libelous publication which he is called upon to defend.

27. For aught appearing from said count, the alleged libelous publication did not refer to the plaintiff.

28. For aught appearing from said count, the alleged libelous publication was a fair comment as to the matters contained therein.

29. It affirmatively appears from said count that the alleged libelous publication was a fair comment on the matters and things contained therein and the allegation in said count that the alleged publication was made with malice is a mere conclusion of the pleader, not supported [fol. 61] by the facts alleged therein.

30. The allegations of said count do not aver a libel per se.

31. For aught that appears from said count, the matter published was not libelous per se.

32. It affirmatively appears that the alleged matter was not libelous per se.

33. The alleged publication not being per se libelous, said count fails to aver sufficient facts showing wherein the plaintiff was injured by said alleged publication.

34. For aught appearing from said count, the alleged publication was merely libelous per quod, if libelous at all.

35. It affirmatively appears that the matter published was only libelous per quod, if libelous at all.

36. It affirmatively appears from said count that the plaintiff was not named in the publication of which complaint is made.

37. Because it does not appear that the alleged publication was understood to refer to the plaintiff by any reader of such publication.

38. Because the alleged publication does not, upon its face, appear to have been said of the plaintiff, nor does it appear from said count that any reader of such publication understood that it referred to the plaintiff.

39. Because colloquia, inducements and innuendoes cannot be considered in determining whether or not the alleged publication is libelous per se.

40. Because the alleged publication is reasonably susceptible to an innocent construction.

41. Because the alleged colloquia, inducements and innuendoes as set out in said count conflict with the alleged publication.

42. Because the plaintiff's interpretation of the alleged publication is contrary to the tenor and effect thereof.

43. Because the allegations with respect to the meaning of the alleged publication are mere conclusions of the pleader.

44. Because the plaintiff's alleged interpretation of the publication in question shows that the same is, at most, merely libelous per quod, if libelous at all.

45. Because the alleged publication affirmatively shows that colloquia, inducements and innuendoes or one or more of them are required and, hence, said publication is not libelous per se.

47. Because specific damages are not alleged.

48. Because the allegations with respect to the publication [fol. 62] are mere conclusions of the pleader.

49. Because there is no allegation that the alleged libelous publication was, in fact, maliciously done.

50. Because said count does not specifically aver wherein the alleged publication was maliciously made.

51. Because the allegations of the count to the effect that the defendants maliciously libeled the plaintiff is but a mere conclusion of the pleader not supported by the facts alleged.

52. Because any recovery by the plaintiff in this case would be violative of Article I, Section IV of the Constitution of the State of Alabama of 1901 as a curtailment or restraint of the liberty of the press in the writing and publishing of the defendant's sentiments on the subject therein stated.

53. Because any recovery by the plaintiff in this case would be violative of the First and Fourteenth Amendments to the Constitution of the United States, as an abridgement of the freedom of the press and freedom of speech.

54. Because any recovery by the plaintiff in this case would be violative of the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws, and abridge the privileges and immunities of the defendant.

55. No facts are alleged to show that this defendant published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

56. No facts are alleged to show that this defendant caused to be published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

57. For aught that appears from the Complaint, this defendant did not publish or cause to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said complaint, and any [fol. 63] recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

58. There is no allegation in said Complaint that this individual defendant published or caused to be published the advertisement referred to and attached to the Complaint, and any recovery in this cause would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without the due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said amendment.

59. For that it affirmatively appears from said Complaint and from Exhibit A attached thereto, that this defendant, in fact, did not publish or cause to be published the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

60. That said Complaint and no count thereof connects the plaintiff in any way with the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

61. That there is no causal connection between this defendant, the alleged libelous matter stated in the Complaint, and the plaintiff; and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

62. That there is no causal connection between this defendant and the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the [fol. 64] equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

63. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a paid advertisement in the New York Times and that said advertisement shows on its face that this defendant did not cause or was not responsible for said paid advertisement appearing in said newspaper.

64. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a paid advertisement in the New York Times and that said advertisement shows on its face that this defendant did not cause or was not responsible for said paid advertisement appearing in said newspaper; and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

65. The averments thereof are conflicting and repugnant.

66. For aught that appears, there was no concert of action between the co-defendants in the Count.

67. The Count is vague and uncertain in that it does not allege how this defendant published the alleged libelous matter.

Respectfully submitted,

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

Vernon Z. Crawford, 570 Davis Avenue, Mobile, Ala-
bama;

Solomon S. Seay, Jr., 28 North McDonough St., Mont-
gomery, Alabama,

Attorneys for Defendant, By: Fred D. Gray.

[File endorsement omitted]

[fol. 65]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

AMENDED DEMURRERS OF DEFENDANT, J. E. LOWERY
—Filed October 28, 1960

Now comes J. E. Lowery, one of the defendants in the above entitled cause and amends his Demurrers to the Complaint heretofore filed in the above entitled cause and separately and severally amends his Demurrers to each Count thereof by adding the additional grounds of Demurrer separately and severally as follows: to-wit items 19-67 inclusive, said items read as follows:

19. That it affirmatively appears from the allegations of the Complaint that this defendant had no connection with the publication of the alleged libelous matter.

20. That the alleged libelous matter as set out in each count of the Complaint in paragraph form is taken out of the context in which it appeared in the paid advertisement, and that said paragraphs are not successive paragraphs, but that several paragraphs intervene and there are no facts alleged in the count showing any connection between the first paragraph which is alleged to be libelous

and the second paragraph which is alleged to be libelous, as appears on the face of Exhibit A attached to the Complaint.

21. Said count avers no facts entitling the plaintiff to recover of the defendant.

22. The allegation of damage as contained in said count is a mere conclusion of the pleader, not supported by the facts alleged.

23. The allegations of said count do not in and of themselves entitle the plaintiff to recover.

24. Said count does not aver sufficient facts entitling the plaintiff to recover of the defendant the damages alleged.

25. Said count is vague, indefinite and uncertain as to what publication the plaintiff alleges is libelous.

26. Said count does not sufficiently allege facts to inform the defendant of the alleged libelous publication which he is called upon to defend.

27. For aught appearing from said count, the alleged libelous publication did not refer to the plaintiff.

28. For aught appearing from said count, the alleged libelous publication was a fair comment as to the matters contained therein.

29. It affirmatively appears from said count that the alleged libelous publication was a fair comment on the matters and things contained therein and the allegation in said count that the alleged publication was made with malice is a mere conclusion of the pleader, not supported by the facts alleged therein.

30. The allegations of said count do not aver a libel per se.

[fol. 66] 31. For aught that appears from said count, the matter published was not libelous per se.

32. It affirmatively appears that the alleged matter was not libelous per se.

33. The alleged publication not being per se libelous, said count fails to aver sufficient facts showing wherein the plaintiff was injured by said alleged publication.

34. For aught appearing from said count, the alleged publication was merely libelous per quod, if libelous at all.

35. It affirmatively appears that the matter published was only libelous per quod, if libelous at all.

36. It affirmatively appears from said count that the plaintiff was not named in the publication of which complaint is made.

37. Because it does not appear that the alleged publication was understood to refer to the plaintiff by any reader of such publication.

38. Because the alleged publication does not, upon its face, appear to have been said of the plaintiff, nor does it appear from said count that any reader of such publication understood that it referred to the plaintiff.

39. Because colloquia, inducements and innuendoes cannot be considered in determining whether or not the alleged publication is libelous per se.

40. Because the alleged publication is reasonably susceptible to an innocent construction.

41. Because the alleged colloquia, inducements, and innuendoes, as set out in said count, conflict with the alleged publication.

42. Because the plaintiff's interpretation of the alleged publication is contrary to the tenor and effect thereof.

43. Because the allegations with respect to the meaning of the alleged publication are mere conclusions of the pleader.

44. Because the plaintiff's alleged interpretation of the publication in question shows that the same is, at most, merely libelous per quod, if libelous at all.

45. Because the alleged publication affirmatively shows colloquia, inducements and innuendoes, or one or more of

them, are required and, hence, said publication is not libelous per se.

47. Because specific damages are not alleged.

48. Because the allegations with respect to the publication are mere conclusions of the pleader.

49. Because there is no allegation that the alleged libelous publication was, in fact, maliciously done.

[fol. 67] 50. Because said count does not specifically aver wherein the alleged publication was maliciously made.

51. Because the allegations of the count to the effect that the defendants maliciously libeled the plaintiff is but a mere conclusion of the pleader not supported by the facts alleged.

52. Because any recovery by the plaintiff in this case would be violative of Article I, Section IV of the Constitution of the State of Alabama of 1901 as a curtailment of restraint of the liberty of the press in the writing and publishing of the defendant's sentiments on the subject therein stated.

53. Because any recovery by the plaintiff in this case would be violative of the First and Fourteenth Amendments to the Constitution of the United States, as an abridgement of the freedom of the press and freedom of speech.

54. Because any recovery by the plaintiff in this case would be violative of the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities of the defendant.

55. No facts are alleged to show that this defendant published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal

protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

56. No facts are alleged to show that this defendant caused to be published in the City of New York, State of New York, or any other place, the advertisement referred in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

57. For aught that appears from the Complaint, this defendant did not publish or cause to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of [fol. 68] the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

58. There is no allegation in said Complaint that this individual defendant published or caused to be published the advertisement referred to and attached to the Complaint, and any recovery in this cause would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

59. For that it affirmatively appears from said Complaint and from exhibit A attached thereto, that this defendant, in fact, did not publish or cause to be published the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due

process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

60. That said Complaint and no count thereof connects the plaintiff in any way with the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

61. That there is no causal connection between this defendant, the alleged libelous matter stated in the Complaint, and the plaintiff; and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

62. That there is no causal connection between this defendant and the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

63. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a [fol. 69] paid advertisement in the New York Times and that said advertisement shows on its face that this defendant did not cause or was not responsible for said paid advertisement appearing in said newspaper.

64. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a paid advertisement in the New York Times and that said

advertisement shows on its face that this defendant did not cause or was not responsible for said paid advertisement appearing in said newspaper; and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

65. The averments thereof are conflicting and repugnant.

66. For aught that appears, there was no concert of action between the co-defendants in the Court.

67. The Count is vague and uncertain in that it does not allege how this defendant published the alleged libelous matter.

Respectfully submitted,

Fred D. Gray, 34 N. Perry Street, Montgomery,
Alabama.

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

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Ala., Attorneys for Defendant. By:
Fred D. Gray.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

AMENDED DEMURRERS OF S. S. SEAY, SR.

—Filed October 28, 1960

Now comes S. S. Seay, Sr., one of the defendants in the above entitled cause and amends his Demurrers to the Complaint heretofore filed in the above entitled cause and separately and severally amends his Demurrers to each count thereof by adding the additional grounds of Demur-rer separately and severally as follows: to-wit items 19-67 inclusive, said items read as follows:

19. That it affirmatively appears from the allegations of the Complaint that this defendant had no connection with the publication of the alleged libelous matter.

20. That the alleged libelous matter as set out in each count of the Complaint in paragraph form is taken out of the context in which it appeared in the paid advertisement, and that said paragraphs are not successive paragraphs, but that several paragraphs intervene and there are no [fol. 70] facts alleged in the count showing any connection between the first paragraph which is alleged to be libelous and the second paragraph which is alleged to be libelous, as appears on the face of Exhibit A attached to the Complaint.

21. Said count avers no facts entitled the plaintiff to recover of the defendant.

22. The allegation of damage as contained in said count is a mere conclusion of the pleader, not supported by the facts alleged.

23. The allegations of said count do not in and of themselves entitle the plaintiff to recover.

24. Said count does not aver sufficient facts entitling the plaintiff to recover of the defendant the damages alleged.

25. Said count is vague, indefinite and uncertain as to what publication the plaintiff alleges is libelous.

26. Said count does not sufficiently allege facts to inform the defendant of the alleged libelous publication which he is called upon to defend.

27. For aught appearing from said count, the alleged libelous publication did not refer to the plaintiff.

28. For aught appearing from said count, the alleged libelous publication was a fair comment as to the matters contained therein.

29. It affirmatively appears from said count that the alleged libelous publication was a fair comment on the matters and things contained therein and the allegation in said count that the alleged publication was made with

malice is a mere conclusion of the pleader, not supported by the facts alleged therein.

30. The allegations of said count do not aver a libel per se.

31. For aught that appears from said count, the matter published was not libelous per se.

32. It affirmatively appears that the alleged matter was not libelous per se.

33. The alleged publication not being per se libelous, said count fails to aver sufficient facts showing wherein the plaintiff was injured by said alleged publication.

34. For aught appearing from said count, the alleged publication was merely libelous per quod, if libelous at all.

35. It affirmatively appears that the matter published was only libelous per quod, if libelous at all.

36. It affirmatively appears from said count that the plaintiff was not named in the publication of which complaint is made.

37. Because it does not appear that the alleged publication [fol. 71] was understood to refer to the plaintiff by any reader of such publication.

38. Because the alleged publication does not, upon its face, appear to have been said of the plaintiff, nor does it appear from said count that any reader of such publication understood that it referred to the plaintiff.

39. Because colloquia, inducements and innuendoes cannot be considered in determining whether or not the alleged publication is libelous per se.

40. Because the alleged publication is reasonably susceptible to an innocent construction.

41. Because the alleged colloquia, inducements and innuendoes, as set out in said count, conflict with the alleged publication.

42. Because the plaintiff's interpretation of the alleged publication is contrary to the tenor and effect thereof.

43. Because the allegations with respect to the meaning of the alleged publication are mere conclusions of the pleader.

44. Because the plaintiff's alleged interpretation of the publication in question shows that the same is, at most, merely libelous per quod, if libelous at all.

45. Because the alleged publication affirmatively shows that colloquia, inducements and innuendoes, or one or more of them, are required and, hence, said publication is not libelous *per se*.

47. Because specific damages are not alleged.

48. Because the allegations with respect to the publication are mere conclusions of the pleader.

49. Because there is no allegation that the alleged libelous publication was, in fact, maliciously done.

50. Because said count does not specifically aver wherein the alleged publication was maliciously made.

51. Because the allegations of the count to the effect that the defendants maliciously libeled the plaintiff is but a mere conclusion of the pleader not supported by the facts alleged.

52. Because any recovery by the plaintiff in this case would be violative of Article I, Section IV of the Constitution of the State of Alabama of 1901 as a curtailment or restraint of the liberty of the press in the writing and publishing of the defendant's sentiments on the subject therein stated.

53. Because any recovery by the plaintiff in this case would be violative of the First and Fourteenth Amendments to the Constitution of the United States, as an abridgement of the freedom of the press and freedom of speech.

54. Because any recovery by the plaintiff in this case [fol. 72] would be violative of the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the defendant the equal pro-

tection of the laws, and abridge the privileges and immunities of the defendant.

55. No facts are alleged to show that this defendant published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

56. No facts are alleged to show that this defendant caused to be published in the City of New York, State of New York, or any other place the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

57. For aught that appears from the Complaint, this defendant did not publish or cause to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

58. There is no allegation in said Complaint that this individual defendant published or caused to be published the advertisement referred to and attached to the complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the

equal protection of the laws and abridge the privileges and immunities secured to the defendant by said amendment.

59. For that it affirmatively appears from said Complaint and from Exhibit A attached thereto, that this defendant, in fact, did not publish or cause to be published the advertisement referred to in said Complaint, and any recovery in this case wouuld violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of [fol. 73] the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

60. That said Complaint and no count thereof connects the plaintiff in any way with the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by the said Amendment.

61. That there is no causal connection between this defendant, the alleged libelous matter stated in the Complaint, and the plaintiff; and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

62. That there is no causal connection between this defendant and the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant the equal protection of the

laws and abridge the privileges and immunities secured to the defendant by said Amendment.

63. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a paid advertisement in the New York Times and that said advertisement shows on its face that this defendant did not cause or was not responsible for said paid advertisement appearing in said newspaper.

64. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a paid advertisement in the New York Times and that said advertisement shows on its face that this defendant did not cause or was not responsible for said paid advertisement appearing in said newspaper; and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

[fol. 74] 65. The averments thereof are conflicting and repugnant.

66. For aught that appears, there was no concert of action between the co-defendants in the Count.

67. The Count is vague and uncertain in that it does not allege how this defendant published the alleged libelous matter.

Respectfully submitted,

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

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

Solomon S. Seay, Sr., 29 North McDonough Street,
Montgomery, Alabama, Attorneys for Defendant.
By: Fred D. Gray.

[File endorsement omitted]

AMENDED DEMURRERS OF FRED L. SHUTTLESWORTH
—Filed October 28, 1960

Now comes Fred L. Shuttlesworth, one of the Defendants in the above entitled cause and amends his Demurrers to the Complaint heretofore filed in the above entitled cause and separately and severally amends his Demurrers to each count thereof by adding the additional grounds for Demurrer separately and severally as follows: to-wit items 19-67 inclusive, said items read as follows:

19. That it affirmatively appears from the allegations of the complaint that this defendant had no connection with the publication of the alleged libelous matter.

20. That the alleged libelous matter as set out in each count of the Complaint in paragraph form is taken out of the context in which it appeared in the paid advertisement, and that said paragraphs are not successive paragraphs, but that several paragraphs intervene and there are no facts alleged in the count showing any connection between the first paragraph which is alleged to be libelous and the second paragraph which is alleged to be libelous, as appears on the face of Exhibit A attached to the Complaint.

21. Said count avers no facts entitling the plaintiff to recover of the defendant.

22. The allegation of damage as contained in said count is a mere conclusion of the pleader, not supported by the facts alleged.

23. The Allegations of said count do not in and of themselves entitle the plaintiff to recover.

24. Said count does not aver sufficient facts entitling the plaintiff to recover of the defendant the damages alleged.

25. Said count is vague, indefinite and uncertain as to [fol. 75] what publication the plaintiff alleges is libelous.

26. Said count does not sufficiently allege facts to inform the defendant of the alleged libelous publication which he is called upon to defend.

27. For aught appearing from said count, the alleged libelous publication did not refer to the plaintiff.

28. For aught appearing from said count, the alleged libelous publication was a fair comment as to the matters contained therein.

29. It affirmatively appears from said count that the alleged libelous publication was a fair comment on the matters and things contained therein and the allegation in said count that the alleged publication was made with malice is a mere conclusion of the pleader, not supported by the facts alleged therein.

30. The allegations of said count do not aver a libel per se.

31. For aught that appears from said count, the matter published was not libelous per se.

32. It affirmatively appears that the alleged matter was not libelous per se.

33. The alleged publication not being per se libelous, said count fails to aver sufficient facts showing wherein the plaintiff was injured by said alleged publication.

34. For aught appearing from said count, the alleged publication was merely libelous per quod, if libelous at all.

35. It affirmatively appears that the matter published was only libelous per quod, if libelous at all.

36. It affirmatively appears from said count that the plaintiff was not named in the publication of which complaint is made.

37. Because it does not appear that the alleged publication was understood to refer to the plaintiff by any reader of such publication.

38. Because the alleged publication does not, upon its face, appear to have been said of the plaintiff, nor does it appear from said count that any reader of such publication understood that it referred to the plaintiff.

39. Because colloquia, inducements and innuendoes cannot be considered in determining whether or not the alleged publication is libelous per se.

40. Because the alleged publication is reasonably susceptible to an innocent construction.

41. Because the alleged colloquia, inducements, and innuendoes, as set out in said count, conflict with the alleged publication.

42. Because the plaintiff's interpretation of the alleged publication is contrary to the tenor and effect thereof.

[fol. 76] 43. Because the allegations with respect to the meaning of the alleged publication are mere conclusions of the pleader.

44. Because the plaintiff's alleged interpretation of the publication in question shows that the same is, at most, merely libelous per quod, if libelous at all.

45. Because the alleged publication affirmatively shows that colloquia, inducements and innuendoes, or one or more of them, are required, and hence, said publication is not libelous per se.

47. Because specific damages are not alleged.

48. Because the allegations with respect to the publication are mere conclusions of the pleader.

49. Because there is no allegation that the alleged libelous publication was, in fact, maliciously done.

50. Because said count does not specifically aver wherein the alleged publication was maliciously made.

51. Because the allegations of the count to the effect that the defendants maliciously libeled the plaintiff is but a mere conclusion of the pleader not supported by the facts alleged.

52. Because any recovery by the plaintiff in this case would be violative of Article I, Section IV of the Constitution of the State of Alabama of 1901 as a curtailment or

restraint of the liberty of the press in the writing and publishing of the defendant's sentiments on the subject therein stated.

53. Because any recovery by the plaintiff in this case would be violative of the First and Fourteenth Amendments to the Constitution of the United States as an abridgement of the freedom of the press and freedom of speech.

54. Because any recovery by the plaintiff in this case would be violative of the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws, and abridge the privileges and immunities of the defendant.

55. No facts are alleged to show that this defendant published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said amendment.

[fol. 77] 56. No facts are alleged to show that this defendant caused to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

57. For aught that appears from the Complaint, the defendant did not publish or cause to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it

would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said amendment.

58. There is no allegation in said Complaint that this individual defendant published or caused to be published the advertisement referred to and attached to the Complaint, and any recovery in this cause would be violative of the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

59. For that it affirmatively appears from said Complaint and from Exhibit A attached thereto, that this defendant, in fact, did not publish or cause to be published the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

60. That said Complaint and no count thereof connects the plaintiff in any way with the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

61. That there is no causal connection between this defendant, the alleged libelous matter stated in the Complaint, and the plaintiff, and any recovery in this case [fol. 78] would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive

the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

62. That there is no causal connection between this defendant and the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

63. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a paid advertisement in the New York Times and that said advertisement shows on its face that this defendant did not cause or was not responsible for said paid advertisement appearing in said newspaper.

64. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a paid advertisement in the New York Times and that said advertisement shows on its face that this defendant did not cause or was not responsible for said paid advertisement appearing in said newspaper; and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

65. The averments thereof are conflicting and repugnant.

66. For aught that appears, there was no concert of action between the co-defendants in the Count.

67. The Count is vague and uncertain in that it does not allege how this defendant published the alleged libelous matter.

Respectfully submitted,

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

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

Solomon S. Seay, Jr., 29 No. McDonough Street,
Montgomery, Alabama, By: Fred D. Gray, Attorneys
for Defendant.

[File endorsement omitted]

[fol. 79]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLEA ONE OF THE DEFENDANT, THE NEW YORK TIMES
COMPANY, A CORPORATION—Filed October 28, 1960

For answer to the complaint, and to each and every
count thereof, separately and severally, defendant, The
New York Times Company, a corporation, saith:

It is not guilty of the matters alleged therein.

Beddow, Embry & Beddow, By: T. Eric Embry,
Attorneys for Defendant, The New York Times
Company, a corporation.

[File endorsement omitted]

PLEA TWO OF THE DEFENDANT, THE NEW YORK TIMES
COMPANY, A CORPORATION—Filed October 28, 1960

For answer to the complaint, and to each and every
count thereof, separately and severally, defendant, The
New York Times Company, a corporation, saith:

That The New York Times Company, a corporation, did
in its issue of its newspaper on March 29, 1960 publish
therein the advertisement made the basis of plaintiff's
complaint, but this defendant denies that such advertise-

ment or any part thereof was published by this defendant of and concerning the plaintiff.

Beddow, Embry & Beddow, By: T. Eric Embry,
Attorneys for Defendant, The New York Times
Company, a corporation.

[File endorsement omitted]

**PLEA THREE OF THE DEFENDANT, THE NEW YORK TIMES
COMPANY, A CORPORATION—Filed October 28, 1960**

For answer to the complaint, and to each and every count thereof, separately and severally, defendant, The New York Times Company, a corporation, saith:

That this defendant did in its issue of its newspaper of March 29, 1960, publish the matter made the basis of plaintiff's complaint and that such matter was a paid advertisement published by this defendant at the order of an advertising agency which paid this defendant for the publishing of such advertisement, but defendant denies that such advertisement or any part thereof was published by this defendant of and concerning the plaintiff.

Beddow & Embry & Beddow, By: T. Eric Embry,
Attorneys for Defendant, The New York Times
Company, A Corporation.

[File endorsement omitted]

[fol. 80]

**PLEA FOUR OF THE DEFENDANT, THE NEW YORK TIMES
COMPANY, A CORPORATION—Filed October 28, 1960**

For answer to the complaint and to each and every count thereof, separately and severally, defendant, The New York Times Company, a corporation saith:

That this defendant did in its issue of its newspaper of March 29, 1960, publish the advertisement made the basis of plaintiff's complaint, but this defendant denies that the