

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 562

TIME, INC., APPELLANT,

vs.

JAMES J. HILL.

APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

INDEX

	Original	Print
Proceedings in the Court of Appeals of the State of New York		
Statement	1	1
Statement under Rule 234 filed in Supreme Court of the State of New York, Appellate Division, First Judicial Dept.	2	2
Record from the Supreme Court of the State of New York, County of New York	4	3
Notice of appeal	4	3
Judgment appealed from	5	4
Third amended complaint	8	6
Exhibit A—Article from Life Magazine, February 28, 1955, pages 75, 76, 78, entitled “True Crime Inspires Tense Play”	18	15
Answer of Defendant Time, Inc.	21	18
Case and exceptions—April 4-17, 1962	24	19
Testimony of James J. Hill—		
direct	25	20
cross	66	57
redirect	82	72
recross	87	77
redirect	89	78

	Original	Print
Record from the Supreme Court of the State of New York, County of New York—Continued		
Case and exceptions—April 4-17, 1962—Con- tinued		
Testimony of Joseph Hayes—		
direct	90	80
cross	139	125
redirect	164	149
recross	174	158
Deposition of Virginia Shevlin Addison, taken on December 3, 1957—read by plaintiff	177	161
Testimony of Tom Prideaux—		
direct	181	164
cross	263	243
redirect	269	249
recross	278	257
Laura Ludwig—		
direct	281	260
cross	290	268
redirect	297	275
recross	298	276
Deposition of Elizabeth Selfridge Hill, taken on October 30, 1958—read by defendants ...	299	277
read by plaintiff	310	286
Testimony of Stanley R. Dean—		
redirect	311	287
Howard Erskine—		
direct	314	290
Deposition of Elizabeth Selfridge Hill—read by plaintiff (continued)	315	291
Motion to dismiss and denial thereof	315	291
Charge of the court to jury	317	292
Exceptions	329	302
Charge of the court to jury	330	304
Verdict	335	308
Motion to set aside verdict and for new trial ...	336	309
Requests of defendant Time, Inc. to charge ...	337	309
Supplemental request of defendant Time, Inc. to charge	341	312

INDEX

iii

	Original	Print
Record from the Supreme Court of the State of New York, County of New York—Continued		
Extract from clerk's minutes	342	315
Stipulations and orders relating to exhibits filed in the Supreme Court of the State of New York, Appellate Division, First Judicial Dept.	343	316
Plaintiffs' Exhibits:		
1—Article appearing in The Times Herald of Norristown, Pennsylvania, dated September 12, 1952	348	321
2—Clipping from Time Magazine of September 22, 1952	350	323
5A—Article appearing in the Philadelphia Sunday Bulletin of November 23, 1952	353	325
6—Article from Philadelphia Inquirer of February 21, 1954	354	326
7—Four reviews of the novel "The Desperate Hours"	356	327
New York (Sunday) Times, February 28, 1954	356	327
New York Herald Tribune, February 28, 1954	358	329
New York Times, March 3, 1954	360	330
New York Herald Tribune, March 4, 1954	364	333
8—Letter from Frank Rasky to James J. Hill, dated April 28, 1954, and response of May 1, 1954	368	335
10—Article from Life Magazine, February 28, 1955, pages 75, 76, 78, entitled "True Crime Inspires Tense Play" (printed as Exhibit A to Third Amended Complaint)	18	15
20—First draft of Life article "True Crime Inspires Tense Play," written by Tom Prideaux	370	337
21—First draft of Life article "True Crime Inspires Tense Play" as received by Mr. Kastner, copy editor of Life Magazine	375	342
22 & 22A—Draft of Life article "True Crime Inspires Tense Play" as received by Life Magazine researcher	380	347

	Original	Print
Record from the Supreme Court of the State of New York, County of New York—Continued		
Plaintiffs' Exhibits—Continued		
23—"Greening Copy" of Life article "True Crime Inspires Tense Play"	389	356
24—Final copy of Life article "True Crime Inspires Tense Play" as received by printer	395	362
29—List of articles appearing in Life Magazine based on true-life incidents	402	369
31—Foreword by Edward K. Thompson to article entitled "How LIFE gets the Story"	406	373
32—Headlines from September 12, 1952 issue of the Philadelphia Daily News, 7 Star edition	410	377
Defendants' Exhibits:		
A—Photograph of James J. Hill while making statement to the press on September 11, 1952	412	379
B—Two pages of the New York Times of September 13, 1952	413	380
G—Article appearing in New York Times of January 30, 1955	415	382
H—Summons, original complaint, amended complaint and second amended complaint	419	385
J—Excerpt from the March 1954 issue of The Literary Guild Review "Wings"	483	427
K—Excerpt from the January 13, 1955 issue of The Philadelphia Inquirer, p. 11, cols. 1 & 2	485	428
Stipulation settling case	488	431
Order settling case	488	431
Stipulation waiving certification	489	431
Order filing record in Appellate Division	489	432
Notice of appeal to the Court of Appeals	491	432
Judgment appealed from	492	433
Order appealed from	493	434
Opinion of Appellate Division, Stevens, J.	495	435
Concurring opinion, Rabin, J.	501	440
Opinion of Botein, J. (dissenting in part)	503	442
Transcript of proceedings on assessment of damages, October 18, 1963	506	445
Decision on assessment of damages	508	446

INDEX

v

	Original	Print
Additional proceedings in the Court of Appeals of the State of New York	509	447
Stipulation dispensing with printing of certain ex- hibits	509	447
Stipulation waiving certification	513	451
Clerk's certificate	514	452
Memorandum decision of affirmance	515	453
Dissenting opinion, Fuld, J.	515	453
Remittitur	519	456
Order amending remittitur	522	458
Notice of appeal to the Supreme Court of the United States	523	459
Order noting probable jurisdiction	525	460
Additional portions of the record from the Supreme Court of the State of New York, County of New York	526	461
Case and exceptions—April 4-17, 1962	526	461
Opening address for plaintiffs	527	461
Opening address for defendant Time, Inc.	543	473
Testimony of Kathleen St. John—		
direct	549	477
cross	556	482
Stanley R. Dean—		
direct	560	486
cross	580	501
redirect	602	518
recross	605	521
Lawrence I. Kaplan—		
direct	607	522
cross	611	526
Summation for defendant Time, Inc.	614	528
Summation for plaintiffs	642	548
Charge of the court to jury	667	565
Defendants' Exhibit M—Written report of Stan- ley R. Dean, M.D., concerning Mrs. Elizabeth Hill, dated January 22, 1957	668	566
Clerk's certificate	676	572

[fol. 1]

**IN THE COURT OF APPEALS
OF THE STATE OF NEW YORK**

JAMES J. HILL, Plaintiff-Respondent,
against
TIME, INC., Defendant-Appellant.

STATEMENT

This is an appeal by Time, Inc. from the judgment herein in favor of James J. Hill, entered in the office of the Clerk of the County of New York on October 23, 1963, pursuant to the order of modification of the Appellate Division, First Judicial Department, dated and filed May 14, 1963, and from that order of modification in so far as it affirmed the order of judgment of the Trial Court entered May 21, 1963, on the issue of liability and failed to dismiss the complaint. The original judgment awarded damages to James J. Hill and to Elizabeth Selfridge Hill, who was then a party to this action. The Appellate Division modified that judgment by affirming it on the issue of liability and directing a new trial on the issue of damages. By order entered at Special Term on October 18, 1963, the judgment entered on May 21, 1962, was vacated and the action was discontinued as to Elizabeth Selfridge Hill and severed and continued as between James J. Hill and Time, Inc.

[fol. 2]

IN THE SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION—FIRST JUDICIAL DEPARTMENT

JAMES J. HILL and ELIZABETH SELFRIDGE HILL,
Plaintiffs-Respondents,

against

JOSEPH HAYES, et al., Defendants,

and

TIME, INC., Defendant-Appellant.

STATEMENT UNDER RULE 234

Plaintiffs brought this action to recover damages against Time, Inc., defendant-appellant, because the mention of their name in a review by Life magazine of the play "The Desperate Hours" allegedly invaded their right of privacy in violation of the New York Civil Rights Law.

The action was commenced October 28, 1955, in the Supreme Court, New York County, by service of summons and complaint. Originally there were plaintiffs and defendants in addition to those named in the present caption. By stipulations filed herein the action was discontinued with respect to such other parties.

Plaintiffs' last pleading, the third amended complaint, was served March 25, 1958 and the answer thereto of defendant, Time, Inc., was served May 19, 1958. Trial was had before Mr. Justice Arthur G. Klein and a jury on April 4-17, 1962, and resulted in a verdict in the amount of [fol. 3] \$75,000 (\$50,000 compensatory and \$25,000 punitive damages) in favor of plaintiff James J. Hill and against defendant Time, Inc.; and in the amount of \$100,000 (\$75,000 compensatory and \$25,000 punitive damages) in favor of plaintiff Elizabeth Selfridge Hill and against defendant

Time, Inc. Said defendant's motion to set aside the verdicts and for a new trial was thereafter denied and judgment was entered on May 21, 1962, in favor of plaintiff James J. Hill for \$75,425 and in favor of Elizabeth Selfridge Hill for \$100,566.67 and for costs in the amount of \$236.35 in favor of said plaintiffs, against defendant Time, Inc. Said defendant served and filed notice of appeal from that judgment on May 23, 1962.

The names of the parties to the action are as set forth in the title. There has been no change in parties or attorneys except as above stated.

[fol. 4]

IN THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
Index No. 8139-55

JAMES J. HILL and ELIZABETH SELFRIDGE HILL, Plaintiffs,
against
JOSEPH HAYES, HOWARD ERSKINE, THE DESPERATE HOURS
COMPANY, and TIME, INC., Defendants.

NOTICE OF APPEAL

Sirs:

Please take notice that defendant, Time, Inc., hereby appeals to the Appellate Division of the Supreme Court for the First Judicial Department, from each and every part of the judgment herein in favor of plaintiffs and against said defendant entered in the office of the Clerk of the County of New York on the 21st day of May, 1962.

May 22, 1962.

Cravath, Swaine & Moore, Attorneys for Defendant
Time, Inc., 1 Chase Manhattan Plaza, New York 5,
N. Y.

To:

Mudge, Stern, Baldwin & Todd, Esqs., Attorneys for
Plaintiffs, 20 Broad Street, New York 5, N. Y.

Clerk of the County of New York

[fol. 5]

IN THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JUDGMENT APPEALED FROM

The above-entitled action having been commenced by James J. Hill, Elizabeth Selfridge Hill, Barbara Hill, an infant, Elizabeth Hill, an infant, James J. Hill, Jr., an infant, Clyde Hill, an infant, and Robert Hill, an infant, each by his guardian ad litem, James J. Hill, against Joseph Hayes, Marrijane Hayes, Howard Erskine, The Desperate Hours Company, Time, Inc., Paramount Pictures Corporation, Random House, Inc., The Literary Guild of America, Inc., Crowell-Collier Publishing Co., Inc., Pocket Books, Inc., and Reader's Digest Association, Inc., and said action having been discontinued by the plaintiffs Barbara Hill, an infant, Elizabeth Hill, an infant, James J. Hill, Jr., an infant, Clyde Hill, an infant, and Robert Hill, an infant, as to all the parties, and the action having been discontinued by the plaintiffs James J. Hill and Elizabeth Selfridge Hill as to the defendants Marrijane Hayes, Paramount Pictures Corporation, Random House, Inc., The Literary Guild of America, Inc., Crowell-Collier Publishing Co., Inc., Pocket Books, Inc., and Reader's Digest Association, Inc., either by Order of the Court or by stipulation, and said action having duly come on for trial before Honorable Arthur G. Klein and a Jury at a Special and

Trial Term, Part 10, of this Court held in and for the said County of New York, at the County Court House in the said County of New York on the 4th, 5th, 6th, 9th, 10th, [fol. 6] 11th, 12th, 13th, 16th, and 17th days of April, 1962, and the issues having been duly tried, and the Jury having duly rendered a verdict in favor of the defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company, and a verdict in favor of the plaintiff James J. Hill and against the defendant Time, Inc., in the sums of \$50,000 as compensatory damages and \$25,000 as exemplary damages, and a verdict in favor of the plaintiff Elizabeth Selfridge Hill against the defendant Time, Inc., in the sums of \$75,000 as compensatory damages and \$25,000 as exemplary damages, and the costs of the plaintiffs having been duly taxed in the sum of \$236.35;

Now, on motion of Mudge, Stern, Baldwin & Todd, Esqs., attorneys for the plaintiffs, it is

Adjudged, that the plaintiff James J. Hill, whose address is No. 409 Sound Beach Avenue, Old Greenwich, Connecticut, do recover of the defendant Time, Inc., whose address is 50th Street and Avenue of the Americas, New York, N. Y., the sum of \$75,000, with interest from the 17th day of April, 1962, in the sum of \$425.00, amounting in all to the sum of \$75,425.00, and that the plaintiff James J. Hill have execution therefor; and it is

Further adjudged, that the plaintiff Elizabeth Selfridge Hill, whose address is No. 409 Sound Beach Avenue, Old Greenwich, Connecticut, do recover of the defendant Time, Inc., whose address is 50th Street and Avenue of the Americas, New York, N. Y., the sum of \$100,000, with interest from the 17th day of April, 1962, in the sum of \$566.67, amounting in all to the sum of \$100,566.67, and that the plaintiff Elizabeth Selfridge Hill have execution therefor; and it is

[fol. 7] Further adjudged that the plaintiffs James J. Hill and Elizabeth Selfridge Hill do recover from the defendant

Time, Inc., the sum of \$236.35 for their costs and disbursements and have execution therefor; and it is

Further adjudged, that the defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company have judgment against the plaintiffs on the merits.

Judgment signed this 21 day of May, 1962.

James McGurrin, Clerk.

(Seal)

[fol. 8]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

THIRD AMENDED COMPLAINT

Plaintiffs, for their Third Amended Complaint, allege as follows:

For a first cause of action against defendants Joseph Hayes, Howard Erskine and the Desperate Hours Company, plaintiff James J. Hill alleges:

1. On or about September 11-12, 1952, plaintiff James J. Hill and his wife, plaintiff Elizabeth Selfridge Hill, and their children were held hostage in their then home in Whitmarsh Township, Pennsylvania, by three convicts who had escaped from the federal penitentiary at Lewisburg, Pennsylvania.

2. In or about the year 1954, defendant Joseph Hayes wrote a novel entitled "The Desperate Hours", which was published by Random House, Inc. and distributed throughout the United States and abroad.

3. Said novel "The Desperate Hours" was a work of fiction describing a jailbreak near Indianapolis, Indiana by three convicts, the invasion by said convicts of the home of a family named "Hilliard", the holding of said family as hostages and the eventual killing or capture of said convicts.

[fol. 9] 4. During the year 1954, defendant Hayes adapted the novel "The Desperate Hours" into a play for

production by a New York co-partnership consisting of himself and defendant Howard Erskine as general partners, and sixty-three other persons as limited partners, said partnership doing business under the firm name and style of The Desperate Hours Company.

5. During the year 1954, defendants Hayes, Erskine and The Desperate Hours Company sold the motion picture rights to the novel "The Desperate Hours" to Paramount Pictures Corporation; and said motion picture was filmed in or about the year 1955, and has been exhibited in every State of the United States and in various foreign countries.

6. The play "The Desperate Hours" opened in New York City on or about February 10, 1955, and continued its run until the fall of 1955.

7. Beginning with February 28, 1955, defendants Hayes, Erskine and The Desperate Hours Company knowingly, and without the consent of plaintiffs, or either of them, and contrary to the provisions of the Civil Rights Law of the State of New York, used said plaintiffs' name and portrait for purposes of trade and advertising within the State of New York, and in every other State of the United States, in connection with the businesses and trades of the defendants, all as hereinafter set forth.

8. In or about January, 1955, and as part of an advertising and promotional campaign to advertise and promote the novel, motion picture and play "The Desperate Hours", and to increase the commercial value of "Life" magazine, [fol. 10] defendants Hayes, Erskine and The Desperate Hours Company and defendant Time, Inc. collaborated with, and assisted, one another in the preparation and publication of a special photographic layout for use in the February 28, 1955 issue of "Life" magazine (a weekly magazine published by defendant Time, Inc. and distributed throughout the United States and abroad) wherein the plaintiffs Hill and their children were identified as the family depicted in the various versions of the fictional work entitled "The Desperate Hours".

9. In said February 28, 1955 issue of "Life" magazine, which was distributed in every State of the United States and in many foreign countries, there appeared a three-page article, with photographs, entitled "True Crime Inspires Tense Play", the body of said article stating as follows:

"The Ordeal of a Family
Trapped by Convicts Gives
Broadway a New Thriller,
'The Desperate Hours'"

"Three years ago Americans all over the country read about the desperate ordeal of the James Hill family, who were held prisoners in their home outside Philadelphia by three escaped convicts. Later they read about it in Joseph Hayes' novel *The Desperate Hours*, inspired by the family's experience. Now they can see the story re-enacted in Hayes' Broadway play based on the book, and next year will see it in his movie, which has been filmed but is being held up until the play has a chance to pay off.

[fol. 11] "The play, directed by Robert Montgomery and expertly acted, is a heart-stopping account of how a family rose to heroism in a crisis. Life photographed the play during its Philadelphia tryout, transported some of the actors to the actual house where the Hills were besieged. On the next page scenes from the play are re-enacted on the scene of the crime."

The balance of said article consisted of photographs of a newspaper report of the true-life incident, and actual house in which plaintiffs Hill and their children were held hostage, and the cast of "The Desperate Hours" enacting scenes from said play in plaintiffs' former home. The following descriptive material appeared below the photographs of the newspaper headline and the actual house:

"Actual Event, as reported in newspaper, took place in an isolated house about 10 miles from Philadelphia.

There three convicts from Lewisburg penitentiary held family of James Hill as prisoners while they hid from manhunt. All three convicts were later captured."

A photostatic copy of said "Life" magazine article is annexed hereto as Exhibit A and made a part hereof as though set forth at length.

10. Said "Life" magazine article of February 28, 1955 was intended to, and actually did, convey the impression that the plaintiffs Hill and their children were the family fictionally depicted in the novel, play and motion picture "The Desperate Hours" and that said works constituted a dramatic portrayal of plaintiffs and a re-enactment of the [fol. 12] true-life incident in which plaintiffs Hill and their children were involved in September 1952, all of which, to the knowledge of defendants Hayes, Erskine and The Desperate Hours Company was false and untrue.

11. Said "Life" magazine article, insofar as it was based upon the purported connection between the plaintiffs Hill and "The Desperate Hours", did not in any way report news, whether current or otherwise, but on the contrary, took advantage of plaintiffs' name, likeness and private life, without cause or justification, to increase the commercial value of "The Desperate Hours" to the profit of defendants Hayes, Erskine and The Desperate Hours Company.

12. The use of plaintiffs' name and portrait, under the circumstances hereinabove described, was primarily for advertising, entertainment and trade purposes, and designed to thrill, astonish and move the readers of "Life" magazine by reporting the fact of the opening of the play "The Desperate Hours" in such manner as to falsely and sensationally link said fictional work directly with one specific family and one actual event out of the past.

13. Defendants Hayes, Erskine and The Desperate Hours Company had knowledge, prior to the publication of

the "Life" magazine article of February 28, 1955, that defendant Time, Inc. intended to identify the plaintiffs Hill and their children as the specific family portrayed in "The Desperate Hours", knew that such identification was false and untrue, and, nevertheless, thereafter collaborated with, and made it possible for, defendant Time, Inc. to prepare and publish said article.

14. By reason of the foregoing, plaintiff James J. Hill has been exposed and subjected to great emotional distress [fol.13] and embarrassment, has been exposed and subjected to extensive and undesirable publicity and comment, has sustained serious impairment of his ordinary business, social and family relationships, and has otherwise been embarrassed, distressed and injured by said defendants' unlawful use of plaintiff's name and portrait.

15. By reason of all of the foregoing, plaintiff James J. Hill has been damaged and is entitled to recover from defendants Hayes, Erskine and The Desperate Hours Company general damages in the amount of \$50,000.00 and exemplary damages in the amount of \$100,000.00.

For a second cause of action against defendant Time, Inc., plaintiff James J. Hill alleges:

16. Plaintiff James J. Hill repeats and realleges each and every allegation contained in paragraph 1-6 and 9 hereof, with the same force and effect as if herein set forth at length.

17. Defendant Time, Inc. is a New York corporation, which publishes and distributes in the State of New York and elsewhere "Life" magazine.

18. Beginning with February 28, 1955, defendant, Time, Inc. knowingly, and without the consent of plaintiffs, or either of them, and contrary to the provisions of the Civil Rights Law of the State of New York, used said plaintiff's name and portrait for purposes of trade and advertising within the State of New York, and in every other State of

the United States, in connection with the business and trade of said defendant, all as hereinafter set forth.

[fol. 14] 19. In or about January, 1955, and as part of an advertising and promotional campaign to advertise and promote the novel, motion picture and play "The Desperate Hours", and to increase the commercial value of "Life" magazine, defendant Time, Inc. and defendants Hayes, Erskine and The Desperate Hours Company collaborated with, and assisted, one another in the preparation and publication of a special photographic layout for use in the February 28, 1955 issue of "Life" magazine wherein the plaintiffs Hill and their children were identified as the family depicted in the various versions of the fictional work entitled "The Desperate Hours".

20. Said "Life" magazine article of February 28, 1955 was intended to, and actually did, convey the impression that the plaintiffs Hill and their children were the family fictionally depicted in the novel, play and motion picture "The Desperate Hours" and that said works constituted a dramatic portrayal of plaintiffs and a re-enactment of the true-life incident in which plaintiffs Hill and their children were involved in September, 1952, all of which, to the knowledge of defendant Time, Inc. was false and untrue.

21. Said "Life" magazine article, insofar as it was based upon the purported connection between the plaintiffs Hill and "The Desperate Hours", did not in any way report news, whether current or otherwise, but on the contrary, took advantage of plaintiffs' name, likeness and private life, without cause or justification, to increase the commercial value of defendant Time, Inc.'s publication, "Life" magazine.

[fol. 15] 22. The use of plaintiffs' name and portrait, under the circumstances hereinabove described, was primarily for advertising, entertainment and trade purposes, and designed to thrill, astonish and move the readers of "Life" magazine by reporting the fact of the opening of the play

“The Desperate Hours” in such manner as to falsely and sensationally link said fictional work directly with one specific family and one actual event out of the past.

23. By reason of the foregoing, plaintiff **James J. Hill** has been exposed and subjected to great emotional distress and embarrassment, has been exposed and subjected to extensive and undesirable publicity and comment, has sustained serious impairment of his ordinary business, social and family relationships, and has otherwise been embarrassed, distressed and injured by said defendant’s unlawful use of plaintiff’s name and portrait.

24. By reason of all of the foregoing, plaintiff **James J. Hill** has been damaged and is entitled to recover from defendant Time, Inc., general damages in the amount of \$50,000.00 and exemplary damages in the amount of \$100,000.00.

For a third cause of action against defendants **Joseph Hayes, Howard Erskine** and the **Desperate Hours Company**, plaintiff **Elizabeth Selfridge Hill** alleges:

25. Plaintiff **Elizabeth Selfridge Hill** repeats and realleges each and every allegation contained in paragraphs 1-14 hereof with the same force and effect as if herein set forth at length.

[fol. 16] 26. By reason of the foregoing, plaintiff **Elizabeth Selfridge Hill** has been exposed and subjected to great emotional distress and embarrassment, has been exposed and subjected to extensive and undesirable publicity and comment, has sustained serious impairment of her health and of her ordinary social and family relationships, and has otherwise been embarrassed, distressed and injured by said defendants’ unlawful use of plaintiff’s name and portrait.

27. By reason of all of the foregoing, plaintiff **Elizabeth Selfridge Hill** has been damaged and is entitled to recover from defendants **Hayes, Erskine** and **The Desperate Hours Company** general damages in the amount

of \$100,000.00 and exemplary damages in the amount of \$200,000.00.

For a fourth cause of action against defendant Time, Inc., plaintiff Elizabeth Selfridge Hill alleges:

28. Plaintiff Elizabeth Selfridge Hill repeats and re-alleges each and every allegation contained in paragraphs 1-6, 9, and 18-22 hereof with the same force and effect as if herein set forth at length.

29. By reason of the foregoing, plaintiff Elizabeth Selfridge Hill has been exposed and subjected to great emotional distress and embarrassment, has been exposed and subjected to extensive and undesirable publicity and comment, has sustained serious impairment of her health and of her ordinary social and family relationships, and [fol. 17] has otherwise been embarrassed, distressed and injured by said defendant's unlawful use of plaintiff's name and portrait.

30. By reason of all of the foregoing, plaintiff Elizabeth Selfridge Hill has been damaged and is entitled to recover from defendant Time, Inc. general damages in the amount of \$100,000.00 and exemplary damages in the amount of \$200,000.00.

Wherefore, plaintiffs demand judgment against the defendants:

1. That plaintiff James J. Hill recover from the defendants Hayes, Erskine and The Desperate Hours Company the sum of \$50,000.00 as general damages, and \$100,000.00 as exemplary damages; and from defendant Time, Inc. the sum of \$50,000.00 as general damages, and \$100,000.00 as exemplary damages.

2. That plaintiff Elizabeth Selfridge Hill recover from the defendants Hayes, Erskine and The Desperate Hours Company the sum of \$100,000.00 as general damages, and \$200,000.00 as exemplary damages; and from defendant

Time, Inc. the sum of \$100,000.00 as general damages, and \$200,000.00 as exemplary damages.

3. That plaintiffs be granted such other, different and further relief as may be just, together with the costs and disbursements of this action.

Mudge, Stern, Baldwin & Todd, Attorneys for Plaintiffs, Office & P. O. Address: 20 Broad Street, New York 5, N. Y.

(Verified March 5, 1958 by James J. Hill.)



ACTUAL EVENT, as reported in newspaper, took place in isolated house about 10 miles from Philadelphia. Three convicts from



Lewisburg penitentiary held family of James Hill as prisoners while they hid from manhunt. All three convicts were later captured.

TRUE CRIME INSPIRES TENSE PLAY

The ordeal of a family trapped by convicts gives Broadway a new thriller, 'The Desperate Hours'

Three years ago Americans all over the country read about the desperate ordeal of the James Hill family, who were held prisoners in their home outside Philadelphia by three escaped convicts. Later they read about it in Joseph Hayes's novel, *The Desperate Hours*, inspired by the family's experience. Now they can see the story re-enacted in Hayes's Broadway play based on the book, and next year will see it in his movie, which has

been filmed but is being held up until the play has a chance to pay off.

The play, directed by Robert Montgomery and expertly acted, is a heart-stopping account of how a family rose to heroism in a crisis. *LIFE* photographed the play during its Philadelphia tryout, transported some of the actors to the actual house where the Hills were besieged. On the next page scenes from the play are re-enacted on the site of the crime.

STAGE SETTING for play is cross section of the besieged house. Two convicts in living room harangue the daughter while the mother (Nancy Coleman)

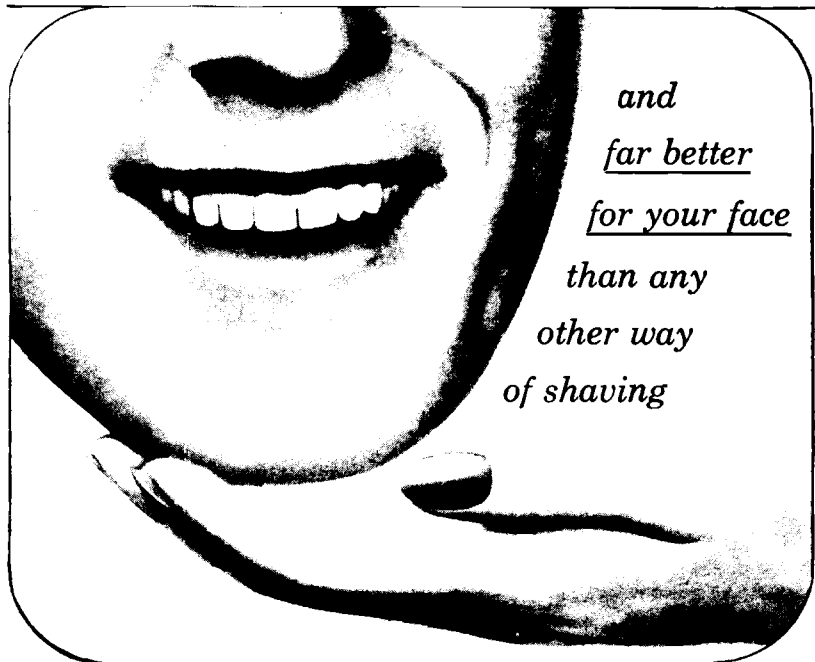
watches helplessly. In bedroom (above, right) the father tries to comfort his son, as a third convict listens in on telephone calls in the upstairs hallway.



[fol. 18]

15

Pretty smooth: your Barbasol shave

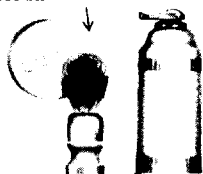


*and
far better
for your face
than any
other way
of shaving*

And here's why...

1. Barbasol is not alkaline, won't dry out your skin

Soapy, alkaline... tough
for skin to take



Its special non-soapy formula is easy on your skin—actually makes your face *feel better, look years younger*. That's because it won't soap off natural skin lubricants as "canned" and lather shaves do. Barbasol never leaves your face hot, parched, taut.

Won't soap off skin lubricants

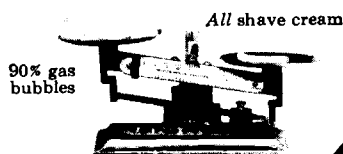
2. Barbasol has more soothing agents!



More skin soothers than
any other shave cream

Barbasol's rich in emollients—special skin-soothing agents. It contains more of 'em than *any* other shave cream made. These ingredients help precondition your face for shaving, keep it feeling tiptop *after* every shave. And with Barbasol your razor gets closer. Shaves *last longer* than with any other way.

3. Barbasol is all shave cream!



90% gas
bubbles

All shave cream

Every bit of Barbasol is designed to condition your face, make shaving much easier. It has *real* body. Not like "canned" shaves—they're 90 per cent gas bubbles, and bubbles never licked a whisker yet. Barbasol softens your whiskers quick, holds 'em up so your razor can slice 'em clean.

- no brush
- no lather
- no rub in

Face it, man!



True Crime CONTINUED

THREE CRISES AT A BACK DOOR



AT REAL HOUSE where family was trapped, actors do scenes from the play. Here daughter Cindy stalls off her beau from entering the beleaguered home.



BRAVE TRY to save family fails when father (Karl Malden) has to toss out gun because son is held as hostage.



FIRST HOPE for rescue comes when trash collector chats with wife and senses something is wrong. He is killed, but his death puts police on trail.

EXHIBIT A, ANNEXED TO THIRD AMENDED COMPLAINT

[fol. 19]

The Original
fredric arnold
Folding Aluminum Armchair



Use them now in recreation room for TV viewing, or in den. When spring comes, put them outside where they'll provide the perfect answer to that leisure living you're looking forward to. Comfortable, colorful . . . and best of all, they'll withstand weather's worst without deterioration. Frames of Alcoa® Aluminum are light but strong; seat and contour back are bright, multicolor plaid. The whole chair folds flat for storage.

Made by the world's largest producer of aluminum folding chairs, the Fredric Arnold Co., Brooklyn 1, N. Y. Sold at better furniture and department stores everywhere.

A user of

ALCOA



ALUMINUM COMPANY OF AMERICA

It's SEA'LICIOUS.

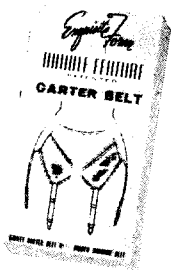
A NEW
TASTE
THRILL!



Made with luscious
tender oysters, creamery butter and fresh milk

So good for you!

NEW
DOUBLE
FEATURE
GARTER
BELT



to wear all through the month

It's a dainty, smoother-fitting garter belt, plus a wonderfully convenient sanitary belt with hidden sani-tabs for "those days"! Quick-drying nylon. \$2.50

At better
stores everywhere.

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Exquisite Form
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True Crime CONTINUED



BRUTISH CONVICT (George Matthews) roughs up the young son, Ralphie (Malcolm Brodrick), who shows his

spunk by talking up to the criminals. The hand of another convict holds a revolver (*foreground*) to terrorize family.



DARING DAUGHTER (Patricia Peardon) bites hand of youngest convict (George Grizzard), makes him drop gun.



FEVERISH FATHER cleverly foists off unloaded gun on the leader (Paul Newman), saves his son and family.

EXHIBIT A, ANNEXED TO THIRD AMENDED COMPLAINT

[fol. 20]

[fol. 21]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

ANSWER OF DEFENDANT TIME, INC.

Defendant, Time, Inc., for its answer to the second and fourth causes of action in the third amended complaint herein:

1. Denies each and every allegation contained in paragraphs 9, 18 through 24, 29 and 30 except that in the issue of Life Magazine dated February 28, 1955, which was distributed in the United States and foreign countries, there appeared an article, a copy of which is annexed to the complaint as exhibit A.

For a first complete defense:

2. The matter set forth in exhibit A to the complaint was in each and every respect a subject of legitimate news interest at the time of its publication.

For a second complete defense:

3. The matter set forth in exhibit A to the complaint was in each and every respect a subject of general interest and of value and concern to the public at the time of its publication.

[fol. 22] For a third complete defense:

4. The matter set forth in exhibit A to the complaint, in so far as it pertains to plaintiffs or either of them, reports facts theretofore of public knowledge and record.

For a fourth complete defense:

5. The matter set forth in exhibit A to the complaint, in so far as it pertains to the imprisonment of plaintiffs, or either of them, reports facts theretofore of public record and knowledge only, and in so far as it pertains to the inspiration which such facts afforded defendant Hayes in the constructions of his novel and play entitled "The Desperate Hours" represents fair, truthful and inoffensive comment in respect of public personages only.

For a fifth complete defense:

6. Plaintiffs are residents of the State of Connecticut and were residents of the State of Connecticut at the time the matter set forth in exhibit A to the complaint was published and distributed and any impact upon plaintiffs as a result of that matter in violation of any asserted right of privacy took place solely in the State of Connecticut.

7. Any right or cause of action asserted by plaintiffs against this defendant for violation of any asserted right of privacy is solely governed by the law of the State of Connecticut.

8. The law of the State of Connecticut does not recognize any alleged cause of action for violation of right of privacy.

[fol. 23] For a sixth partial defense:

9. The matter set forth in exhibit A to the complaint was published in good faith without any malice whatsoever toward plaintiffs, or either of them, or any other person.

Wherefore, defendant, Time, Inc., demands judgment dismissing the complaint herein against it, together with costs and disbursements in this action.

May 16, 1958

Cravath, Swaine & Moore, Attorneys for defendant
Time, Inc., 15 Broad Street, New York 5, N. Y.

[fol. 24]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

SPECIAL AND TRIAL TERM, PART X

New York, N. Y., April 5, 1962

Before:

Honorable Arthur G. Klein, Justice and a jury.

Appearances:

Mudge, Stern, Baldwin & Todd, Esqs., Attorneys for
Plaintiffs, By: Leonard Garment and Donald J. Zoeller,
Esqs., of Counsel.

Gilbert & Gilbert, Esqs., and A. L. Berman, Esq., Attorneys for Defendants Hayes, Erkin and The Desperate Hours Co., By: Jerome E. Malino, Esq., and Theodore R. Jackson of Counsel.

Cravath, Swaine & Moore, Esqs., Attorneys for Defendant Time, Inc., By: Harold R. Medina, Jr., Esq., and Oliver Biddle, Esq., of Counsel.

Albert Stern, C. S. R., Official Reporter.

CASE AND EXCEPTIONS

* * * * *

[fol. 25] JAMES J. HILL, one of the plaintiffs, residing at 409 Sound Beach Avenue, Old Greenwich, Connecticut, called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Garment:

Q. Mr. Hill, would you just keep your voice up, please. Are you one of the plaintiffs in this action?

A. Yes.

Q. What is your relationship to the other plaintiff, Elizabeth Hill?

A. Husband.

Q. What is your business or profession, Mr. Hill?

A. I am vice president and director of sales for a manufacturing concern, Alba—division of Alba Waldensian, Inc., main mills in Valdese, North Carolina. My office is in the Empire State Building.

Q. Will you tell us what your work involves?

A. I direct the sales for the entire company. We distribute nylon hosiery for ladies, to various leading department

stores, specialty stores and national chains throughout the country.

Q. Where do you make your home, Mr. Hill?

A. I live at 409 Sound Beach Avenue, Old Greenwich, Connecticut.

Q. How long have you been in the merchandising business?

A. Since 1934.

Q. Where did you go to school?

A. I attended the University of Kansas, at Lawrence, Kansas, Bachelor of Arts degree, in 1928. Harvard Law School for two years.

Q. Did you withdraw from law school?

A. I did.

Q. What line of work did you go into at that point?

A. At that point I was working for the Harvard Intramural Department coaching several exercise classes. I was also working in a Shell Oil filling station in Cambridge, [fol. 26] Massachusetts, and I was playing basketball for five or six different semi-professional teams through New England.

Q. And is that what you continued to do for a period of time?

A. I did.

Q. When did you get into merchandising?

A. In 1933, I entered the Jordan Marsh Company on their executive training course.

Q. And have you been in that business ever since then?

A. I have.

* * * * *

Q. Now, Mr. Hill, in September 1952 where were you and your family living?

A. We were living in a house outside of Philadelphia, in the Whitmarsh Township, Pennsylvania.

Q. By whom were you employed at that time?

A. By Dextdale Hosiery Mills, at Landsdale, Pennsylvania.

Q. And what was your job with Dexdale?

A. I was director of sales.

Q. How long had you been with Dexdale?

A. A total of approximately nine years.

Q. Would you tell us something about the house that you lived in at that time?

A. It was a large, old Dutch farmhouse that had been converted into a residence, with a a stone barn in back which was almost as large as the house. It was situated in the middle of an eighty-acre tract. It had about 20 or 22 rooms in the house.

Q. Did you own that house or did you rent it?

A. I rented it.

* * * * *

[fol. 27] Q. I don't believe I asked you what the size of your family was in 1952 and how old the children were.

A. Susan, our oldest daughter, was seventeen. Betty was fifteen. Jim, Jr. was eleven, and Clyde and Robert, Butch and Bobby, the twins, were four.

Q. Mr. Hill, coming to September 11, 1952, did that day start like all other days in the life of your family?

A. Yes.

Q. Would you tell the jury as best you can now what happened that day?

A. Mrs. Hill and I got up at the usual time, which was somewhere around six o'clock, and then the children started to get up, and we all had breakfast together. Around eight o'clock, I left in one of our cars with Susan and Betsy, to take them to Norristown, Pennsylvania, where they attended the senior high school.

From there I went to Philadelphia that day to work with some of the leading department stores, John Wanamaker's, Strawbridge, and Gimbels.

Around five o'clock, I telephoned Mrs. Hill that I was finished and would be leaving for home, and I arrived around six o'clock. I drove my car into the parking area,

back by the barn, and walked up to the house, walked in the center back door.

I was met at the doorway by Mrs. Hill, who was very nervous. She said in effect, "Please don't do anything that you will be sorry for. Something terrible has happened to our family. Just be careful," or something like that.

Naturally, I was very disturbed about it. I didn't know what in the world had happened. So I put my arm around her and tried to console her, and we walked along the hallway towards the main dining room, which was connected by a large breakfast room.

[fol. 28] As I came around the corner of the partition, I came face to face with two young men with guns in their hands pointed at Mrs. Hill and myself.

Q. Did you know who they were at that time?

A. I did not.

Q. Did you later learn the identity of those two men?

A. I did. I later learned it from Mrs. Hill, who had seen a newspaper which our daughter Betsy had brought home, and I also had a chance to see the newspaper which I had bought in Philadelphia and had just folded up and carried into the house without reading.

Q. Who were those two men?

A. The smaller one was Joe Nolen, and the taller, thin one was Elmer Schuer.

Q. All right. You walked in and there were Joe Nolen and Elmer Schuer, and they had these guns.

A. Lined up on the other side of the table, with our five children, and on the table there were a number of assorted shotguns and rifles and a supply of ammunition.

Joe Nolen spoke up and said, "Mr. Hill, we have taken over your house and we intend to keep it as long as we need it."

I don't know whether these are the exact words, but, in fact—

Q. I understand. Just give the substance, Mr. Hill.

A. He said, "We need shelter. We need clothing. We

need money. And we are going to stay as long as we need to."

He said, "If you folks do what you are told, nobody will be hurt."

Q. What did you tell him, Mr. Hill?

A. I told him that their problems were their own problems; that we were interested in just our family, and as long as nothing happened to our family and as long as their requests were reasonable, then we would do what they told us to do.

[fol. 29] Q. All right. What happened after that?

A. After that, they searched me, and then Joe Nolen said that he would suggest that we get something to eat. And he apologized for the fact that we wouldn't have the usual meal, since that was Mrs. Hill's shopping day, and he said that she had been prevented from going out to do the shopping. He told us to go ahead and have something to eat and then they would get something for themselves after that.

Q. Did you go into the kitchen?

A. Yes.

Q. And was Mrs. Hill with you?

A. Yes.

Q. Did you have something to eat?

A. We had something to eat, some sandwiches or soup or something.

Q. Did you discuss with Mrs. Hill the events that had transpired that day before you came home?

A. Yes.

Q. What did she tell you?

A. She told me that only a few minutes after I had left, around eight o'clock, that a man had appeared at the back door and had asked if the mister was in and she replied that he wasn't, and the man immediately started coming in through the screen door. She tried to stop him, but with no success. He was followed by two other men carrying guns. She told me that the first man was Joe Nolen, and

the two men that came in afterwards were Elmer Schuer and Joe Nolen's younger brother, Ballard Nolen.

* * * * *

Q. Mr. Hill, what was Mrs. Hill's attitude or appearance during this period, that is, from the time you came home and through the dinner meal that you had?

A. She was very distressed. Obviously she was very frightened, the same as I was.

Q. Was she crying?

A. No, she was not.

[fol. 30] Q. Were any of the children crying?

A. None of the children cried at any time. There was no hysteria whatsoever.

Q. What was the attitude of your children about the presence of the men in the house at this time, that is, the early part of the evening?

A. Butch and Bobby, of course, were only four at the time. They obviously didn't realize what was going on. It was an unusual situation to them. Jimmy was very quiet. He was there during the entire nineteen hours, also, with the twins and Mrs. Hill. He seemed to sense that this was very serious, but he didn't give any outward show of it.

Betsy, who came home earlier in the afternoon, was openly indignant about the convicts coming in the house and actually made one remark in front of me and in the hearing of one of the convicts along the line that they were just a bunch of punks.

Susan was quite disturbed and she had very little to say.

Q. After you finished dinner, Mr. Hill, what then happened?

A. Joe Nolen had come out to the kitchen door and he stood there for a minute, and then he said—he pardoned himself and asked if he might come in.

Naturally, I said, "Certainly," and he came in and sat down and talked a few minutes with Mrs. Hill and me. Then he said, "We will have to put you folks all in one place tonight so that we can watch you." And he said,

"Where would be the best place for that so that we can watch you," or words to that effect.

I suggested that the third floor apartment, which the girls had fixed up—actually, I believe they were former maid's quarters. It had two rooms separated by a stairway coming up from the second floor, and at the base of that [fol. 31] stairway on the floor there was a door which latched on the second floor side.

Q. So that this was sort of a little, separate apartment in the house?

A. Yes, with a bath and so on.

Q. What sleeping arrangements were made?

A. Well, there was a single bed in each room. So Mrs. Hill was to take one of the single beds, and Susan was to take one of the others. The convicts offered to help us take extra mattresses up there, and they even offered to take down the twins' cribs and put those back up.

I told them that they obviously hadn't had much experience with putting up cribs and taking them down because that's a pretty serious job.

So we said we would just take the mattresses upstairs. We placed the twins' mattresses on the floor beside Mrs. Hill's bed. We put another mattress in the other room for Betsy to sleep in the same room with Susan. Then another mattress on the hallway that was alongside the stair well for Jim. And that was the basis of the sleeping arrangement.

Q. What time did you and your family go upstairs to this part of the house?

A. Around nine, nine-thirty.

Q. Did you go to sleep immediately?

A. No. We attempted to play a game of hearts, the entire family, but we gave that up after a while.

Q. Did the convicts or any of them come up into this part of the house at any time after you and your family went up there for the evening?

A. No.

Q. Was there a time when either you or Mrs. Hill were asked to come out of the apartment to do something?

A. Yes.

Q. When was that?

A. The telephone rang, and as Mrs. Hill had told me that she had done during the day, they called her to answer the telephone. While she would take the call and talk, [fol. 32] one of the convicts would get on the connecting phone and listen in and then eventually would signal when she was to end the conversation. They called her downstairs to answer the telephone call around nine-thirty or so, and then she returned upstairs.

Q. Did they do anything about the telephone at that point?

A. Mrs. Hill said they ripping the wires out as she came back upstairs.

Q. Did the convicts call upon you or come up into your family's quarters at any other point that night?

A. Not at all.

* * * * *

Q. Mr. Hill, when did the family finally go to sleep, about what time?

A. I would say the twins dozed off not too long after we finished playing cards, probably around ten o'clock or so.

Jimmy, who was—I was sitting in a chair at the head of the stair well, and I could see Jimmy more clearly than the rest of the family—he dozed off somewhere around ten-thirty or so, and I could hear Mrs. Hill moving around in the bed. It was shadowy from where I was sitting, but I think that she wasn't sleeping.

Susan, in the other bedroom, was quite restless, and I don't think that she slept too much during the night.

Q. Where did you spend the night, Mr. Hill?

A. I spent most of the night sitting in a chair at the head of the stairway. At different times I got up and tiptoed into the different rooms to see if everybody was all right; most of the time, in the chair.

Q. Did there come a time when the convicts finally left? Well, let me put the question this way: Do you know when the convicts left?

A. I know when two cars left.

[fol. 33] Q. Would you tell us the circumstances of the departure of the convicts, as best as you knew it?

A. Around midnight, it seemed, as best I could tell, there was a great deal of moving around downstairs and that lasted for ten or fifteen minutes. Then there was quiet again for almost 45 or 50 minutes. Then they started moving around again and I heard the motor of one of our automobiles start, and from the sound it seemed to me that they were moving it forward and moving it backwards. We couldn't see the barn area from where we were up on the third floor.

Then there was quiet again and this same interval. This happened successively almost each hour, until around 3 o'clock or 3:15 I heard a car start up. I knew it wasn't one of our new Pontiacs, so I judged that it must be the old green Mercury that I had seen parked in the lot when I had come home earlier in the evening.

Q. Well, in any event, when did you finally come down out of this part of the house?

A. Well, the second car started up—

Q. No, Mr. Hill. When did you come down out of this section of the house?

A. We came down shortly after 6 o'clock.

Q. Now let me ask you this. Before you went up to the sleeping quarters, had the convicts or any of them given you and Mrs. Hill any instructions in connection with your going to bed and when you got up, et cetera?

A. Yes.

Q. What were those instructions?

A. Joe Nolen had asked me what time we usually get up and I told him around 6 o'clock. He said that would be fine. He said, "Get up as usual tomorrow at 6 o'clock. Don't come downstairs before that, and don't notify the police until 8 o'clock. If there is any rumbling, you will hear from us."

Q. Did you agree?

A. We did.

[fol. 34] Q. You came down, you say, at 6 o'clock in the morning?

A. Yes.

Q. Were the convicts gone?

A. Yes, they were.

Q. What did you and the other members of your family do at that point?

A. We looked around the house and we looked around the garage area. We found that one of our cars had been taken. We found their car was gone. We found that some clothing and some luggage and things of that type had been taken. Then we dressed, we had breakfast, and at 8 o'clock, around 8 o'clock, I walked over toward one of the neighbors to make a telephone call to the police.

Q. Now, Mr. Hill, in the period of time that you were in the house, from 6 o'clock on, was there any profanity, any obscene language on the part of any of the convicts in the presence of any member of your family, so far as you know?

A. None whatsoever.

Q. Was there any violence in the way of any type of assault or touching by any of the convicts of any member of your family?

A. Not one bit of it.

Q. Was there any drinking of hard liquor in the house?

A. There was hard liquor—

Mr. Medina: I don't see how this witness can tell that.

The Court: If he can say, I will permit it. If you saw any of them drinking, you can so state.

Mr. Medina: If he limits the question to in his presence, I have no objection.

The Court: Yes, in his presence.

By Mr. Garment:

Q. So far as you know, Mr. Hill, was there any hard liquor drunk by any of the convicts?

[fol. 35] Mr. Medina: I still object to that question.

The Court: Let us put it this way.

Did you have any liquor in the house?

The Witness: Yes, sir.

The Court: Did you notice whether any of it was gone after you came downstairs?

The Witness: It didn't seem that any of it was gone.

The Court: Then the answer to the question did they drink in your presence would be "No," I assume.

The Witness: That is correct.

Q. Was any member of the family out of the house during the period that you were there?

A. No one left the house at all.

Q. Was there any attempt on the part of any member of the family to escape?

A. There was no attempt by anyone to escape.

Q. Was there any gun shot by anyone in or around your house during the period of time that you were there?

A. There was no gun shot in the house or around the house while I was there.

Q. Was anybody other than your family or members of your family assaulted or injured in or around your house during the period of time that you were there?

A. No one.

Q. What time did the police arrive?

A. Around 9, 9:30.

Q. Were these representatives of the local or State police, or both?

A. I telephoned the local police and the local police arrived first. Then I believe the State police came.

Q. Was the Federal Bureau of Investigation there?

A. Yes, they arrived later from Philadelphia.

Q. Were you questioned by the police?

A. Yes.

[fol. 36] Q. Were the other members of the family questioned by the police?

A. Yes.

Q. Would you tell us very briefly, Mr. Hill, and generally what the subject matter of the questioning was, and in gen-

eral terms what responses were given by you or by other members of your family in your presence?

A. We were questioned individually and collectively and then individually and then collectively—about every combination that you could think of. They wanted us, each of us, to tell them everything we possibly could about the description of the convicts, about the events of the day and the night, about any possible conversations of the convicts that we might have heard, about any indication that they might have given to us as to their plans.

They repeatedly went over the question as to whether there had been violence to any member of our family. They questioned our daughters and Mrs. Hill about whether they had been violated or not. They even questioned the twins about what they had seen, what they knew, what events they could tell about.

They wanted to know about the property that had been taken, about the clothing, about the luggage, anything else that might be missing.

They wanted a description of the car, the motor numbers, and so on, a description of the green Mercury that they apparently had arrived in.

Q. And did you and the members of your family answer these questions to the best of your ability?

A. Yes, we did.

This questioning continued to somewhere around 2 o'clock in the afternoon.

Q. During this period of time were there any members of the press in the house?

A. Yes. We were all in two rooms, which actually opened [fol. 37] out into one big room, and before we finished the entire area was crowded with people milling around, and in the midst of it someone shot off a flash camera.

I went to the State police officer in charge and the Federal Bureau of Investigation man and told them that the press had come into the house, that they had no right to be there in that way, that one of them had even torn off a screen from the window and had crawled in in that way.

Q. In any event, Mr. Hill, were the gentlemen of the press and any photographers asked to leave the house until the police questioning was terminated?

* * * * *

A. As far as I know, all of the photographers and members of the press were asked to leave until the questioning had been ended.

* * * * *

By Mr. Garment:

Q. In any event, Mr. Hill, did there come a time when you gave a statement to the press?

A. Yes.

Q. Before you gave that statement, did you go over it with one of the representatives of the police or the F. B. I.?

A. I went over it with the chief officer of the State police and the chief officer of the F. B. I.

Q. Where did you give the statement?

A. I stayed on the front steps of the front porch of the house.

Q. Were there members of the press assembled on the premises of your house?

A. Yes, on the lawn.

Q. Can you approximate how many persons were present, that is, were there many or few?

A. A great many.

[fol. 38] Q. Do you know whether there were representatives of various news services as well as representatives of specific newspapers?

A. I believe there were representatives of national news services and also of local papers, Philadelphia papers.

Q. Was there television equipment present on your lawn?

A. There was a lot of equipment there. I assumed it was television and radio equipment.

Q. And did you make your statement over a microphone or into a microphone?

A. Yes, I did.

Q. In general terms—I don't think there is any need to repeat what you went through before—did you describe the events that had transpired in your house to you and the members of your family, in your statement to the press?

A. I did, as best I could, the events of the day and night.

Q. Was Mrs. Hill with you at the time you gave this statement?

A. She was not.

Q. Were certain other members of your family present with you when you gave the statement?

A. Yes.

Q. Who was present with you?

A. Betsy, our youngest daughter, and the three boys—Jim, Bobby and Butch.

Q. Where was Mrs. Hill?

A. Mrs. Hill was in bed at that time.

Q. Well, I wonder if you could tell us, was she ill or what?

A. She was just worn out.

Q. And where was Susan?

A. Susan refused to come out of the house.

Q. After you finished making your statement, Mr. Hill, were questions asked?

A. Yes.

Q. Could you tell us again briefly and in general terms the nature of those questions and your responses to the questions?

A. After we told about the events, then they wanted to know specific things, about had there been any violence, [fol. 39] had anybody been struck, how did they act, was there any profanity, did they tear up the house, the furniture, and so on. Just general questions along that line.

Q. And what did you tell them, Mr. Hill?

A. I told them that there had been absolutely no violence, there had been no profanity whatsoever. I told them the events that had happened.

Q. In your statement to the press and in your responses to the questions asked by the press, Mr. Hill, did you at-

tempt to recapitulate the events of the entire day, that is, repeating also material that Mrs. Hill had told you?

A. Yes, I did.

Q. Do you know whether Mrs. Hill was questioned or gave any statement to any members of the press during the day?

A. Mrs. Hill was in the room when all of the people were milling around earlier. I wasn't with her all the time that she talked with people. We were all talking to many officers. She could have talked with a reporter at that time.

Q. Now, Mr. Hill, was an account of your interview and were reports of the incident published in the Philadelphia area?

A. Yes.

Q. To your knowledge, were these accounts published all over the country?

A. I believe the national news services published them widely.

Q. Was it the subject of reporting in magazines also?

A. Yes.

Q. Would you say, Mr. Hill, in general terms, that the reporting at that time in these various publications fairly and with reasonable accuracy reproduced what you had told the press directly in response to questions?

A. It did.

Q. I show you a clipping of an article with photographs from the Times-Herald of Norristown, Pennsylvania, dated [fol. 40] September 12, 1952, and I ask you whether that is a representative news account of your incident.

A. Yes, it is.

* * * * *

(Photostatic copy referred to received in evidence as Plaintiffs' Exhibit 1.)

* * * * *

By Mr. Garment:

Q. Mr. Hill, in addition to this article in the Norristown Times-Herald there were, of course, a good many other such articles published in and around Philadelphia on September 12th and September 13th of 1952?

A. Yes.

Q. So far as magazine coverage is concerned, I show you this clipping from Time Magazine for September 22, 1952 and I ask you whether you were acquainted with that report at or about the time of its publication (handing paper to witness).

A. Yes, sir.

Q. And does that report fairly reflect the facts of what transpired in your house as you reported it to the press on September 12, 1952?

A. Yes.

* * * * *

(The clipping from Time Magazine of September 22, 1952, was received in evidence as Plaintiffs' Exhibit 2.)

Mr. Garment: With your Honor's permission, I would like to read this article to the jury. It is quite short.

The article is entitled, "House Party."

Now I will read the text.

"When Mrs. Elizabeth Hill, 43, answered the knock at the back door one morning last week and saw the young [fol. 41] man with a two days' growth of beard, she was terrified. Her husband, James Hill, a hosiery company executive, had left for work; her daughters Betsy and Susan were in school. In the big ivy-covered house in a Philadelphia suburb, there were only Mrs. Hill, her eleven-year-old son Jimmy and four-year-old twins, Clyde and Robert. On the 8 a.m. newscast she had heard about the three 'desperate and vicious' bank robbers who had escaped from the federal penitentiary at Lewisburg.

"'You probably know who we are,' said 26-year-old Joseph Nolen of Woodbine, Kentucky. 'We're not going

to hurt you—we just want your house for a day. If you do what we tell you, nobody will be hurt.’

“As Nolen pushed open the back door, his brother Ballard, 22, and Elmer Schuer, 21, of Chicago appeared from behind a trellis, pointing shotguns at Mrs. Hill. When the men had searched the house from cellar to attic, Mrs. Hill asked them if they would like some breakfast. ‘Yes, we’d appreciate it,’ replied Joseph politely. She fixed them some scrambled eggs, bacon and coffee.”

Then there is another little heading: “Tonic and Lotion.

“Breakfast done, the three fugitives took baths and shaved, helping themselves to Hill’s hair tonic and shaving lotion. Then they helped themselves to Hill’s suits. When Joseph discovered that six-footer Hill’s suits didn’t fit, he sat down at an old treadle sewing machine and carefully altered the trousers and sleeves. The thread broke repeatedly, and Mrs. Hill kept rethreading the needle.

[fol. 42] “While one of the men stood by with a shotgun, Mrs. Hill called her cleaning woman to tell her that the car had broken down and she couldn’t pick her up. A Fuller brush salesman telephoned, and she asked him to deliver the brushes she had ordered some other day. At 4 p.m., when Susan and Betsy came home from school and found Ballard guarding their mother (the other two had gone out somewhere on an errand), they thought it was some kind of joke.

“Two hours later Hill came home from work, and Ballard ushered the whole family into the kitchen for dinner. They were all seated at a meal of canned soup, spaghetti, chile con carne, milk and coffee when Joseph and Schuer returned. ‘May I come in?’ asked Joseph politely, standing in the kitchen doorway. Later the men played poker. They asked Betsy to join them, but she said that she played only canasta. The robbers told her they did know that game. Most of the time they kept the radio tuned to dance music, and they used no profanity.”

Another heading: "Bedtime.

"I guess you folks would like to go to bed,' suggested Joseph at last. 'If you do, just go ahead. I wish you would all go up to the third floor if you do go to bed.' Hill observed that there was only one bed up there. So Joseph and the other two men carried up several loads of cribs and mattresses. Hill sat up all night in a chair while his family tried to sleep. At 3:30 a.m., nineteen hours after the fugitives entered the house, he heard his car start up. The three men then drove away into the early morning [fol. 43] blackness, where the FBI and most of the police in Pennsylvania hunted for them.

"Following out orders from the trio, who had cut the telephone wires, Hill waited until 8 a.m. before going to a neighbor's house to call the police to tell them about his interesting house guests."

* * * * *

Q. At this point, after September 12th, the three convicts were still at large, were they not?

A. Yes.

Q. Was your family under police protection?

A. I had demanded police protection and had gotten it.

Q. Did that continue until such time as the convicts were apprehended?

A. Yes.

Q. When were they apprehended?

A. On Saturday, which was about ten days after the incident. I believe it was September 20, 1952.

* * * * *

Q. Let me put this question to you, Mr. Hill. How did you learn of the apprehension of the convicts?

A. Mrs. Hill and I were listening to the radio Saturday morning at around 9:30 or so on September 20, 1952. We heard the report over the radio that they had been captured in New York.

Q. Did you thereafter read news accounts of their capture?

A. We did.

Q. Were these news accounts published in the Philadelphia area?

A. They were.

Q. Were you called by the press at that time?

A. Yes.

Q. Mr. Hill, I show you an article in the Philadelphia Daily News for September 22, 1952 and I ask you whether [fol. 44] you and Mrs. Hill saw that article at or about the time of its publication.

A. Yes, we did.

* * * * *

AFTERNOON SESSION

JAMES J. HILL, resumed the stand and still being under oath further testified as follows:

Direct examination.

By Mr. Garment (Continued):

* * * * *

(The articles from the issue of the Philadelphia News referred to were received in evidence as Plaintiffs' Exhibit 3.)

Q. Mr. Hill, I show you this clipping from the Conshohocken Recorder for September 22, 1952. First, I want to ask you this: Is this Conshohocken Recorder a local newspaper in or around the Whitemarsh area?

A. Yes.

Q. Will you look at this article and tell me whether or not you and Mrs. Hill saw that article at or about the date of this publication?

A. Yes, we did.

* * * * *

(The articles from the Conshohocken Recorder received in evidence as Plaintiffs' Exhibits 4-A and 4-B.)

* * * * *

Q. Just to have the record clear on this, Mr. Hill, the apprehension and killing of the convicts and the killing of the detective took place in New York City some ten days [fol. 45] after your incident in your home in Pennsylvania; is that correct?

A. Yes.

Mr. Garment: Now, with your Honor's permission, I would like to read first two or three paragraphs from Exhibit 4-A. The heading is: "Convicts Killed, Police Guard Ceases."

The subheading: "James Hill Family Moving Freely Again.

"For the first time in 10 days, members of the family of James J. Hill, Joshua Rd., near Flourtown Rd., Whitemarsh Twp., felt free to go home and come as they please.

"The fear that has gripped their lives since three escaped convicts held them captive for 19 hours was lifted and the police guard provided by Whitemarsh Twp. and the State Police 24 hours daily since September 12th was gone.

"Two of the convicts were dead in New York and the third was in prison. A detective also is dead and a second detective wounded critically.

"The scene of murder was one that might have happened in the secluded Hill residence, at one time occupied by G. Harrison Frazier, had the family failed to cooperate with the criminals or had police attempted to capture the trio while the desperadoes were holding Mr. and Mrs. Hill and their five children prisoners in their own home from 8:00 A. M. September 11 until 3:30 the next morning.

"Hill said this morning he did not wish to comment on the killing of the two convicts and the surrender of one. 'I have nothing more to say,' was his only observation.

[fol. 46] "While a great manhunt developed after the trio fled from the Hill home, all seven members of the Whitemarsh Twp. Police Department had a turn guarding the family. They were assisted by the State Police.

"Mrs. and Mrs. Hill felt that there was a possibility that the escapees might return and harm them, and requested police protection as the manhunt spread into adjoining states."

* * * * *

Q. Now, did there come a time, Mr. Hill, when you and your family moved from Whitemarsh Township?

A. Yes.

Q. When was that?

A. November 24, 1952.

Q. And where did you move to?

A. To our present home, in Old Greenwich, Connecticut.

Q. I want to ask you this, Mr. Hill: Had that move been planned prior to the incident of September 11?

A. The move had been planned for a later date.

Q. What effect, if any, did the incident have upon the move?

Mr. Medina: I object to the form of the question.

Q. Let me put it to you this way, Mr. Hill: Were your plans in relation to the timing of your move affected in any way by the incident?

Mr. Medina: Same objection.

The Court: That's the same question. I will overrule the objection.

A. It accelerated the move.

[fol. 47] Q. What was the occasion for the move that had been previously planned?

A. Our sales office for Dexdale Hosiery Mills had always been located at the plant, at Lansdale, Pennsylvania. The center of selling activity in the hosiery business has always been New York City, and I prevailed upon the president of Dexdale Hosiery Mills to allow us to take the selling office from the mill over to New York City and combine it with our New York office.

Q. Now, at the time of your move, Mr. Hill, was there any further newspaper comment about you or your family?

A. Yes.

Q. Do you know whether there had been some telephone calls or other questions from the press to any member of your family?

A. I believe they telephoned Mrs. Hill.

Q. Mr. Hill, I show you a clipping from the Sunday Bulletin of Philadelphia for November 23, 1952 and I ask you whether you saw that article at or about the time of this publication?

A. Yes, I did.

* * * * *

(The two articles referred to from the Sunday Bulletin of Philadelphia were received in evidence as Plaintiffs' Exhibits 5-A and 5-B.)

Mr. Garment: With your Honor's permission, I would like to read part of this article to the jury.

The article is entitled: "Captive Family Moving to Connecticut. Hills, Held by Convicts, Leaving Whitemarsh.

"The James J. Hills are leaving their rambling home in Whitemarsh Twp. where they were held captive for 19 hours last September by the Nolen Brothers and Elmer [fol. 48] Schuer, three escaped bank-robbers. Tomorrow is moving day for the hosiery firm executive, his wife Elizabeth and their five children. They are moving to their new home in Old Greenwich, Connecticut, two blocks from Long Island Sound, where the entire family will be close to their favorite recreation, salt water bathing.

"The terrifying experience of last September 11-12 is not forgotten but seldom discussed and never with the children. It has had nothing to do with their moving. Mr. Hill is general sales manager of the Dexdale Hosiery Company, Lansdale, which is transferring its main sales office to New York City. He will make his headquarters there."

There follows a recapitulation of the previous incident and the article concludes:

"Mrs. Hill said yesterday the family had suffered no ill effects from the experience. Moving is nothing new to the family. They have moved almost yearly in the last ten years as Hill was transferred from place to place by Dexdale. 'Moving a family our size from a 20-room house is some job,' Mrs. Hill said, as she supervised the packaging of the chinaware.

'It seems that what we pack the twins unpack.'"

By Mr. Garment:

Q. Now Mr. Hill, apart from these interviews that we have talked about and that I have read to the jury and others that were published in other newspapers, were there other requests from other persons or organizations for interviews beyond those that we have already talked about?

A. Yes, there were.

[fol. 49] Mr. Medina: I object to the form of the question. It calls for hearsay.

The Court: I will permit the answer.

The objection is overruled.

* * * * *

Q. Would you tell us who made the requests without going into details of what the requests were?

A. A person who purported to be an agent of the Ed Sullivan Toast of the Town Show. I refused his request. A reporter from the Lewisburg, Pennsylvania newspaper requested an interview. I refused that. There was a call from a leading New York columnist, I believe Inez Robb—I think that's who it was—requesting—

Mr. Medina: Here is the vice. He gives hearsay in the answer. I ask that it be stricken.

Mr. Garment: It is simply a question as to his having received the requests.

The Court: Perhaps we can bring this to a head by indicating—you received numerous requests, all of which you rejected, is that correct?

The Witness: That's correct.

The Court: I will permit you to state from whom those requests came—with the understanding that that's all you can go into.

Overruled.

Now, you have mentioned Inez Robb and the other two. Were there any others?

The Witness: I can't recall the exact names, but from the Philadelphia television and radio stations, from some of the New York television and radio stations.

[fol. 50] By Mr. Garment:

Q. Did these requests involve appearances by you and members of your family?

A. Some of them did.

* * * * *

The Court: . . . You didn't agree to any of these, did you, sir?

The Witness: No, sir. I refused all of them.

* * * * *

Q. When you reached Old Greenwich, Connecticut, Mr. Hill, and settled down there, was there continuing comment about the Whitmarsh incident of September 11-12, 1952?

A. Somewhat, for a short period, and then it died down.

* * * * *

Q. Was there any comment, was there any publicity in the Old Greenwich Newspaper or any paper in Greenwich?

A. No.

Q. Was there a call from a New York newspaper to either you or your wife, to your knowledge?

A. There was a call to Mrs. Hill.

Q. Was any interview given?

The Court: He has already said that he didn't give any more interviews after his first one.

Is that the fact, sir?

The Witness: Yes, sir.

Q. Apart from newspaper comment, when you reached Old Greenwich, Mr. Hill, was there any further comment on the part of individuals? And by that, I include questioning in connection with the Whitemarsh incident.

A. There was some from people that had known us in the Philadelphia area.

[fol. 51] Q. And about when did that die down?

A. Within several months after the first of the year.

Q. Now, did there come a time when the Whitemarsh incident came up for discussion again?

A. Yes.

Q. When was that?

A. That was in the spring of 1954.

Q. What event or events brought that about?

A. The publication of The Desperate Hours novel.

Q. Will you tell the jury what happened at that time.

A. Mrs. Hill received a copy of the novel from a Mrs. Elsa McKenzie of Philadelphia, a friend of ours. She also received a copy of a review which was sent to her by Mrs. Jack Anderson of the Philadelphia area.

Q. I show you this photograph of a review from the Philadelphia Inquirer and ask you whether that is a photograph of the review that was sent to Mrs. Hill?

A. It is.

* * * * *

(Photostat of article from Philadelphia Inquirer of February 21, 1954, as referred to, received in evidence as Plaintiffs' Exhibit 6.)

Mr. Garment: With your Honor's permission, I would like to read this to the jury.

The heading for this review is: "Convicts Hide In Home, Hold Family as Hostages. THE DESPERATE HOURS by Joseph Hayes, Random House," and so forth.

"In this tense compactly built tale of terror Philadelphia readers will recognize a slice of real life out of the fairly recent past. Joseph Hayes has simply drawn to its logical conclusion, in a single time sequence, what might have happened when three escaped convicts took over the home of a well-known Whitemarsh physician as a hideout and [fol.52] held members of the family hostages for a considerable length of time before moving on.

"The author has transferred his locale to the outskirts of Indianapolis; his convicts are from Terre Haute instead of Bellefonte, and he has peopled the house of the captives to suit his own purposes. Beyond that, with compelling detail and deft characterization, he has played out the story that could have developed in Whitemarsh if circumstances had brought the police into it in time.

"The Desperate Hours' has terrific emotional impact playing as it does on the fears and divided loyalties of the trapped father, Dan Hilliard; the disillusionment of his small son Ralph and the latter's ultimate recovery of faith in his dad's knowledge and strength and the courage-close-to-tears of Hilliard's wife and daughter.

"Hayes has made his convicts, too, actual human beings rather than figures of stock. They are hardly admirable but one knows how they feel and why, without being subjected to case histories.

"This is the first full-length novel by a short-story writer who already has made a name for himself in the magazine and television fields.

Many a veteran novelist could envy him his skill."

By Mr. Garment:

Q. Did you read *The Desperate Hours* at that time, Mr. Hill?

A. No, I did not.

Q. Do you know whether Mrs. Hill read *The Desperate Hours* at that time?

A. I don't know.

[fol. 53] Q. Did you and Mrs. Hill see any other reviews of *The Desperate Hours*, particularly reviews in New York newspapers?

A. Yes, we did.

Q. I show you photostats of several reviews. I would like you to indicate to me which of those you and Mrs. Hill read. (Handing paper to witness.)

A. We read all of these.

* * * * *

(Photostats of four reviews referred to received in evidence as Plaintiffs' Exhibit 7.)

Mr. Garment: I propose to read just one of these reviews.

This is a review from the Sunday Times entitled "Nightmare at The Hilliards"—"The Desperate Hours," and so forth.

"Billed as a novel of suspense, his book earns its title from the first breathless paragraph. The story line is a familiar one (what happens when a trio of mad dog convicts hole up in an average home after a jailbreak). So, inevitably, are most plot patterns in novels of this genre: it is the treatment, not the ingredients that really matters. Mr. Hayes has milked the last drop of horror from his macabre situation. As a Hitchcock-type nightmare, 'The Desperate Hours' is a strictly Grade-A job.

"As we have said, the story hits its stride on the first page, when the three escaped hoodlums ghost out of a woodlot (like lonesome jackals on the prowl), capture a farmer's car and go roaring south to Indianapolis, to make rendezvous with a lady who'll bring funds to complete their getaway. The pace never slackens as the trio enters the suburban home of the Hilliards (a house selected at random, [fol. 54] thanks to its comparative isolation). Eleanor Hilliard is pinned down to her living room, just as she is finishing her afternoon's housekeeping. So is 11 year old Ralphie, as he comes rollicking in after school. So are 19 year old Cindy and Dan Hilliard, as they return from their respective jobs—and the nightmare is smoothly in gear.

“What happens thereafter is Mr. Hayes’ story. Other characters move into the fringes of the main action as the novel goes careening towards its fearful finale—Cindy’s playboy fiancé (who turns out to be anything but that in the closing chapters), a demon-ridden sheriff whose resemblance to TV’s Joe Friday is, after all, only coincidental. The author draws each member of his hard pressed cast with a sharp, true pen. When you have turned to the last page you’ll find the Hilliards are as convincing (and as cohesive) as the family next door. So, for that matter are the convicts themselves. These are completely evil men, doomed and damned almost from birth. Yet they are completely human, too, from first to last. This, perhaps, is the book’s most ominous social comment.

“This is Mr. Hayes’ first novel. A publisher’s note informs us that he learned his trade via the television studio and the slick short-story mill. Some of that slickness is in evidence here and there. Some of the drama is a bit contrived, and the ending, for all its biblical inevitability, seems designed for the camera’s eye rather than the reading lamp. But these are minor points in a novel of nerve-shattering impact. ‘The Desperate Hours’ (a Literary Guild choice for [fol. 55] March) is a whale of a good yarn. But don’t begin it after midnight, unless you have company.”

By Mr. Garment:

Q. Mr. Hill, after you and Mrs. Hill received the copy of the book, copy of that review from the Philadelphia newspaper that I introduced into evidence, and after you read the reviews, did you and she discuss *The Desperate Hours*?

A. We did.

* * * * *

Q. Mr. Hill, will you tell me what your reaction was?

A. I was quite disturbed about it, naturally.

Q. Would you tell me what your feeling was, briefly.

A. I knew that as small as it might be, that it was going to revive unpleasant questions, about something that we had done our very best to put behind us, something that we wanted to forget. Even though the questioning might not be widespread, limited, for the most part, to people that knew about our incident and knew that we had lived in Philadelphia, still there could be a certain number of them that would be very embarrassing to us. It would be very hard for us to go through the whole thing and revive it to a certain extent again.

Q. Mr. Hill, was there a revival of some comment or questioning about Whitemarsh after *The Desperate Hours* was published?

A. Yes, there was, as I explained before, and it seemed to last for several months after the book had come out and then it sort of died down.

* * * * *

[fol.56] Q. What did you tell these people, Mr. Hill?

A. I told them that *The Desperate Hours* was not our story; that we had had nothing to do with it in any way; that there had been no violence in our incident; there had been no threat of molesting my wife or daughters; that there had been no profanity whatsoever, no one had been harmed. And I insisted on that. I told them we had no part in the writing of *The Desperate Hours*; that I didn't know Joseph Hayes; I had never heard from him. I don't know him today.

* * * * *

Q. In any event, Mr. Hill, how long after the publication of *The Desperate Hours* novel in March of 1964 did this questioning and comment continue?

A. As I testified before, several months or so, and then it died down.

Q. Right in the middle of all this, did you receive a request in writing for another interview with respect to your actual incident in Whitemarsh during September of 1952?

A. I did.

Q. Did you show that request to Mrs. Hill?

A. I did, and I discussed it with her.

Q. Did you make a response to that request?

A. I did.

Q. Did you make a copy of the response?

A. I did.

Q. Who was that request from?

A. From a Mr. Rasky, who resided at that time in Long Island, some place in Long Island.

Q. Did you know Mr. Rasky prior to receiving this request from him?

A. No.

* * * * *

(Paper containing letter from Mr. Rasky to Mr. Hill, dated April 28, 1954 and a copy of Mr. Hill's response was received in evidence as Plaintiffs' Exhibit 8.)

[fol. 57] Mr. Garment: With your Honor's permission, I will read this to the jury.

The letter is on the printed letterhead with a phone number, HICKORY 6-2844 and the name "Frank Rasky" and the address 37-09 75th Street, Jackson Heights 72, Long Island.

It's addressed to James J. Hill, Lansdale, Pennsylvania.

"Dear Mr. Hill:

"Allow me to introduce myself. I am a professional magazine writer in New York.

"The editor of Male Magazine has asked me to inquire whether you would be prepared to submit to an interview in connection with your experience in September 1952. That, of course, is when your family were held by those escaped convicts for 19 hours.

"Under such an arrangement you would receive half of any payment I would get for the magazine.

"I believe such an article would help the public to understand how to contend with criminals.

"I would be much obliged if you would write telling me whether or not you would be interested in such an article being written about your experience. If you are interested I would like to arrange a satisfactory time when I can come to your place for an interview. Cordially (signed) Frank Rasky."

By Mr. Garment:

Q. Now, Mr. Hill, the answer to that appears on the back, is that correct?

A. That's correct.

Q. And that is in your handwriting?

A. Yes, sir.

[fol. 58] Q. Did you make this copy of the letter you sent to Mr. Rasky—

Mr. Malino: We will concede it is a copy.

A. Yes.

Mr. Garment: Dated May 1, 1954.

"Mr. Frank Rasky, Jackson Heights, Long Island.

"Dear Mr. Rasky, Your letter of April 28th received.

"For the best interests of our children we have felt that it was best to avoid any course of action that might remind them of our experience in September 1952.

"Following this policy we have refused all radio, television, magazine, newspaper, and so forth offers connected with that experience.

"Trusting that you will understand and abide by our feelings in this matter, I am, sincerely yours, James J. Hill."

* * * * *

Q. Was there an article written about you?

A. Not that I know of.

* * * * *

Q. Did there come a time when the Whitemarsh incident came up for discussion again?

A. Yes.

Q. When was that?

A. That was February 28, 1955.

Q. What happened at that time?

A. The Life article using our name was published then.

Q. Mr. Hill, immediately prior to that did you and Mrs. Hill know that the play had opened?

A. Yes.

[fol. 59] Q. Had you read any of the reviews of the play?

A. We had.

Q. Will you tell me which of those reviews you and Mrs. Hill read (handing papers to witness)?

A. I read four New York newspapers a day: The New York Times, New York Tribune, The Evening Journal and The Telegram, and I read the papers from front to back. These are the ones that I know I saw.

Q. Do you know whether Mrs. Hill saw any of these reviews?

A. When anything like that came up I showed them to her.

* * * * *

(The review from The Herald Tribune was received in evidence as Plaintiffs' Exhibit 9-A, from The New York Times as Plaintiffs' Exhibit 9-B and from The Journal-American as Plaintiffs' Exhibit 9-C.)

Q. Do you recall the day that you saw the Life article?

A. Yes.

Q. When was it?

A. That was on a Friday that the magazine was delivered to our home through the mail.

Q. That would have been a Friday in the month of February?

A. The latter part of February.

Q. Will you tell the jury how you saw it, how it was brought to your attention?

A. When I returned home Mrs. Hill handed me the magazine open to the article.

Q. Did you read the article?

A. I did.

* * * * *

(February 28, 1955 issue of Life Magazine received in evidence as Plaintiffs' Exhibit 10.)

* * * * *

[fol. 60] Q. Mr. Hill, do you know what the balance of that headline said that is printed in the top left?

A. May I see it?

Q. Yes.

A. No, I don't.

Q. And the house, of course, that appears in the top right is a photograph of your house?

A. It is.

Q. On the second page under the heading "True Crime. Three crises at a back door," would that appear to be the back door of your house at Whitemarsh?

A. Yes, sir. That was the door that we used as the main entrance coming from the driveway.

Q. Did any of the scenes that are depicted on page 78, at the back door of your house, happen in your incident?

A. No. We weren't outside of the house in our incident.

Q. Did any of the scenes that are depicted on page 78 of the article take place in your incident?

A. No.

Q. Mr. Hill, would you tell the Court and jury what your reaction was when you saw that article that night?

A. Well, at first I was amazed when my wife handed me the article and I saw the James J. Hill name. I couldn't believe what I saw. Then I began to consider what this was going to mean to my family and to myself, and I was very disturbed. Mrs. Hill was very disturbed, and I got madder and madder—

Mr. Medina: I object, your Honor. This witness was asked for his own reaction and he is perfectly able to understand that.

The Court: Objection sustained. Strike it out.

Just tell us your reaction.

A. (continuing) I got madder and madder. You have to understand that for two and a half years we had done everything humanly possible to put the Whitemarsh inci-

dent behind us. We wanted to forget it, individually and as [fol. 61] a family. Right after the incident we had made it clear to everyone that there had been no violence, that there had been no molesting of my wife or of my daughters, there had been no profanity, and that there had been no harm to any of us. And then *The Desperate Hours* novel came out and a wave of speculation started, and we told everyone that this was not our story; that we had nothing to do with it; that we weren't connected with it in any way; that there had been no violence in our incident; that we weren't cashing in on the incident, and so on.

Then the play came out, with the same thing happening—

Mr. Medina: Your Honor, I think this witness was only asked for his reaction.

The Court: That's what he is telling us.

Mr. Medina: It seems to me he is going somewhat beyond that.

A. (continuing) Here, without any reservation whatsoever, *Life* was saying that *The Desperate Hours* story was the story of my family, of James J. Hill and his family, with no reservation whatsoever. I knew that there was the book. I knew that there was the play. And I knew that a moving picture was going to appear later on. I knew that everyone would tie us in to *The Desperate Hours*, to the violence and to the killings that were in the story. I felt like they were going to believe that we were liars or phonies because we had told everyone at the start that in the Whitmarsh incident nothing like that had happened to us.

I was so angry as I was going through this that I just didn't—I wanted to be careful of what I said to Mrs. Hill. Mrs. Hill wasn't well at the time. I wondered what was going to happen to her as a result of this.

[fol. 62] Over the weekend we discussed the *Life* article, discussed what we could do. We saw that the actors of the play had been taken to our old home and photographed there, and we figured that Joseph Hayes had told *Life* that the real story was his play or the book, as to what had actually happened to us at Whitmarsh in 1952.

We couldn't understand how a responsible person could do that just for the sake of some free publicity. We certainly couldn't understand how Life Magazine could publish an article such as this without first checking the newspapers or at least picking up a telephone to find out whether this was the truth or how we felt about it. It was just like we didn't exist, like we were dirt, like they didn't care.

Q. Mr. Hill—

A. As I went over this, I got madder and madder. I could see that everything that we had done was going down the drain, was wiped out just in one minute; that we were going to be subjected from that time on to continued, added insinuations, insults and so on. I was so mad at the time I just wanted to get my hands on Joseph Hayes and on the Life crew that had pulled this stunt.

Q. Mr. Hill, did you take some action very shortly after that?

A. Yes, I did.

Q. Did you discuss that with your wife before you did?

A. We discussed it and we decided on the action we would take.

Q. What did you do?

A. I went to see my friend, Bob Guthrie.

Q. And who is he?

A. Bob Guthrie is an attorney with your firm. And I asked him what my rights were and what steps I could take.

Q. When did you go to see him?

A. It was either the Monday or the Tuesday following that weekend.

[fol. 63] Q. And this lawsuit eventuated out of that meeting with him?

A. It did.

Q. Mr. Hill, was there comment and questioning from persons after the Life article? Just answer that yes or no.

A. Yes.

* * * * *

April 6, 1962

(Same appearances.)

(The trial was resumed pursuant to adjournment.)

* * * * *

JAMES J. HILL, one of the plaintiffs, resumed the stand and, still being under oath, testified further as follows:

Direct examination.

By Mr. Garment (Continued):

Q. Mr. Hill, I want to go back to a subject matter that I was questioning you about yesterday as to which certain objections were made. You testified, did you not, that at the time of the original incident there were requests for news interviews by the assembled members of the press at your home and that you and Mrs. Hill gave interviews to the press. Is that correct?

A. I did.

Q. And that on subsequent occasions, particularly in connection with your move from Whitemarsh, there were requests made for statements and articles were published about the family's move from Whitemarsh. Do you recall that?

A. Yes.

Q. I also asked you yesterday, Mr. Hill, whether you had in addition to requests for interviews from the primary [fol. 64] press media received various offers and proposals for television appearances, paid interviews, collaboration in feature articles and other forms of publicity. Do you recall that?

* * * * *

By Mr. Garment:

Q. Do you recall that I asked you about that?

A. Yes.

Q. And you said you had received such offers?

A. I did.

Q. And, further, that you had rejected such offers?

A. I rejected all offers.

Q. You rejected all offers.

A. Yes, sir.

Q. And the last of those requests or offers for paid publicity was the written request from Frank Rasky, to which you responded in writing in April 1954. Is that correct?

A. That's correct.

Q. Mr. Hill, would you tell the jury what distinction you and Mrs. Hill drew between interviews to the primary press media at the time of the incident and these other offers for interviews and paid publicity?

Mr. Medina: I object to the question, your Honor. It seems to me that's outside of your Honor's ruling. I may be mistaken.

The Court: No, the rulings I made earlier, I don't know whether they covered this particular point, although you did, Mr. Garment, cover it in the memorandum which you submitted to the Court this morning. However, we did not discuss it in the robing room as we did the other points.

Mr. Garment: I believe we did.

The Court: At any rate, I am going to overrule the objection.

[fol. 65] Mr. Medina: May I have a continuing objection to this type of testimony?

The Court: Yes, you may have an objection.

* * * * *

By Mr. Garment:

Q. Do you have the question in mind, Mr. Hill?

A. I have.

Q. Go ahead.

A. At the time of the incident we knew that we would have to make a statement to the press, to tell them about the events. The head FBI officer and the head State Police officer told me that we would just have to make a statement, that there was no way that they could clear the yard unless we did give that statement.

Also we wanted the fact be made known clearly to the public that there had been no violence, that no one had been harmed, that my wife and daughter certainly hadn't been violated.

We knew of other hostage incidents that we had heard about in the newspapers in previous years and we knew that lots of things of that type did happen. We were surprised and thankful that nothing like that had occurred to us and we wanted everybody to know exactly what had occurred during the entire period that the convicts were at our house.

After that point we felt that for our family's welfare that we weren't interested in any publicity of any sort. We wanted to put it behind us. We wanted to take it out of our minds just as quickly and as completely as we possibly could. We had no desire to cash in on the publicity. We weren't interested in making public appearances and making a spectacle out of the family in any way. We just [fol. 66] wanted to calm this thing down and get rid of it just as quickly and as fully as we possibly could.

Q. Well, now, Mr. Hill, we have come all the way back to where we were at the close of business yesterday afternoon when you had completed testifying about your immediate reaction to the Life article when you saw it, and I want to ask you now to state as briefly as you can what Mrs. Hill's reaction was as you observed it.

A. Well, her reaction was the same as mine. We had talked about what would be best for our family. We came to an agreement that that was what we would do.

Q. I am talking about the reaction of Mrs. Hill the night that you and she saw the Life article.

A. Her reaction was very similar to mine. She was quite angry at it. She was more bewildered than angered, she was just stunned by it, she couldn't accept the fact that it had happened to us.

* * * * *

Cross examination.

By Mr. Medina:

Q. Have you ever seen the motion picture The Desperate Hours, Mr. Hill?

A. No, sir.

Q. Did you ever see the play?

A. No, sir.

Q. When did you first read the novel?

A. I would say several years after the Life magazine article came out.

Q. That would be 1956, 1957?

A. Not before that.

Q. When did you start this action?

A. I think the official time was October of 1955.

Q. Don't you remember that the summons in this action was served in June of 1955?

A. I don't remember the exact dates as to what you would call the official opening of it or not. I am not cognizant of court terms like that.

* * * * *

[fol. 67] Q. The Desperate Hours novel was based upon the incident that happened to you in September 1952, wasn't it?

A. No, it wasn't.

Q. Wasn't it based upon the actual occurrence of September 1952 in which plaintiffs Hill were involved—and I quote—

A. At the time we thought it was based on it, because from the information that I had the Life article said that this was the story of The Desperate Hours, this was the story that was to be in the play, it was to be in the motion picture, et cetera. So I figured at the time that Joseph Hayes had told Life what had happened was the story as he told it in the play, what had happened at Whitemarsh.

Q. But you did verify the complaint in this case on October, 1955, didn't you?

A. To the best of my belief at the time.

Q. And you swore to it at that time, didn't you?

A. I swore to the best of my belief just as it appeared in Life magazine.

Q. And you also swore at that time that the novel and the play were a portrayal of you, didn't you?

A. I had not seen the play, I had not seen the novel. That is what the Life article said, Mr. Medina.

Mr. Medina: I ask that the answer be stricken as not responsive, your Honor.

The Court: Overruled.

Mr. Garment: Mr. Medina, would you indicate what paragraph you are referring to?

Mr. Medina: I am referring to Paragraph 22 of the original complaint, and to Paragraphs 15, 25, 40 and 47 of the second amended complaint.

[fol. 68] Mr. Garment: Do you want to read the rest of that paragraph as to what it says about a portrayal?

Mr. Medina: You are privileged to do that, Mr. Garment. Do you suppose you could let me go ahead without interruption? You have had your say.

Mr. Garment: All right, if you want to do it on that basis.

Mr. Hill, you have that material before you?

Would you read the last question back?

The Court: He has answered the question. Counsel in fact has objected on the ground it wasn't responsive, and that objection was overruled.

Read the question and answer.

(The question and answer were read by the reporter.)

Mr. Medina: I want to press this objection, because that paragraph of the complaint is a conclusory paragraph alleging that this was a portrayal within the meaning of the Civil Rights Law.

The Court: The witness has answered the question, in my opinion.

By Mr. Medina:

Q. When you started your original suit you named as a defendant Mr. Hayes, didn't you?

A. Yes, sir.

Q. And Mrs. Hayes?

A. Yes, sir.

Q. And Mr. Erskine?

A. Yes, sir.

Q. And the Desperate Hours Company?

A. Yes, sir.

Q. And Time, Inc.?

A. Yes, sir.

[fol. 69] Q. And Paramount Pictures?

A. Yes, sir.

Q. And Random House?

A. Yes, sir.

Q. And the Literary Guild?

A. Yes, sir.

Q. And Crowell-Collier Publishing Company?

A. Yes, sir.

Q. And Pocket Books?

A. Yes, sir.

Q. And Readers Digest?

A. Yes, sir.

Q. And Paramount Pictures had put out the motion picture The Desperate Hours, hadn't they?

A. Yes.

Q. And the Literary Guild of America and Random House had published the book, hadn't they?

A. Yes, sir.

Q. And Crowell-Collier Publishing Company had had a serialization of the novel in Collier's Magazine, hadn't it?

A. Yes, it did.

Q. And then the Readers Digest published a condensation of the novel, didn't it?

A. Yes, sir.

Q. And then Pocket Books put the novel in a pocket book, didn't it?

A. I saw a pocket book.

Q. And when you sued all those defendants you stated in Paragraph 22 of the complaint, to which you swore, that in truth and in fact "Said novel was based upon the actual occurrence of September 1952 in which plaintiffs Hill were involved," didn't you?

A. "As above set forth with certain modifications of the actual facts, including the partial modification of the name of the family involved from Hill to Hilliard, the reduction of the size of the besieged family, the creation of numerous melodramatic and violent incidents which did not in fact occur, the insinuation of sexual approaches by one of the convicts to the hostage daughter, and with numerous other fictional embellishments in the characterization of the personalities, relationships, attitudes and acts of the members of the besieged family."

[fol. 70] Q. That is the full paragraph, isn't it?

A. That's what I swore to.

Q. But you did say it was based upon the actual occurrence, didn't you?

A. I said it was based on the actual occurrence because that was what Time in their Life article had published, that it was the story of the James J. Hill family.

Q. Now, then, there came a time that you served another complaint in the case, didn't there?

A. I don't know the exact order of the proceedings. Which one are you referring to?

Q. Didn't you have a first amended complaint which was verified by Mrs. Hill on March 7, 1956? Isn't that so?

A. This is a copy of an amended complaint. What was the date?

Q. Verified by Mrs. Hill on March 7, 1956, which means that she swore to it.

A. Yes, that is correct, the 7th day of March 1956.

Q. And in Paragraph 7 of that complaint you repeated the paragraph you had had in the prior complaint and said that the novel was based upon the actual occurrence of September 1952, didn't you?

A. Well, Paragraph 7 says: "In truth and in fact said novel purported to depict plaintiffs and members of their family and was based upon the actual occurrence of September 1952, in which plaintiffs Hill and their family were involved, as above set forth, with certain modifications of the actual facts, including the partial modification of the

name of the family involved from Hill to Hilliard, the reduction of the size of the besieged family, the creation of numerous melodramatic and violent incidents which did not in fact occur, the insinuation of sexual approaches by one of the convicts to the hostage daughter and with numerous other fictional embellishments in the characterization of the personalities, relationships, attitudes and acts of plaintiffs and the members of their family."

Q. But you did say that the novel was based upon the occurrence of 1952, didn't you?

A. I said that because Life had put it in black and white with no reservations whatsoever that The Desperate Hours story was the story of the James J. Hill family, and connected me with the moving picture which was to come out later. It said you can see the story and you can see the play which is also the story.

Q. Can't you answer me with a yes or no, without a speech?

A. Mr. Medina, I want to answer your questions as best I can. But I can't answer it yes or no.

Q. You also said that the novel—and I quote, "constituted a portrayal of plaintiff James J. Hill," didn't you?

A. Where are you reading this?

Q. Paragraph 15.

A. Of the same complaint?

Q. Of the same complaint. Or you can look at Paragraph 26 or Paragraph 42 or Paragraph 49. They all say the same thing.

A. Would you like me to read all of those paragraphs?

Mr. Garment: That is not necessary.

Q. Can't you answer me whether you stated that the novel was a portrayal of James J. Hill?

A. It was—I said it was a portrayal with reservations.

Q. Then there came a time when you got another complaint in this case, didn't there?

A. As I told you, I wouldn't remember the direct pleadings in this case.

Q. Well, there is a second amended complaint that you verified on July 3, 1956, isn't there?

A. Let's see.

Q. You swore to it.

A. What paragraph is that, sir.

Q. Paragraph 7—rather I am referring to the verification which is attached at the end, in which you say that it is [fol. 72] true of your own knowledge except as to the matters stated to be alleged upon information and belief.

A. That's right.

The Court: I think the question was, was there another complaint.

Mr. Medina: Yes, that is the question, really.

The Court: The answer to that is "Yes"?

The Witness: Yes.

The Court: And that you verified it on what date?

The Witness: July 3, 1956.

Q. There you stated as of your own knowledge, and not on information and belief, that the novel—in Paragraph 7: "The novel was based upon the actual occurrences of September 1952," didn't you?

A. I stated as it is listed here in Paragraph 7.

Mr. Garment: Is this the second amended complaint that you are referring to?

Mr. Medina: Yes, sir.

Mr. Garment: This is before any of the examinations and discovery proceedings, Mr. Medina.

Mr. Medina: You are entitled to bring out anything you want, Mr. Garment. I am just asking some questions.

The Witness: This was according to my knowledge at the time.

Q. You also swore in Paragraphs 15, 25, 40 and 47 that the novel was a portrayal of plaintiff James J. Hill, didn't you?

A. 15 and what?

Q. 15, 25, 40, 47.

A. And what was your question?

[fol. 73] Q. And you swore that the novel was a portrayal of plaintiff James J. Hill.

A. Yes, I swore that it was a portrayal of the plaintiff James J. Hill, "and a use of his name and portrait by defendants," and so on. That is 15. And what was the other one?

Q. Well, that is enough for our purposes.

A. I can't give you all of them unless I get a chance to look at them.

Q. All right, 15, 25, 40, 47.

A. Yes, I swore to them as being a portrayal of myself, to the best of my belief at that time.

Q. And, of course, it was necessary, if you were going to sue Paramount Pictures and Random House and the Literary Guild and Collier's and Pocket Books and the Readers Digest, that you state that what they had printed was a portrayal of you, wasn't it?

Mr. Garment: I think that asks the witness to draw a legal conclusion. These pleadings were drawn by lawyers.

The Court: Objection sustained.

Q. Then there came a time for you to serve another complaint in this action, didn't there?

A. Yes. There were numerous servings throughout the seven years.

Q. No, I am talking of the last one. This one you swore to on March 5, 1958. Isn't that the last one?

A. I don't know, there were so many of them.

Q. Didn't you verify a third amended complaint on March 5, 1958?

Mr. Garment: Why don't you show it to him?

A. The 5th day of March 1958?

Q. Yes.

A. Signed by James J. Hill?

[fol. 74] Q. Yes.

A. Yes.

Q. Now, in that complaint you dropped the defendants Mrs. Hayes and Paramount Pictures and Random House and the Literary Guild and Crowell-Collier and Pocket Books and Readers Digest, didn't you?

A. Yes.

Q. And you just sued Mr. Hayes, Mr. Erskine, The Desperate Hours Company and Time, Inc.

A. Yes.

Q. But in that complaint you now state that The Desperate Hours is not based upon the incident of 1952, don't you?

A. Yes.

Q. And it doesn't constitute a portrayal of you?

A. Yes.

Q. Isn't that correct?

A. Where is that? That The Desperate Hours did not constitute a portrayal of me?

Q. Yes.

A. Yes.

Q. And that is your present position?

A. Yes.

Q. Now, you amended your complaint in 1958 over the complaint which you last verified in 1956 and changed your statement, that the novel was based upon the occurrence, to a statement that the novel was not based upon the occurrence, because you knew that you had to state that if you were going to sue Time, Inc., didn't you?

Mr. Garment: I will object to the question.

A. No.

The Court: Objection sustained.

Q. Well, you certainly thought that the novel and the play invaded your privacy, didn't you?

Mr. Garment: I will object to that as argumentative.

The Court: I will permit that. Overruled.

[fol. 75] Do you understand the question.

The Witness: State the question again.

Q. You certainly thought that the novel and the play invaded your privacy?

A. At the time that the novel and the play came out, I resented the questioning that it aroused, that came up at

the time, naturally because of what was happening to my family because of it. In that way it did invade my privacy. There was no use of my name, though.

Q. Now, certainly many other people thought, long prior to the Life article, that the novel The Desperate Hours was based upon your incident, did they not?

A. I testified that the people that knew that we had lived in Whitemarsh, that we were the people involved in the Whitemarsh incident, and then knew about The Desperate Hours, they thought there was some connection.

Q. They had no trouble in putting two and two together, did they?

Mr. Garment: I will object to the form of that question.
The Court: Sustained as to form.

Q. There were many of your friends who long prior to the Life article thought that the novel was based upon the occurrence in September 1952, were there not?

* * * * *

A. Some of our friends did.

Q. And many of the business acquaintances that you saw also, long prior to the Life article, had drawn the same conclusion, had they not?

A. Some of them that knew about the Whitemarsh incident and also knew about The Desperate Hours.

[fol. 76] Q. As a matter of fact, as you have testified, a friend even sent you a copy of the book.

A. That is correct.

Q. But you did not read it?

A. No, I didn't read it—at the time.

Q. Well, the incident which occurred to you in September 1952 was located in a suburb of Philadelphia, was it not?

A. It was a farm house located in Whitemarsh Township, on the outskirts of Philadelphia.

Q. And these three convicts who arrived, arrived after 8 o'clock in the morning, didn't they?

A. Around 8:10 in the morning.

Q. And they left about 3:30 the following morning, did they not?

A. They left in two stages: 3:15 and around 3:45.

Q. And of the three convicts who appeared, two of them were brothers, were they not?

A. Yes.

Q. After the incident, you made a statement to the press, didn't you?

A. To what date are you referring?

Q. Well, did you make more than one?

A. No, I made one.

Q. When was that?

A. That was on Friday afternoon, after the incident occurred on Thursday, September 11.

Q. I show you a photograph and ask you if you can identify that as showing you making that statement.

A. Yes, sir.

Mr. Medina: I ask this be marked for identification.

(Photograph was marked Defendant Time Exhibit A for identification.)

Q. And the substance of that statement is what appears in The New York Times for September 13, 1952, which I [fol. 77] show you; isn't that correct?

A. I don't want to take the time to read all this, but I judge that this is the statement which in substance is what I gave.

Mr. Medina: I ask that that be marked for identification.

(Photostat of two pages from September 13 edition of The New York Times was marked Defendant Time Exhibit B for identification.)

Q. And essentially the same story appears in the Herald-Tribune for September 13, 1952, does it not?

A. I judge this is the same article.

Mr. Medina: I ask that this be marked for identification.

(Photostat of two pages from Herald-Tribune for September 13, 1952 was marked Defendant Time Exhibit C for identification.)

Q. I show you seven other newspaper extracts and ask you if these show stories which were published and dealt with your September 1952 incident, at or about that time—excuse me, there are six.

The Court: Perhaps you can get a concession from counsel on this.

Mr. Garment: I will concede anything that is—

The Court: We might save time.

Mr. Garment: That is in published form.

Mr. Medina: If you agree that they have been properly identified, I ask that those six be marked for identification as one exhibit.

Mr. Garment: Certainly.

[fol. 78] (Six photostats of newspaper extracts were marked Defendant Time Exhibit D for identification.)

Q. Likewise there was further publicity in the newspapers at the time that you left Pennsylvania to move to Connecticut, was there not?

A. Yes, sir.

Q. And this is an example of that, is it not?

A. Yes.

Mr. Medina: I ask that this be marked for identification.

(Photograph of article from Conshohocken Recorder was marked Defendant Time Exhibit E for identification.)

Q. You also had a little further newspaper attention in November of 1952, when you had a car accident, did you not (handing photostat to the witness)?

A. That is right.

Q. And that appears in this newspaper clipping which I show you?

A. Yes.

Mr. Medina: I ask that this be marked for identification.

(Conshohocken Recorder of Tuesday, November 25, 1952, photostat of article, was marked Defendant Time Exhibit F for identification.)

* * * * *

AFTERNOON SESSION

JAMES J. HILL, one of the plaintiffs, resumed the stand and, still being under oath, testified further as follows:

Cross-examination.

By Mr. Medina (Continued):

Q. Mr. Hill, you had been damaged by the book *The Desperate Hours* long prior to the *Life* article, had you not? [fol. 79] A. Mr. Medina, I am not able to say exactly how and by what I have been damaged, as to the degree and so on. I don't believe that *The Desperate Hours* novel helped my family in any way after the incident.

Q. But you had been damaged by the book prior to the *Life* article, had you not?

A. Yes, in that way.

Q. And you had been damaged because the book invaded your privacy with utter disregard to your family's rights, had you not?

Mr. Garment: Your Honor, I object to the form of the question. The objection will have to be a little bit complicated because the question is a little bit complicated. It is predicated upon allegations of the complaint, of the original complaint, which, in turn, were based upon the fact of the *Life* article prior to any examination of any defendants. We made various allegations with respect to all of the publications, as a matter of law, at that time.

Mr. Medina: As a matter of fact. It's in a sworn complaint, Mr. Garment.

The Court: It doesn't make any difference, gentlemen, what the complaint, whether the first or third, says.

The question is you were damaged, were you not, by—what was it, the play?

Mr. Medina: I am quoting: "—invaded your privacy with utter disregard for your family's rights."

The Court: The question is permissible. I will overrule the objection.

A. Yes.

[fol. 80] Q. And that is your own language as used by you upon the taking of your deposition; isn't it, and not in your complaint?

The Court: Wait a minute now—

Mr. Garment: We don't have a question of contradiction now. Before you use the deposition, there has to be some contradiction.

The Court: Let me hear the question.

(The reporter read the pending question.)

The Court: I will sustain the objection. If you want to go into any contradictions, you don't do it in that fashion.

Mr. Medina: I only said that, your Honor, because Mr. Garment had said I was quoting the complaint, whereas I was quoting Mr. Hill himself in his deposition.

Mr. Garment: Do you want to indicate what page you are referring to?

Mr. Medina: Page 91.

The Court: The objection is sustained.

Proceed.

* * * * *

Mr. Medina: . . . Incidentally, Mr. Garment and I have now been able to check into the facts of the matter. The summons in this action was drawn and dated on June 27, 1955 and it was served with the complaint on October 28, 1955.

* * * * *

[fol. 81] By Mr. Medina:

Q. Did you make any complaint to anyone at any time named as a party to this action prior to the institution of this suit?

A. When you say complaint, do you mean a legal complaint?

Q. No, did you write a letter to Paramount Pictures objecting to the motion picture?

A. No.

Q. Did you write to Mr. Hayes objecting to his book?

A. No.

Q. Did you get in touch with Time, Inc. regarding the Life article?

A. No.

Q. So that the first thing you did with respect to any of these defendants was the instituting of this action by the service of a summons and complaint in October 1955; is that not correct?

A. Mr. Medina, the article had been published. I couldn't withdraw the article. If I had gotten in touch with Life, it wouldn't have made any difference, the article was out on the street.

The Court: I will sustain the objection and strike the answer as not being responsive.

The question is you did nothing except to have this complaint served, the summons and complaint. You didn't complain at all prior to that time to any of these defendants.

The Witness: I started steps to bring action.

Q. But you didn't get in touch with any of the people named in this action until the action was actually commenced in October 1955; is it not correct?

A. Yes, sir.

* * * * *

Q. Incidentally, you reside and vote in Connecticut, do you not, Mr. Hill?

A. Yes.

[fol. 82] Q. The picture of the back door which is shown in Life, on page 76, and which was one of the doors of your house, that was the side door or back door, was it not, of your old house?

A. May I see it?

Q. Yes (handing magazine to witness).

A. This picture here, that was the center door (indicating). There were three doors on the front side, three on the back side. This was the center door, and you walk along here from the drive. You came in here and went into this door.

Q. Was that at the front or back of the house?

A. At the back of the house.

Q. At the back of the house. That's what I thought?

A. Yes.

* * * * *

Q. With respect to the defendants Mrs. Hayes, Paramount Pictures, Random House, Literary Guild, Crowell-Collier Publishing Company, Pocketbooks and Readers Digest, which were all in this case when it was first commenced, you voluntarily discontinued as to those remaining the defendants, didn't you?

A. Yes.

Mr. Medina: That's all.

Redirect examination.

By Mr. Garment:

Q. Mr. Hill, would you bear with me for a moment? I want to take you back to those earlier complaints that Mr. Medina asked you about, namely, the complaints prior to the present complaint in this action. Do you recall that Mr. Medina drew to your attention a particular paragraph that appeared in those earlier complaints in which the allegation was made by you that "The Desperate Hours" was based upon your true life incident and purported to be a [fol. 83] portrayal of your family but in fictionalized form. Do you recall that?

A. Yes.

Q. Now, what was your belief at the time you made that allegation?

A. I believed that the incident had inspired the writing of the novel, that it purported to be a story of what had happened to us but it was so changed, so fictionalized, that it absolutely wasn't our story at all.

Q. Was it actually your belief at that time that the author, Joseph Hayes, had been inspired by your incident to write *The Desperate Hours* and had based *The Desperate Hours* on your incident?

A. At the time I believed so.

Q. And what was the basis for that belief?

A. The *Life Magazine* in their article had said that *The Desperate Hours* was the story of our actual incident at Whitmarsh and that we would see it in Joseph Hayes' book, we would read it in his book, that we would see it in the play and that there was a motion picture later which would show that.

Q. And didn't the *Life* article also say that *The Desperate Hours* was inspired by your incident?

A. Yes, it did.

Q. What was your belief as to the source of information on the part of *Life Magazine* at that time for the statement that *The Desperate Hours* was based on your incident and was inspired particularly by it?

A. I thought that Joseph Hayes had told him that.

Q. Had you or anyone, to your knowledge, on your behalf made any investigation or had been in a position to make any investigation to determine how the article actually came about?

A. No.

Q. Did you know then as a matter of fact whether Joseph Hayes had told *Life Magazine* that *The Desperate Hours* was based on your incident?

A. I did not. I only believed it.

[fol. 84] Q. And was your belief the product of the *Life* article at that time?

A. Solely.

Q. And was your complaint at that time that the *Life* article stated that *The Desperate Hours* was the story of

your family, whereas in truth and in fact it was a work of fiction and not your story?

A. That was my complaint.

Q. The original action was brought against a number of parties, as Mr. Medina brought out this morning; is that correct?

A. Yes.

Q. The first party named at that time was Joseph Hayes, was it not?

A. That's correct.

Q. And was that in line with your belief that Joseph Hayes must have told Life Magazine that The Desperate Hours was inspired by your incident and based upon it?

A. That was my belief.

Q. You also named as party defendants in your first complaint, Mr. Hill, all of the publishers of the various versions of The Desperate Hours, including Collier's, The Literary Guild, The Readers Digest, Random House, Paramount Pictures, among others; is that correct?

A. I did.

Q. And was it your belief in naming all those parties that they together with Joseph Hayes had told Life that The Desperate Hours was based upon this incident so as to obtain publicity for all those publications?

A. I thought that they had done this together.

Q. Did you or your counsel know at that point what the actual facts were?

A. No.

Q. Had there been any testimony taken before trial at that time of any of those defendants?

A. No.

Mr. Medina: I will object to this question.

The Court: He has already said no.

I might indicate to all of you gentlemen and to this jury [fol. 85] that the only thing that is before this jury is the third amended complaint. Now, Mr. Medina's cross-examination went to the question of the credibility of this wit-

ness, and I don't want you to go into too much detail as to these other complaints.

Mr. Garment: That was the basis for his cross-examination, the first complaint drawn by the lawyers before they had taken any depositions of anybody concerned with this case.

By Mr. Garment:

Q. The next two complaints contained essentially the same allegation, did they not?

A. Yes.

* * * * *

Q. Do you know whether there had been any testimony taken or examinations of any of the defendants at that point or any documents produced in connection with or prior to the preparation and service of those next two complaints?

A. What date are you talking about?

Q. These would be prior to the service of the final complaint, which is the one in this action.

A. 1958?

Q. 1955, 1956.

A. I made a deposition in 1956—

Q. I'm referring to the defendants. Had your counsel, my firm, myself, taken the testimony of any of these defendants or obtained any documents from them to determine exactly how this article came about prior to the service of those next two complaints?

A. I don't believe so. My deposition was the first one, I thought.

Q. So that the next two complaints simply reiterated the allegation of the first complaint without any further facts being known to either you or your counsel?

A. So far as I know.

[fol. 86] The Court: May I suggest when you see counsel stand up, he is going to make an objection, and do not answer the question.

I will permit it, Mr. Medina.

Q. Now, Mr. Medina asked you about the dropping out of these various other publishers in connection with the preparation of the complaint which is before the Court at this point. Do you recall that question?

A. Yes.

Q. That series of questions?

A. Yes.

Q. Would you speak up a little bit, Mr. Hill.

A. Yes.

Q. Do you know whether that complaint was prepared after I, as your counsel, had examined representatives of Life Magazine and Joseph Hayes?

A. We are talking about the final complaint?

Q. Yes.

A. Yes, it was after.

Q. And was that complaint based upon the evidence that had been taken?

A. It was.

Mr. Malino: I object.

The Court: I don't see how this witness could answer that question. There is no question but that the lawyers drew these different complaints.

Mr. Garment: I wouldn't get into this subject, your Honor, if it hadn't been raised by Mr. Medina.

The Court: I think you have covered it. However, I think there is no doubt that this witness has testified that in between the second amended complaint and the present one, there were these examinations before trial.

Q. And that various of the defendants were dropped out as a result of matter—

[fol. 87] The Court: Objection sustained. He would not be in a position to know that unless you told it to him.

Q. And, in any event, Mr. Hill, after the examinations were taken, did you have any further complaint against the defendants who were dropped out of the case?

Mr. Medina: It calls for a conclusion.

The Court: The Court will certainly take judicial notice of the fact that the present complaint is not against any other defendants other than the three theatrical defendants and Time, Inc.

Mr. Garment: That's all I have in the way of redirect.

Recross examination.

By Mr. Malino:

* * * * *

(Photostatic copy of two pages from New York Times, dated January 30, 1955, received in evidence as Defendant Hayes Exhibit G.)

* * * * *

Recross examination.

By Mr. Medina:

Q. Mr. Hill, when you verified to your original complaint on October 13, 1955, Paragraph 22 of that complaint, to which we have referred, was sworn to by you to be true upon information and belief, was it not?

A. It was to the best of my knowledge at that time.

Q. And yet when you came to the second amended complaint, which you swore to on July 3, 1956, that was sworn to as of your own knowledge, was it not?

[fol. 88] Mr. Garment: And I take full responsibility for the pleadings that were drawn in this action.

Mr. Medina: I would think the person swearing would have something to do with it.

The Court: I will permit the question. No comment, please.

A. To the best of my knowledge.

Q. Didn't you sign your name before a notary public to the following paragraph: "James J. Hill, being duly sworn, deposes and says that he is one of the plaintiffs described in the foregoing second amended complaint; that

he has read the same and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information or belief, and that as to those matters he believes it to be true"? You did swear to that, did you not?

A. Yes.

Q. And Paragraph 7 is not upon information and belief, is it?

Mr. Garment: I will concede that it isn't.

Mr. Medina: I ask that the original complaint, the amended complaint and the second amended complaint be marked for identification.

The Court: Let them be deemed marked Defendant Time's Exhibit H for identification.

(The original complaint, the amended complaint and the second amended complaint were deemed marked as Defendant Time's Exhibit H for identification.)

Mr. Medina: That's all.

[fol. 89] Re-redirect examination.

By Mr. Garment:

Q. Mr. Hill, did you know any more of the facts—

The Court: I won't permit you to go into this except if you want to bring out the fact that all pleadings are drawn by lawyers.

Mr. Garment: That's what I am trying to bring out.

Q. These pleadings were drawn by me, weren't they?

A. Yes, sir.

Q. And then I submitted them to you?

A. Yes, sir.

Q. And you signed them.

A. And I signed them.

The Court: Any further questions now?

Mr. Medina: And you swore to them.

The Witness: Yes, sir.

Mr. Malino: Didn't you read them?

The Witness: Yes, sir, I read them. But after I read them—

Mr. Garment: Did you understand everything in them?

Mr. Medina: I object.

The Court: Sustained.

Step down.

(The witness was excused.)

* * * * *

Mr. Garment: May I at this time offer in evidence the Samuel French edition of the play script of *The Desperate Hours*.

The Court: Any objection?

Mr. Medina: Only this, your Honor: This is a revision of the original play, not in the language part but in the setting of it to make it adaptable for use outside of New York City.

[fol. 90] The setting in this book makes the back door the front door. So that when Life has in its article in three places there was a scene at the back door, that it is perfectly true of the play in its Broadway edition. However, in this edition, revised so as to be used in a different setting, it appears as the front door.

As long as it is understood that the doors are okay in the Life story I have no objection to using this edition.

Mr. Garment: That we have no objection to.

The Court: It will be received as Plaintiffs' Exhibit 15.

(The Samuel French edition of *The Desperate Hours* was received in evidence as Plaintiffs' Exhibit 15.)

* * * * *

April 9, 1962.

(Same appearances.)

(The trial was resumed pursuant to adjournment.)

* * * * *

JOSEPH HAYES, 1168 Westway Drive, Sarasota, Florida, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Garment:

Q. Mr. Hayes, you are the author of the screen play of the motion picture that the Court and jury saw this morning; are you not?

A. Yes, I am.

[fol. 91] Q. Before I go any further in the examination with you, Mr. Hayes, I would like to read to you simply the text of the article relating to The Desperate Hours which appeared in the February 28, 1955 issue of Life Magazine, which is Plaintiffs' Exhibit 10 in evidence.

You will recall, Mr. Hayes, that the article has a headline "BANK ROBBERS HOLD FAMILY IN WHITEMARSH PRISONERS," a photograph of a house, a caption starting with "Actual event" and then "TRUE CRIME INSPIRES TENSE PLAY" followed by the sub-heading "The ordeal of a family trapped by convicts gives Broadway a new thriller, The Desperate Hours."

Going to the text: "Three years ago Americans all over the country read about the desperate ordeal of the James Hill family, who were held prisoners in their home outside Philadelphia by three escaped convicts. Later they read about it in Joseph Hayes' novel The Desperate Hours, inspired by the family's experience. Now they can see the story reenacted in Hayes' Broadway play based on the book, and next year will see it in his movie which has been filmed but is being held up until the play has a chance to pay off.

"The play, directed by Robert Montgomery and expertly acted, is a heart stopping account of how a family rose to heroism in a crisis. Life photographed the play during its Philadelphia tryout, transported some of the actors to the actual house where the Hills were besieged. On the next

page scenes from the play are reenacted on the site of the crime."

And then, you will recall, Mr. Hayes, that on the next page under the heading "True Crime" there were three scenes from the play photographed, according to the caption for the first photograph, at the real house. Do you [fol. 92] recall that, Mr. Hayes?

A. I recall that. But I would like to see that, if you are going to question me in detail on it.

Q. Certainly (handing Plaintiffs' Exhibit 10 to the witness). Mr. Hayes, in addition to authoring the screen play for *The Desperate Hours*, you were also the author of the novel *The Desperate Hours*, were you not?

A. That's correct.

Q. And you, and you alone, adapted the novel into the play *The Desperate Hours*?

A. That's right.

Q. When did you write the novel *The Desperate Hours*?

A. I wrote the novel of *The Desperate Hours* in the months of April and May 1953.

Q. And where did you write it?

A. In Bradenton Beach, Florida.

Q. When did you adapt the novel into the play *The Desperate Hours*?

A. Well, that spread over a long period of time, because I did the picture simultaneously and in between, I mean the picture script. To the best of my recollection, that would take in the beginning of the following February—the book came out in March—I would say somewhere in January, February, through that entire summer into the production of the play in that Fall, of 1954.

Q. So that the adaption of the novel *The Desperate Hours* into the play and the motion picture took place roughly at or about the same time?

A. Yes, in the same area of time, that's right.

Q. Would it be fair to say, Mr. Hayes, that the three versions of *The Desperate Hours* are essentially similar from the standpoint of plot?

A. Well, you have seen the picture, and once you read the play, you will realize there are great differences. But, of course, there are basically the same people involved in this situation.

[fol. 93] Q. The differences that exist are differences in detail; is that correct?

A. They are in detail, but there are great differences. They give different coloration to each version.

Q. Would it be fair to say, for example, that the play dealt somewhat more on the inner relationship between the various characters and what might be described as the psychological aspects of the characters?

A. Certainly, that's true. When a writer writes he always—if I were to write it tomorrow, I might write it differently. It's a creative process.

Q. That's what I was getting at. Following the publication of the book in 1954—

Mr. Garment: Withdrawn.

Q. Was *The Desperate Hours* also serialized in a national magazine?

A. Yes, it was.

Q. When was that?

A. That would be in the time probably within the six weeks previous to March 1, 1954. I would have to verify that, but that's my memory.

Q. That was in *Collier's Magazine*?

A. *Collier's Magazine*.

Q. Was it also a selection of the Literary Guild?

A. It was.

Q. The play went into rehearsal about what time, Mr. Hayes?

A. The play went into rehearsal on December 3, 1954.

Q. And it opened on Broadway in the month of February 1955?

A. February 10, 1955.

Q. When did the play complete its run on Broadway?

A. It completed its run sometime in, I think it was, June; it may have been July of 1955. In other words, it ran only

from February through July.

[fol. 94] Q. And were there touring companies of *The Desperate Hours* after that?

A. No, there were no touring companies of *The Desperate Hours*.

Q. Were there any productions of *The Desperate Hours* in other cities?

A. There were ultimately stock productions, as there always are, yes, but not by us.

Q. I want to take up with you, Mr. Hayes, your general background as a writer. Would you tell the jury briefly what your experience has been in the writing field prior to the writing of *The Desperate Hours*?

A. Well, I have been a free-lance writer—completely a free-lance writer since the war, since 1946 or 1947. I have written short stories for all the magazines. I wrote with my wife something like nineteen published plays for the Samuel French catalog done by American touring groups and schools and colleges. I wrote radio plays. I wrote television plays. And I was writing television plays when my youngster became ill, and that forced me to go to Florida. I went to Florida practically broke and wrote *The Desperate Hours*.

Q. Were you employed by Samuel French?

A. I was employed for a little over two years by Samuel French as an assistant editor.

Q. And in that connection, you would have had occasion to read a great many scripts submitted by authors?

A. Indeed, yes.

Q. I would like to discuss with you Mr. Hayes the writing process. I may have some difficulty with the terms, but I am sure you will be able to help me out.

A. I may have more.

Q. It is a fact, is it not, that an author of fiction in the present day, and throughout the history of literature, draws his material from the real world around him and from his own personal view of that world?

A. Certainly.

[fol. 95] Q. And, in addition, it would be fair to say, would it not, Mr. Hayes, that authors draw upon themes that have been popular in fiction, shaping those themes in terms of their own view of the subject matter and giving them a fresh approach?

A. That has been going on as long as there has been writing.

Q. And, in addition, the writer brings to the matter of the world around him and the standard themes of literature his own internal view of the world and experiences from his own life?

A. He should.

Q. And so the combination of these three basic elements through a process of thought and evolution, testing and trying, represents the creative process?

A. I would think that that's a rough approximation.

Q. And it would be fair to say, would it not, that the end result of this process of organizing and shaping a great many different materials into a novel work is something different from any of its parts?

A. Absolutely.

Q. Now, I want to talk to you about the application of this series of general principles to *The Desperate Hours*. *The Desperate Hours* involves the hostage theme, does it not?

A. Yes, it does.

Q. And that has been a theme that has interested writers for a great many years; is that true?

A. That's true. I myself wrote earlier—

Q. I will come to that, Mr. Hayes.

And it would be no mistake to say that it has been a theme of literature for hundreds of years?

Mr. Medina: I object to the form of that question. He is going pretty far in his preliminary questions.

[fol. 96] The Court: If the witness can answer it, I will permit it.

Overruled.

A. The answer is yes.

Q. There came a time, didn't there, Mr. Hayes, when you, as a writer, became interested in the hostage theme?

A. That is correct.

Q. When was that?

A. That was in 1947, when I first began free lancing with magazine writing.

Q. Would you please keep your voice up just a little bit.

A. Yes; sorry.

Q. And at or about that time, Mr. Hayes, did you write and was there published in a national magazine a short story involving the hostage theme?

A. There was.

Q. And was the name of that story "The Voice of Yesterday"?

A. It was.

Q. Mr. Hayes, would you look at this photostat and the covering affidavit—which I do not believe will be necessary—and state whether or not that is a true copy of the Voice of Yesterday?

A. Yes, this is a photostat of the story that appeared in the Woman's Home Companion, written by me.

Q. From the standpoint of the date, that would have been in 1946?

A. Yes.

* * * * *

(Photostatic copy of the Voice of Yesterday was received in evidence as Plaintiffs' Exhibit 16.)

* * * * *

Q. Mr. Hayes, the basic theme of the Voice of Yesterday—and correct me if I misstate it—was that of an individual, a father, compelled to perform certain acts by [fol. 97] reason of his being under the belief that his son was being held hostage?

A. That is correct.

Q. Now, from that point forward, while you were engaged in other creative efforts, were you interested in the hostage theme for purposes of some additional literary work?

A. Yes, I was.

Q. Let me ask you this, Mr. Hayes: You are a fairly disciplined and methodical craftsman in terms of accumulating materials and thinking them through before actually sitting down and starting to work. Wouldn't that be a fair statement?

A. In general, that's a fair statement.

Q. And has it been your procedure, working procedure, to take clippings from newspapers and from magazines of true life incidents involving some theme that interested you, accumulating those over the years?

A. It has been and still is.

Q. And you would keep files or folders of various subject matter and fill those folders as the years went along?

A. That's correct.

Q. Over the years, following the writing of the Voice of Yesterday, were there a number of hostage cases reported in the press and in magazines which came to your attention?

A. There were.

Q. I know it would be unreasonable to ask you at this point to approximate how many. But would it be fair to say that there were a great number?

A. Well, I think you would have to define a great number. I don't know how we arrived at it. I would only have my own memory, going back a number of years now, as to how many I had at the time.

Q. Would it be fair to say that there were many?

A. It would be fair.

* * * * *

[fol. 98] Q. And when you saw the story of some person or persons held hostage, would it be your practice to clip that out of the newspaper or magazine and save it?

A. Yes. My wife or I might do it and maybe not look at it for a week or so, but we did it and made a file, yes.

Q. Do you recall generally, Mr. Hayes, that certain of those reports involved families held hostage?

A. Yes, of course, they did. May I just say one thing? I think we should make a distinction between held prisoner and held hostage.

Q. I think you have a good point. I'm glad you reminded me of it, as a matter of fact.

The term hostage connotes, doesn't it, someone who is held in a situation where he fears that—where he does something with the fear that somebody else might be harmed?

Mr. Medina: I object to the form of the question, your Honor.

The Court: Would you agree with that statement or do you want to give us your own definition?

Q. Perhaps it would be best if you defined it.

A. I would prefer to give my own.

Q. You may do that.

A. It would seem to me that a man held prisoner is a man held at the point of a gun or behind bars, and his basic concern is about himself.

It would seem to me that the hostage idea involves the idea of a man who is concerned about other human beings whom he loves and that the fact that a loved one is held hostage creates his basic motivation as opposed to trying to free himself personally and selfishly from the gun or the bars.

Would that be fair?

[fol. 99] Q. It sounds reasonable to me. In any event, whether the description be hostage or prisoner, there were numerous incidents of families whose homes were invaded by criminals and convicts and who were then held prisoner or hostage, as the case may be?

A. That is correct.

Q. Some of these cases involved three convicts, did they not?

A. Yes.

Q. And I am referring to cases apart from the Hill incident.

A. I can recall at least one other that did. I just couldn't recall the name of the case, but I can recall one.

Q. Well, to take one specific incident, do you recall one case in California?

A. I recall two in California, as a matter of fact, one involving three men. I do recall that, if that's what you mean.

Q. And was that a case where three escaped convicts waylaid an individual who was driving in his automobile and then took him to his home and then held the individual and his wife and two children prisoners?

Mr. Medina: Your Honor, I think we ought to have greater identification. If there is a newspaper clipping as to any of these incidents, it should be produced rather than obtaining something which may just be a figment of someone's imagination.

The Court: If the witness can remember, overruled.

A. I had a lot of clippings. Naturally, this took place a long time ago. I no longer have the clippings which I can produce.

The Court: The question was do you recall a case that happened in California.

The Witness: Very clearly.

[fol. 100] Q. And these three convicts went into this home and held this family, and, as a matter of fact, one of the convicts took the father, I believe into town to either buy or sell a car. Is that correct?

Mr. Medina: I object to this question, your Honor. He is now asking him for the actual facts.

Mr. Garment: I am talking about the news report, Judge Klein.

Mr. Medina: You didn't ask that question, Mr. Garment.

The Court: If he doesn't remember it in that form, the witness can so state.

Do you remember a case like that?

The Witness: I remember that case.

Q. Let me make this clear at the outset, to save time. In relation to all of these cases we are talking about news clippings, are we not?

A. We are.

Q. Or we are talking about magazine articles is that correct?

A. That's correct.

Q. In none of these cases did you actually do personal research into the facts of the case; is that correct?

A. That's correct.

Q. In none of these cases did you actually interview the persons involved to determine whether or not the news clipping was a faithful account; is that correct?

A. I never did.

Q. I am not quite sure that we have an answer to the question that I asked you—

A. I did remember the California case.

Q. And it did involve one of the convicts taking the father into town to either buy or sell an automobile?

A. Yes, it did.

[fol. 101] Q. Do you recall another case involving three convicts that, I believe, took place in Ohio, which had a rather tragic ending?

A. Yes, I do. I had forgotten it. Yes, I do.

Q. And in that case do you recall how the captivity of those persons by those three convicts ended?

A. It seems to me that the entire family was shot by the men in the head.

Q. Now, Mr. Hayes, there have been cases—and I am referring to hostage or prisoner cases—where the criminals or convicts were brothers—and I am referring to cases other than the Hills'—isn't that true?

A. I am not sure of that. No, I am not sure of that.

Q. Do you recall the—well, suppose we hold that for a moment.

There have been cases which have ended non-violently?

A. Oh, yes.

Q. And there have been, as you indicated, cases which ended violently?

A. Correct.

Q. Would it also be fair to say that in many of these cases there were multi-state police alarms and posses out for the convicts?

A. Yes, indeed.

Q. And would it also be fair to say that in many of these cases clothing was taken from the family by the convicts?

A. I wouldn't be able to answer that absolutely as to detail.

* * * * *

Q. Apart from these hostage cases, is it a fact, Mr. Hayes, that your home during the period starting in 1946, that is, after the Voice of Yesterday, was in or near Danbury, Connecticut?

A. That is true.

Q. And what is the name of the community where it was located?

A. Brookfield Center.

Q. It is true, is it not, Mr. Hayes, that your home overlooked the Danbury Federal Penitentiary?

A. That is true.

[fol.102] Q. Would it be fair to say that as you read about these many cases of people or families held hostage by criminals or convicts you thought, as a writer, about the possibility of convicts from that prison escaping and entering your own home?

A. I would say it would be a recurrent thought, yes.

Q. It would be a recurrent thought?

A. Yes.

Q. And would it be fair to say altogether, Mr. Hayes, that out of all of these elements—the classic hostage theme, the many news and magazine accounts of homes, houses

and families held prisoner by convicts and criminals, and your own personal location near a penitentiary, out of all these elements, *The Desperate Hours* was shaped?

A. I would say from those elements and others.

Q. And other elements.

A. Yes.

Q. In other words, Mr. Hayes, the creation of a literary work is the result of the pulling together of almost an infinite number of pieces and parts; isn't that true?

A. I think that's true.

Q. And it is a process that comes at the end of years of thought, of years of exposure to the real world and of years of pondering how to put those elements together in dramatic form?

A. That's true. It sometimes takes something to trigger the actual doing of the thing.

* * * * *

Q. As an example of the many parts that are involved in a novel, isn't it true that you read of an incident involving a young mother and her infant daughter who were held at knife point by a criminal? Do you recall that?

A. Yes, I do recall that, in Mahopac, New York.

Q. That was a case that took place in New York State.

A. Right.

[fol. 103] Q. Sometime before you wrote *The Desperate Hours*.

A. Yes. It was within a year or so.

Q. As a matter of fact, it was in the year 1952, was it not?

A. I don't recall that.

Q. And in that incident, when this criminal was approached, by the police, he threatened to stab the girl if they did not permit him to escape; isn't that true?

A. That is true.

Q. And in the ensuing battle he killed the girl, did he not?

A. He did.

Q. And he was subsequently executed for that crime?

A. I believe he was.

Q. As an author, that element was utilized by you, quite properly, of course, as a part of *The Desperate Hours*; isn't that true?

A. Yes, certainly.

Mr. Garment: May I, with your Honor's permission, read a very short passage from the novel which is in evidence as Plaintiffs' Exhibit 12.

The Court: All right.

Mr. Garment: "Finally Glenn straightened, reached into his pocket and drew out something small which Dan could not see. The young man crossed to Eleanor, and Dan felt himself stiffen. In that instance he knew, with only faint surprise, that under the same or similar circumstances he would be unable to do anything but what he had just done when Robish grabbed Ralphie. That or worse. Next time, perhaps right now, he might kill one of them.

" 'Read it,' Glenn said, 'read it loud enough so your old man can hear it, Mrs. Hilliard.'

"Dan heard his wife's tight voice begin to read, after she had unfolded the yellow frayed newspaper clipping, and [fol. 104] he had to concentrate very hard over the scorching ache in order to catch the significance of the words.

"What she read was a dispassionate newsservice story of an occurrence in New York State. It described, in some detail, the manner in which a convict, attempting to escape from a police net surrounding a small house in which he was hiding, had brutally killed a small girl when the police fired at him as he left the house. He had climbed into a small pick-up truck, holding the girl in front of him. Even though wounded himself by police fire, he had shot the girl through the stomach"—and so forth.

Q. That was the example that you referred to?

A. Yes, that was one of the cases.

* * * * *

Mr. Garment: I think it should be stated, since there have been a number of comments about the play and the motion picture and the novel, that it was the novel that was the first representation of The Desperate Hours.

Q. Isn't that correct?

A. That is true.

Q. And to the extent that you were inspired by this array of thoughts, events, acts, attitudes, and so forth, that **would** have been the novel The Desperate Hours; isn't that true?

A. Yes.

* * * * *

Q. Isn't it a fact, Mr. Hayes, that you gave interviews with respect to the writing of The Desperate Hours?

A. Many interviews.

[fol. 105] Q. And those interviews were arranged by Random House, were they not?

A. Principally, yes.

Q. And that would have been a normal part of the publicity relating to any novel?

A. Yes.

Q. And in those interviews you were asked questions and gave answers, and I am sure that you gave truthful and fair answers to those questions. Isn't that a fact?

A. I tried to.

Q. And, in addition, as part of the ordinary job of collaborating on publicity you wrote various articles about The Desperate Hours which were published in newspapers of note?

A. When I was asked, I did, yes.

Q. I would first like to show you, Mr. Hayes, the book review of The Desperate Hours which appeared in the Herald Tribune of March 4, 1954—that is the fourth page of Exhibit 7—and ask you whether the first paragraph and the following sentence were substantially an accurate reproduction of statements that you made (handing Plaintiffs' Exhibit 7 to the witness).

A. Yes, that's substantially what I said.

Mr. Garment: With your Honor's permission, I would like to read that first paragraph in evidence.

This is a book review by Lewis Gannett in the Herald Tribune.

"From his hilltop in Bridgewater, Connecticut, Joseph Hayes can see at night the circle of lights that marks Danbury Federal Prison. And when he has just read in the newspapers of a convict who escaped from prison, broke into some lonely homestead and forced the family to do his bidding as hostages, he looked at those bright lights, and at his red-haired wife and red-haired sons, and wonders, [fol. 106] 'What if there were a prison break and one or more of those desperate men escaped in this direction?'

"His wondering led him to spin the high-tension story that is the Literary Guild's March selection."

Q. Mr. Hayes, do you recall that you were interviewed by Mr. Emory Lewis of Cue Magazine in the latter part of 1954?

A. I am sorry, I don't.

Q. Perhaps I can refresh your recollection. I show you this article from Cue Magazine for February 5, 1955 and ask you whether that refreshes your recollection as to having given an interview to Mr. Emory Lewis of that magazine (handing paper to witness).

A. Yes, I remember this.

Q. And, again, that interview as published in Cue Magazine fairly reproduced—

A. I am sure it does.

Q. —fairly reproduced your remarks to Mr. Lewis?

A. Right.

Mr. Garment: I have a photostat of just that page, which I offer in evidence.

The Court: Any objection?

Mr. Malino: I have no objection.

Mr. Medina: I object to this, your Honor; it is pure hearsay.

Mr. Garment: Pure what?

Mr. Medina: Hearsay.

Mr. Garment: It's a declaration by a defendant which he says is true.

Mr. Medina: It is just a double hearsay in an endeavor to prove some other fact through the mouth of an author in [fol. 107] Cue, whom I cannot cross-examine, when the man who is supposed to have made the statement is right here.

The Court: If he says that this is exactly what he said to this man who was interviewing him, I will receive it.

The objection is overruled.

The Witness: I would like to acquaint myself with this more thoroughly, if you are going into it. I say I gave the interview. I don't know what is at issue here; I have no idea. This is a surprise to me.

Mr. Medina: I think maybe, perhaps, Mr. Hayes should be given an opportunity to read it more carefully.

The Court: Certainly. I thought he had.

Mr. Garment: By all means.

(The photostat referred to was handed to the witness.)

The Witness: Thank you.

The Court: Is that substantially what you told that man?

The Witness: Yes.

The Court: Let it be received in evidence as Plaintiffs' Exhibit 17.

(Photostat of Emory Lewis' article in Cue Magazine was received in evidence as Plaintiffs' Exhibit 17.)

By Mr. Garment:

Q. Before I show this to the jury, I want to get the time sequence clear. This article was published on February 5, 1955. Do you recall how long before that you gave this interview to Mr. Lewis?

A. No, I am sorry, I don't.

[fol. 108] Mr. Medina: There has been no proof of publication. The date of the magazine happens to be February