

5th. Many times the magazine will come out either before or after the actual date appearing on it.

Mr. Garment: In any event, on or about February 5, 1955.

Q. Was it before the Life article of February 28, 1955?

A. Yes, that would be correct.

Q. And at or about the time that Life was preparing the article relating to The Desperate Hours; isn't that true?

A. Well, I wouldn't know that; I would assume it. They had taken the pictures, but I had no contact with them.

Q. Excuse me?

A. They had taken the pictures, but I had no contact with them during this period.

Q. As to the actual preparation of the article.

A. None whatever.

Q. Now, in order to get that clear, the actual picture-taking—which we will come back to later on—was on January 31 and February 1, 1955, in Philadelphia; is that correct?

A. Correct.

Q. You were present at the picture-taking, of course?

A. I was.

Q. And when you said that you didn't know about the actual date of the preparation of the article, you were referring to the actual preparation of the article itself, the text, the arrangement of the photographs and the like?

A. Right.

Mr. Garment: With your Honor's permission, I would like to read a brief passage from this interview dated at or about February 5, 1955.

[fol. 109] “The Desperate Hours' is a manhunt melodrama concerning three escaped convicts who invade a respectable, middle-class household in Indianapolis.

“I set it in my home town because that is what I know,' he explained. ‘And I think that neighborhood is more typical than, say, New York, or Connecticut or California.’

“The Indiana author explained that the idea for the novel came from newspaper accounts of manhunts, not any particular one but several.”

Q. You also wrote and there was subsequently published in the Sunday Times for January 31, 1955 an article with relation to the writing of *The Desperate Hours*; isn't that true?

A. I did write such an article.

Q. And do you recall where you wrote that article?

A. I wrote it in a hotel room in Philadelphia.

Q. In Philadelphia?

A. Yes.

Q. Do you recall when the out-of-town tryouts in Philadelphia started?

A. I couldn't give you exact dates. I think we opened in New Haven around January 5th and I think we opened in Philadelphia about a week later, I would say the 10th or 12th of January.

Q. So that this article with reference to the writing of *The Desperate Hours* that was subsequently published in the Sunday Times was written by you in Philadelphia sometime between the middle of January and the end of January? Would that be a fair statement?

A. I think that would be fair.

Q. Mr. Hayes, I show you Defendants' Exhibit A in evidence and ask you whether that article entitled "Fiction [fol. 110] out of Fact" is the article that I have just been talking about (handing paper to witness).

A. Yes, it is. I recognize it.

Mr. Medina: Is that "A"?

Mr. Malino: That's a copy—

Mr. Medina: It's Exhibit G, if I am correct.

The Court: It is Exhibit G.

Mr. Garment: Again with your Honor's permission, I would like to read briefly from this article so as to recall this to the jury's memory.

"Fiction out of Fact

"by Joseph Hayes.

“Author of ‘The Desperate Hours,’ due at the Barrymore February 10th.

“Philadelphia.

“At the moment I am writing this, the newspapers are headlining a story about five guards held hostage in the Massachusetts State Prison. The news accounts concentrate on the action. But what of the more personal stories involved? What are the thoughts and emotions of the guards’ waiting relatives?”—and so forth.

“It was out of conjectures such as these that, in the spring of 1953, I sat down to write a novel which, when completed, I called ‘The Desperate Hours.’

“The novel—and the play version of it—was based on various news stories. In California, in New York State, in Detroit, in Philadelphia, frightened and dangerous men entered houses, held families captive in their own homes; these were headline stories, soon forgotten. Some ended tragically, others did not. The newspapers soon dropped all reference to them.”

[fol. 111] And then follow some other questions addressed to yourself as to why it was written, and then:

“Instead of researching any of the specific ‘cases’, however, I found it best to let my imagination play with the idea. Meanwhile, I reached into my own background and found a setting, the City of Indianapolis, where I was born, a typical city.

“After that, it was necessary to probe into my own convictions about people, ordinary, down-to-earth, representative people—what did I really feel about them? What did I believe about them and how did they react under stress? Once I could answer that question honestly, I could begin ‘research.’

“Technically I needed to make my police activity reasonably authentic”—and so forth, with respect to the police activity.

“And then follows a discussion of the mind of the criminal. This mind became, as I worked, so complex and cun-

ning that, almost automatically, the necessary plot-twists and surprises of story erupted, often to my own astonishment, so that in the end even the plot itself became something quite distinct from all the other hostage stories I had ever encountered.”

By Mr. Garment:

Q. That certainly was a fair statement of the facts as you already described them to us in court.

A. That is correct.

Q. Now, Mr. Hayes, I would like to ask you about the relationship between *The Desperate Hours* and the Hill incident.

[fol. 112] Of course, you knew about the Hill incident along with these various other captive or hostage incidents that we have talked about?

A. Yes, I did.

Q. As a matter of fact, Mr. Hayes, there were hostage incidents following the Hill incident and prior to the actual writing of *The Desperate Hours*, were there not?

A. I think there were, but I couldn't answer that exactly.

Q. Do you recall that in the month of December, 1952 in Pennsylvania, the same State of Pennsylvania, a family was held captive by five convicts, I believe, who had escaped from a nearby penitentiary? Does that ring a bell?

A. It doesn't ring a bell; I'm sorry.

Q. When you wrote *The Desperate Hours* was it your intention to tell the story of the James Hill family or the incident in which that family was involved in September 1952?

A. It was not.

Q. Would you speak up, please?

A. It was not.

Q. Did you make any attempt to depict any member of the Hill family in *The Desperate Hours*?

A. No, sir, I did not.

Q. Did you make any attempt to depict the Hill home in *The Desperate Hours*?

A. No, sir, I did not. I did not know the Hill home.

Q. Would you speak up, sir?

A. I did not know the Hill home. I couldn't have done that.

Q. Did you make any attempt to describe any of the physical facts or events surrounding the Hill incident?

A. I made no conscious attempt to do that. What ever came into the work seeped in from this previous knowledge.

Q. And that would have been a matter of seeping in of knowledge from a great number of events—

A. And from the Hill—

[fol. 113] Q. Including among this great number the Hill incident.

A. That is correct.

Q. You say you have no actual recollection that that was even the fact. If it was a fact it was something unconscious.

A. May I say to you that I didn't read these clippings or have them propped up in front of me and pick this fact from this one and this one from that one. I studied them, read them, and then wrote.

Q. I'm sure that that was the case. And so, to complete this line of questioning, Mr. Hayes, it was not your intention and you did not depict any person whatever who was involved in the Hill incident, either the convicts or the members of the family or anyone else involved in the actual Hill incident?

A. No, sir, I did not.

Q. And it was not your intention and in fact you did not depict the words or substance of anything that was said by anybody in the Hill incident?

A. Not consciously.

\* \* \* \* \*

Q. Is it a fair statement, Mr. Hayes, that you told anyone who asked you about the writing of The Desperate Hours essentially what you have told the Court and jury this afternoon?

A. That is correct.

Q. Did you ever tell any interviewer or any other person that *The Desperate Hours* was inspired particularly by the Hill incident?

A. No, I never used that phrase.

Q. Did any publication, to your knowledge, discussing either the play or the motion picture or the novel, state or indicate that you had ever made such a statement?

A. No.

Q. I want to ask you about the name Hilliard. It is a fact, is it not, Mr. Hayes, that a writer, particularly a trained, experienced writer like yourself, is concerned about the names he uses in a fictional work?

A. That is true.

[fol. 114] Q. And in the course of writing, as you say, some nineteen or more plays in collaboration with your wife, Marrijane, both you and Mrs. Hayes have yourselves been concerned about names for characters in your plays and short stories?

A. That is true.

Q. And that is because of a concern on your part of having any confusion or connection of the names selected with real-life persons; isn't that a fact?

A. That's a fact.

\* \* \* \* \*

Q. Isn't it a fact that is known among professional writers and persons in the creative field that when a writer is dealing with any theme, and particularly with a realistic type of theme, such as a hostage theme, that the use of any real-life name would be avoided like the plague?

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

The Court: I will permit it just so we can move along here.

A. Yes, in general that is true.

Q. Did you have the name Hill in mind when you used the name Hilliard?

A. No, I did not.

Q. Where did you get that name from?

A. In Bradenton, Florida, where I lived at the time of the writing, the leading Chevrolet dealer in that area, Chevrolet and Pontiac, is named Hilliard, and every time I would take my children to a drive-in motion picture we were subjected to what amounted to television commercials in between the features, in which the name Hilliard always featured.

Q. I ask you to look at this Bradenton telephone directory and state whether or not the name of that Chevrolet dealer appears there (handing telephone book to witness). [fol. 115] A. "Hilliard Brothers, Auto Dealers, Garage"—and so forth.

Q. Wouldn't it be fair to say, then, Mr. Hayes, that you didn't even have the Hill incident specifically in mind when you sat down and wrote *The Desperate Hours*?

A. Well, I would say that I had in mind in the manner that I have described.

Q. I mean consciously, with any clipping in front of you?

A. No, I did not.

Q. Mr. Hayes, we have talked generally about the matter of publicity and the ordinary procedure of a writer collaborating in obtaining publicity for a novel or other work that is being published. Do you recall that testimony?

A. Yes, I do.

Q. As far as the play *The Desperate Hours* is concerned, in addition to writing the script of the play, it is true, is it not, that you were also a co-producer of the play?

A. That is correct.

Q. And your associate in the production of *The Desperate Hours* was Mr. Howard Esrkine?

A. Yes.

Q. That gentleman who is sitting in the rear of the courtroom (indicating); is that correct?

A. That is correct.

Q. The play *The Desperate Hours* was technically produced by a company called *The Desperate Hours Company*?

A. That is correct.

Q. Which would have been a limited partnership with various persons who had contributed—

A. Sixty-three investors.

Q. Did The Desperate Hours Company hire publicity or press agent representatives?

A. Yes. All producers do.

Q. That would be the usual and common practice in the industry?

A. Correct.

[fol. 116] Q. Who were those press agents or publicity representatives?

A. Marian Byram and Phyllis Perelman.

Q. And in general terms was it their responsibility to arrange for interviews and the publication of articles such as we have been discussing here today?

A. That is correct.

Q. Publicizing the play?

A. That was their function, yes.

Q. And they would also arrange for coverage, if that could be obtained, in magazines?

A. Yes.

Q. Isn't it a fact, Mr. Hayes, that in the theatrical world, coverage by Life magazine is considered very important to the production?

A. Yes, it is.

Q. And wouldn't it be fair to say that coverage of a play in Life magazine would, in a sense, represent the most important type of publicity for the play?

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

The Court: Overruled.

A. No, I would not say that it was that important.

Q. But you would consider it important?

A. I would consider it important as I would consider coverage by Look magazine or the Saturday Evening Post or any of the others important.

Q. I must ask you to keep your voice up.

A. I am sorry.

Q. I am sorry, Mr. Hayes, but at the end of the sentences you seem to drop your voice.



Was the matter of coverage in Life magazine discussed by you with your publicity representatives and other associates?

A. It was discussed only hopefully, because one doesn't solicit this sort of thing.

[fol. 117] Q. I didn't hear the end of that.

A. One does not solicit this sort of thing any more than one talks to a critic about what he is going to write.

Q. Do you mean that if you are going to get coverage in Life magazine they have to come to you?

A. Well, Life magazine—any magazine of this nature knows exactly what's going on in the theatre world and makes its own decisions as to what it is going to do about it.

Q. Was this discussed with the director of The Desperate Hours also, Mr. Robert Montgomery?

A. Yes.

Q. By the way, was Mr. Montgomery an investor in The Desperate Hours as well as the director of the play?

A. Yes, he was.

Q. Did there come a time when somebody other than your associates connected with the production of The Desperate Hours mentioned coverage of The Desperate Hours play in Life magazine?

A. Yes.

Q. And was that Mr. Bradley Smith?

A. Yes.

Q. Who is Bradley Smith?

A. Bradley Smith is a neighbor of mine in Connecticut. But he is also a free-lance photographer for all sorts of publications, including, I think, Life. But he is not employed by them, that I know of. He simply is a free-lancer.

Q. Did you have a discussion with Mr. Bradley Smith about the possibility of coverage of The Desperate Hours in Life magazine?

A. We had a general discussion full of suggestions by him as to how The Desperate Hours might be covered. But it was a very general discussion and did not go into any detail as to how—not only by Life magazine but various others.

Q. Did Mr. Smith ask you any questions about the staging of *The Desperate Hours*?

A. Yes, he did.

[fol. 118] Q. By the way, is Mr. Smith quite acquainted with various publicity techniques?

A. He is, indeed. He is a man with a very active mind, very fertile and free with his ideas.

Q. I don't know whether you answered this in response to my other question, but do you know whether Mr. Smith had done photographic work for *Life* magazine?

A. Yes, he had.

Q. On a free-lance basis?

A. As I understand it. I couldn't verify that.

Q. That is, he was not an employee of *Life* magazine at the time this discussion took place?

A. As far as I know, he was not.

Q. In your discussion with Mr. Smith were you asked, as part of this discussion about various ways of publicizing the play, whether there had been an incident in Philadelphia?

Mr. Malino: I object to that part of the question that characterizes this as a discussion. We haven't found out yet just what happened here. Where did they meet? What was this all about?

Mr. Garment: I don't mean to place any serious—

The Court: You can go into that on cross-examination.

Mr. Garment: All right; I think I might be able to clear that up.

Mr. Malino: It could be done now.

Q. Mr. Hayes, this meeting that you had with Bradley Smith was on a train riding home to Danbury, Connecticut, from New York?

A. It was a casual meeting on a train, not a business meeting or a set-up of any kind like that.

[fol. 119] Q. And you and Bradley Smith were good friends and neighbors?

A. Correct.

Q. And you talked about other neighbors?

A. We certainly did.

Q. And you talked about the world and other matters?

A. Yes.

Q. The children?

A. Both of us, yes.

Q. And in the course of the discussion you came around to discussing your play *The Desperate Hours*?

A. That's right.

Q. Did you know at that time that the play was scheduled for an out-of-town tryout in Philadelphia as well as New Haven?

A. My recollection would be that we did, yes.

Q. Did you tell Mr. Smith, Bradley Smith, that you were going to be in Philadelphia before coming to New York with the play?

A. Yes, it was part of the general conversation.

Q. And then with relation to this matter of possible ways of publicizing *The Desperate Hours*, did Bradley Smith ask you whether there was an incident in Philadelphia?

Mr. Medina: I object to the form of that question. Again he is tying in two or three things at one time and characterizing the conversation. If he wants to ask him whether there was any question as to the incident in Philadelphia, let him go ahead without characterizing the nature of the discussion.

Mr. Garment: I think—I am examining a defendant—

The Court: I am going to overrule the objection—if the witness understands the question and can answer it.

[fol. 120] Do you understand the question?

The Witness: Yes.

Would you read the question back?

(The reporter read the pending question.)

A. Yes, he did.

Q. And did you tell him that there was an incident in Philadelphia?

A. I told him that was one of the incidents, in Philadelphia.

Q. One of the incidents.

A. That's exactly right.

Q. Did Bradley Smith say in words or substance that Life sometimes or frequently liked to cover theatrical events in that way?

A. Yes, he did.

Q. That would be by relation to some true life incident or event?

A. Correct.

Q. And that's about where the matter was left in the course of this very informal conversation with your friend Bradley Smith?

A. That's exactly the way it was left.

Q. Then I imagine followed the hectic business of getting prepared with the play.

A. You chose a very good word.

Q. And as the co-producer and author, I am sure that you were working day and night.

A. Indeed.

Q. And ultimately you were in Philadelphia readying the play for its Broadway opening?

A. That's correct.

Q. Did there come a time when you heard from some representative of Life magazine?

A. Yes, there did.

Q. Do you recall approximately when that was?

A. No, I am sorry, I wouldn't be able to give you a date. It was during the Philadelphia stay.

Q. So that it would have been the early part of January, 1955?

A. Well, not too early, in the sense that we opened in [fol. 121] New Haven, I believe, on the 5th. So it would be midway in January.

Q. Sometime midway in January 1955.

A. Yes.

Q. In what manner did you hear from Life magazine?

A. I received a telephone call.

Q. And from whom was that call?

A. Mr. Tom Prideaux.

Q. And who is Mr. Prideaux?

A. Mr. Prideaux, whom I did not know at that time, introduced himself as the theatrical editor of Life magazine.

Q. And that is Mr. Prideaux who is sitting over on the other side of the courtroom (indicating)?

A. That's correct.

Q. And you say you did not know Mr. Prideaux at that time?

A. I did not.

Q. And he introduced himself as the theatrical editor of Life magazine?

A. Words to that effect.

Q. Did he in words or substance say that Life had an idea for the coverage of The Desperate Hours?

A. Yes, he did.

Q. Did he ask you whether you would cooperate?

A. Yes, he did.

Q. Did you tell him that you would?

A. Naturally, I did.

Q. Did he ask you whether there had been an incident in Philadelphia?

A. Yes, he did.

Q. Did you tell him that there had been an incident?

A. I told him there had been.

Q. Did you tell him the name of the people involved in the incident?

A. I didn't know the name at that time?

Q. Did he ask you to do something at that time?

A. Yes, he did.

Q. What did he ask you to do?

A. He asked me, first, whether we were interested in their [fol. 122] coming down and taking pictures if everything worked out. And I said yes, we were. And then he described to me the idea of taking the actors from our stage out to the site of this incident and photographing scenes from the play in this background, and would I contact the occupant of the house in Philadelphia—at that time I

thought the house was in Philadelphia; I didn't know the situation—would I contact the occupants of the house and find out whether that would be agreeable with them. This I agreed to do.

Q. At that point certainly no one knew who was living in this house.

A. No, we didn't know that. We knew very little.

Q. Did Mr. Prideaux ask you whether The Desperate Hours had been particularly inspired by this incident?

A. No. This did not enter into the conversation.

Q. Did Mr. Prideaux ask you whether The Desperate Hours was the story of the family involved in this incident in Philadelphia?

A. No, he did not.

Q. Did you make an appointment with Mr. Prideaux at that time?

A. The sequence of events thereafter was very confused, but such an appointment was made.

Q. I think perhaps you could speak a little bit slower, Mr. Hayes.

A. I say the sequence of events after that was very confused because of my other work; but such an appointment was made.

Q. I don't want to tax you with this matter of dates too closely, but do you recall whether you went out to check on the house before or after that appointment was made?

A. My recollection is I went out to the house and made the appointment for Mr. Prideaux.

Q. I see. How did you find the house?

A. Well, in the first place, it took some doing. Our general manager on the show was familiar with Philadelphia—  
[fol. 123] Q. That would be Sam Handelsman?

A. Yes. So the natural person to ask was him. He found out the house was in Whitmarsh. We drove out to Whitmarsh still without any other knowledge, went to the police, told them of the situation, and the policeman actually escorted us to the house.

Q. Did you ask the policeman or did you learn from the police—in Whitmarsh I assume—whether the family that had been involved in the incident was still there?

A. I learned that from him because he volunteered that information.

Q. He told you that they were no longer there?

A. That's right.

Q. Do you know how Mr. Handelsman located the house?

A. I think he located the area through the newspapers or through a friend of his who went to the newspapers. I don't know for sure.

Q. When you got out to the house, did you find the residents of the house there?

A. Yes, I did. My recollection is one lady was there.

Q. Was that Mrs. Stahlheber?

A. It turned out to be Mrs. Stahlheber.

Q. Did you tell Mrs. Stahlheber something about the purpose of your call at that point?

A. Yes, naturally.

Q. Did you tell Mrs. Stahlheber something that you had been asked by Mr. Prideaux to tell her?

A. Yes.

Q. What was that?

A. I told her that Life magazine was interested in using the house for a picture story and would she be willing to talk it over with them.

Q. Did you explain who you were?

A. Oh, yes.

Q. Did you tell her that there was a play that was then running or would be running in Philadelphia?

A. Yes, I did.

[fol. 124] Q. Did you explain to her that there had been an incident of a family that had been held by some convicts in the house?

A. Yes, I did—to her surprise.

Q. Did she know that that had taken place?

A. No, she did not.

Q. Did she consent to the use of her house for this photographic work?

A. She didn't consent to me. She consented to talk with Mr. Prideaux when he came out, because actually I had no reason to ask her to do this when Mr. Prideaux hadn't even decided at that time that he was actually going to do it, and, also, other elements entered in relative to my own feeling about the house and what-not.

Q. I wonder if you could explain to the jury what you mean by that.

A. Yes, I will. My concern from the beginning, when this whole thing was suggested, was that perhaps this house would not accurately depict or reflect the set and the general background of our play.

Q. You mean The Desperate Hours play?

A. Yes. And I wanted to make sure that these two coincided sufficiently in their suggestion so that the resulting story would truly reflect our play.

Q. Did Mrs. Stahlheber ask or did you tell her what this article was going to be about?

A. No, I did not.

Q. I suppose the fact of the matter is that you had no knowledge at that point of what it was going to be about.

A. No, I did not.

Q. After you saw Mrs. Stahlheber at the house, you called Mr. Prideaux and told him that an appointment had been made?

A. I notified him. Whether I called him, telegraphed him or had someone else phone him, I couldn't say.

[fol. 125] Q. And do you recall the date when Mr. Prideaux came down to Philadelphia?

A. No, I am sorry, I don't know the exact date.

Q. Would it be on or about January 17th?

A. Yes, it would.

Q. 1955?

A. Yes.

Q. Where did you meet Mr. Prideaux?

A. Mr. Prideaux came to my hotel, as I recall it, and I met him and the young lady who accompanied him, in the lobby, with my wife and with Mr. Erskine. That's my recollection. Whether there were others there, I don't know.



Q. By the way, Mr. Hayes, did Robert Montgomery ever tell you that he had had a discussion with Mr. Prideaux about the coverage of *The Desperate Hours* in *Life Magazine*?

A. Mr. Montgomery mentioned—

Q. I wonder if you could simply answer that question yes or no.

A. Yes.

Q. When did he mention that to you?

A. That's where it becomes vague. Sometime during the production he mentioned that, because of the unusual set we had, *Life* magazine might be interested. It was as general as that.

Q. Because of the unusual set?

A. That's right.

Q. That would have been the double-decker set that you had for *The Desperate Hours*?

A. That's right. And when we rehearsed we had a mock-up of it so that the entire rehearsals were in an open frame showing two stories, and this was a very interesting theatrical idea.

Q. That would have been a cross-section of the besieged house; is that right?

A. That's right.

Q. In any event, you met Mr. Prideaux on January 17, 1955 for the first time?

A. I assume that date, yes.

[fol. 126] Q. Do you recall what time of the day that was? Was it, roughly, in the morning, the afternoon, or the evening?

A. My recollection is that it was late afternoon.

Q. Had you made arrangements or did you then make arrangements for transportation out to the former Hill home in Whitmarsh?

A. There was a car provided by a friend of our general manager's and my recollection is that she drove us out there that day.

Q. Did anybody accompany Mr. Prideaux on his visit?

A. Yes. There was a young lady with him.

Q. For the sake of the record, Mr. Hayes, let me just finish the question.

A. I am sorry.

Q. A young lady had accompanied him down from New York?

A. I beg your pardon.

Q. I say some member of his staff had accompanied him down from New York?

A. Correct.

Q. Do you recall what her name was?

A. No, I don't.

Q. Would the name Laura Ecker refresh your recollection?

A. Yes, that name is familiar to me as one of the two young ladies involved here.

Q. At a subsequent date there was another young lady who came down?

A. That's right.

Q. Did Mr. Prideaux indicate to you what Miss Ecker's function was?

A. I don't remember.

Q. Did he say that she was a researcher or reporter for Life magazine?

A. I don't believe he did, but I just don't recall.

Q. In any event, you knew that Miss Ecker was associated with Mr. Prideaux.

A. Of course.

Q. Did all of you then go out to the house together in one car?

A. Yes, we did.

Q. Was there any discussion about the real life incident on the way out to the house?

A. No, not to my recollection.

[fol. 127] Q. Did you at that time, as a matter of fact, recall any details of the actual real life incident?

A. No, I wouldn't know the details.

Q. You ultimately arrived at the house and Mrs. Stahlheber was there pursuant to the arrangements that had been previously made; is that correct?

A. Correct.

Q. Did you or Mr. Prideaux speak to Mrs. Stahlheber?

A. I introduced Mr. Prideaux to Mrs. Stahlheber. Then they held their discussion.

Q. Do you know what Mr. Prideaux said to Mrs. Stahlheber?

A. No, I don't.

Q. Do you know in general terms whether he explained the purpose of the call?

A. Yes, I am sure he did.

Q. And, in general terms, that Life was considering the possibility of doing an article which would involve photography in this house?

A. Yes.

Q. But beyond that did Mr. Prideaux go into any details as to what the article was going to be about?

A. No.

Q. Was an arrangement then made between Mr. Prideaux and the occupant of the house, Mrs. Stahlheber, for the use of the house in connection with photographic work for Life coverage of The Desperate Hours, if Life ultimately decided to do the article?

A. With that "if," yes.

Q. And did Mr. Prideaux state or indicate to you that the ultimate decision as to whether or not an article would be done by Life magazine would depend upon his consultation with other persons at Life magazine?

A. He did not enter into any conversation with me relative to his procedure at Life magazine, no, sir.

Q. Would you tell us in general terms, and briefly, Mr. Hayes, what happened at the house, that is, what you did there?

A. At the house, first they held this conversation, [fol. 128] went inside, my father was there, he had been ill, and he and I, I remember, walked around the grounds while this went on. Ultimately I went into the house and walked through it with Mr. Prideaux, both of us looking at the areas that might in some way correspond to similar areas on the stage and in the stage set.

Q. Did you and Mr. Prideaux reach agreement that the house was suitable for use in relation to the play?

A. My recollection is that Mr. Prideaux did not commit himself in any way. I said that the house from our point of view would represent our play.

Q. That is, it would be physically consistent with your play?

A. Correct.

Q. Did Mr. Prideaux make some arrangements with Mrs. Stahlheber whereby she would be paid for the use of the house?

A. I don't know that.

Q. As you have just described it, would that be a fair summary of what transpired at the house?

A. Yes, sir, it would.

Q. Did you then return to Philadelphia proper?

A. We did.

Q. That evening did Mr. Prideaux see *The Desperate Hours*?

A. Yes, he did.

Q. And then did he and Miss Ecker leave for New York?

A. Yes.

Q. By the way, do you recall whether Miss Ecker asked you any questions or whether you made any statements to Miss Ecker about the relationship between the real life incident and writing of *The Desperate Hours*?

A. I do not.

Mr. Malino: You mean you don't recall it, or there were no such statements?

The Witness: I don't recall it.

[fol. 129] Q. Did Mr. Prideaux or his associate, Miss Ecker, ask you for any research materials relating to the actual incident?

A. No, sir, they did not.

Q. Did they ask you for any news clippings?

A. No, they did not.

Q. Did they ask you anything at all about the Hill incident?

A. No, not as I recall.

Q. And, as you indicated before, you told them nothing?

A. We were not concerned so much with the Hill incident as we were with the practicalities of setting up the proper shots representing the play. We had practical considerations, no time for contemplation of such things as this. It didn't even concern us at the time.

Q. Well, Mr. Hayes, what did you understand was going to be the nature of this article about The Desperate Hours that would appear in Life or might appear in Life Magazine in which a real house was going to be used?

\* \* \* \* \*

A. My impression was that here was an opportunity to create a news story—

Q. To create a news story?

A. To create a news story in that—

The Court: New or news?

The Witness: News.

The Court: N-e-w-s?

The Witness: Yes.

Q. To create a news story?

A. A news story—in an unusual manner by having actors in a play concerning certain events moved into a setting in which similar events had occurred.

[fol. 130] Q. Similar events. You mean where a family had been held hostage?

A. Yes.

Q. Pure and simple?

A. Yes.

Q. Nothing beyond that?

A. That's right.

Q. Did you ask Mr. Prideux whether he proposed to use, if he ran this article, the name of the family that lived in the house at the time of the incident?

A. I wouldn't presume to do that.

Q. Did it seem to you that there was no occasion to discuss that matter?

A. That's correct. I did not see it that way.

Q. Mr. Hayes, let me ask you this. Did the thought enter your mind that the name of the real-life family would very likely be used in connection with any article about The Desperate Hours utilizing this real-life house?

A. No, sir, I don't think it entered my mind one way or the other.

Q. Did Mr. Prideaux indicate to you before he left for New York whether Life would cover The Desperate Hours?

A. No, sir. As far as I recall, he did not. I would not approach him and ask him such a question.

Q. Was there any discussion at that time about the financial arrangements for the actual costs of photographing the proposed article in Life Magazine?

A. I would have to give you a rather complex answer. There was such a discussion.

Q. Give me the best answer you can. Was it on this occasion, January 17th?

A. Yes, I believe it was. But there had to be a discussion relative to the payment of stagehands because of union regulations when a photograph call is held in the theatre. So there had to have been a discussion.

Q. Now, it is Life's standard procedure, is it not, to pay certain expenses in relation to the coverage of a theatrical [fol. 131] event and to require the producer of the play which is being covered to pay certain others?

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

The Court: If this witness can answer as to what is Life's procedure, I will permit it.

Mr. Garment: If it is known generally.

The Court: He is not the best one to testify on it.

Do you know what this procedure is?

The Witness: I can testify to what the general procedure in the theatre relative to producers is.

The Court: You mentioned specifically Life Magazine. Read the question.

(The reporter read the pending question.)

The Court: Do you know?

The Witness: The answer is yes.

Q. That is very well known, isn't it, Mr. Hayes?

A. It's generally accepted.

Q. And the expenses that Life Magazine pays generally covers transportation and, of course, the photography of the article as well as its own production and printing expenses, while the producer pays the theatrical expense. Is that correct?

A. That is correct.

And some producers use the same night. We always have to take pictures on our own, of shows, so we, on that, use the same night that the magazine is going to cover it and dovetail those expenses that we have to absorb.

Q. I understand. The point is this, Mr. Hayes: that the producer of the play pays for the overtime charges of stage-[fol. 132] hands that may be required for overtime shooting of photographs by Life Magazine?

A. That is the extent that the producer is involved in the expense, yes.

Q. Well, that was the extent that you were involved?

A. That is correct.

\* \* \* \* \*

Q. In the case of this particular photo article that appeared in Life Magazine, apart from the efforts, of course, that you and your associates made from a physical standpoint in setting up the shooting you incurred the expenses of overtime shooting,—one night in Philadelphia, is that right?

A. That's right, the stagehands.

Q. There came a time when there were photographs taken in New York as well. I don't know whether you were there.

A. I knew there was, but I am sorry, I just don't have any knowledge about this.

Q. You don't recall whether there were—let me put the question to you this way. Those photographs would also have been taken after hours, would they not?

A. Well, when we were running, not rehearsing, during the day, I just don't know.

\* \* \* \* \*

Q. When did you next hear from Life Magazine about this possible coverage in Life Magazine?

A. When next after Mr. Prideaux left Philadelphia for the first time?

Q. Yes.

A. I wouldn't be able to give you an accurate answer; sometime in the next week.

Q. Do you recall whether you personally heard from Mr. Prideaux?

A. I don't recall.

Q. In other words, in some fashion, either by a call from your press representatives in New York or a direct call from Life Magazine, you were advised that they proposed to cover the play in this true-life fashion; is that right?

A. In some manner we had to set up dates that were agreeable to both sides.

Mr. Malino: I don't like his bringing into this question the press representatives. That is the first time we hear about them.

Did you hear that part of the question, Mr. Hayes?

The Witness: I heard it.

I don't know what the procedure was, really.

By Mr. Garment:

Q. It may have been either from your publicity representatives in New York or by a direct call from Life Magazine to you that you learned that Life proposed to do the article and wanted to make arrangements for another visit by certain of its representatives to determine what kind of photographs would be taken; isn't that correct?

Mr. Medina: I object to the form of the question as being in the alternative.



The Court: He has already answered that once. He said he did hear from somebody.

Mr. Medina: As long as he says he heard from somebody and we leave it that way, fine.

Q. All right, Mr. Hayes, you heard from somebody.

A. That's all I can tell you.

Q. There came a time when some other people from Life Magazine, other than Miss Ecker and Mr. Prideaux, came down to Philadelphia; is that right?

A. Correct.

Q. Who was it who came down this next time?

A. A photographer named Cornell Capa, and another young lady accompanied him.

[fol. 134] Q. Was that Miss Addison or Miss Shevlin?

A. Yes, that sounds more familiar, Shevlin.

Q. Virginia Shevlin. I believe that's the name.

A. I think so.

Q. When did she come down?

A. They came down in the afternoon or early evening of January 31st, I guess.

Q. Let me ask you this. You are about to refer to the date when she came down for photographic work.

A. Yes, I am.

Q. Wasn't there an occasion before that when the photographer and Miss Shevlin came down to see the play?

A. Yes. I don't think I saw them at that time.

Q. I see. Did you learn that they were there?

A. Yes. I think that's the reason I didn't think of it.

Q. In any event, on January 31st Mr. Capa and Miss Shevlin came down to Philadelphia to do the photographic work?

A. Correct.

Q. When was the photographic work done in the theatre?

A. The night of January 31st, as I recall. By night I mean after the performance.

Q. Do you recall whether Miss Shevlin and Mr. Capa had with them a shooting script at that time of photographs that they were to take?

A. I don't know what they worked from; I'm sorry.

Q. When did the shooting of photographs take place out at the house?

A. The following day.

Q. Who went out to the house the next day?

A. Those actors selected by Mr. Capa to go out to the house, myself, three or four other people—I don't know everyone who went.

Q. Did Life make the arrangements for the transportation of all these people?

A. Yes, all that was arranged and taken care of.

[fol. 135] Q. And the equipment out to the house?

A. Yes.

Q. Was there any discussion among yourself and Mr. Capa and Miss Shevlin as to the relationship between *The Desperate Hours* and this former incident that took place in the house?

A. No, there was not. Our discussion was limited to setting up the pictures in the proper way.

Q. Do you recall how long the photographic work at the house took on February 1st?

A. No. I think I left before the work was all over. I don't know how long they were out there over-all.

Q. But, in any event, a great number of photographs were taken?

A. Yes, that is true.

Q. At different places in the house and outside of the house?

A. Correct.

Q. Did you see Miss Shevlin and Mr. Capa before they went back to New York?

A. I don't recall whether I saw them after they left the house. I don't know.

Q. Was that the last contact that you personally had with the preparation of the Life article?

A. It was the last except for a note which I wrote from the hotel to Mr. Prideaux in the intervening time.

Q. I show you a photograph of a letter on the stationery of the Warwick Hotel, addressed to Mr. Tom Prideaux and signed "Joseph Hayes," and ask you whether that is the letter that you referred to (handing paper to witness).

A. Yes, it is.

\* \* \* \* \*

(Photostat of letter from Mr. Hayes to Mr. Prideaux, dated February 3, 1955, received in evidence as Plaintiffs' Exhibit 18.)

\* \* \* \* \*

[fol. 136]

April 10, 1962.

(Same appearances.)

(The trial was resumed pursuant to adjournment.)

JOSEPH HAYES, a witness for the plaintiff, resumed the stand and, still being under oath, testified further as follows:

Mr. Garment: Your Honor, at the close of business yesterday, I had placed in evidence a letter dated February 3, 1955 that was written by Mr. Hayes to Mr. Prideaux of Life Magazine. With your permission, I would like to read this letter.

"Mr. Tom Prideaux:

"Life Magazine

"New York, N. Y.

"Dear Tom Prideaux:

"It was a pleasure meeting you and we all enjoyed the pleasant and cooperative way that Miss Shevlin and Cornell Capa worked with us. I hope you get a great story.

"I am writing really to ask a sort of personal favor. There is such a lot of violence in the play that I am sure the

photos will be dramatic. But the play is not totally one of violence, and I am hoping that you will be able to suggest this contrast in the various moods in the total story. I am saying this with no desire whatever to dictate or influence your editorial policy, but only expressing a personal feeling that the play has also tenderness, warmth, and so forth, and that to present a full picture of it these elements should also be suggested. I am sure this is all very obvious and that you will agree.

[fol. 137] "I have just become aware fully of the new Equity rulings regarding use of actors who are photographed and also the credit line situation as dictated by Equity. I gather that this is a new ruling, and I am wondering if you and staff are fully aware of it, as I was not. Anyway, I would much appreciate your giving this your full consideration.

"Again thanks for a fine job and all best wishes, sincerely yours, Joseph Hayes."

Direct examination.

By Mr. Garment (Continued):

Q. Did you receive a reply from Mr. Prideaux?

A. Not that I recall.

Q. What was the next thing that happened in relation to the Life article so far as you were concerned?

A. Where are we exactly? We have been shot?

Q. February 3, 1955.

A. Well, the next thing was when it appeared on the stands.

The Court: Appeared where?

The Witness: On the stands.

Q. In the interim between February 3rd and February 28th you did not hear from anyone connected with Life Magazine?

A. That is right.

Q. And you did not contact anyone at Life Magazine?

A. That is correct.

Q. Very briefly, Mr. Hayes, would you tell the jury whether or not The Desperate Hours is the story of or a reenactment of the Hill episode?

A. It is not a story of and it is not a reenactment of that episode.

Q. Did anybody from Life Magazine ever ask you whether it was.

A. No, they did not.

[fol. 138] Q. Did you ever tell anyone from Life Magazine that it was?

A. I did not.

Q. Now, there has been a lot of talk in this case so far about similarities. Did anybody from Life Magazine in the course of any of the meetings you had with them discuss similarities between The Desperate Hours and the Hill incident with you?

A. No, sir. That subject did not come up.

Q. And you never told anyone of Life Magazine about any similarities?

A. I did not.

Q. Did anyone from Life Magazine ever ask you whether or not The Desperate Hours specifically was inspired by the Hill incident.

\* \* \* \* \*

A. I don't believe that the word inspired came up in our discussion.

Q. At all.

A. No.

Q. Now, Mr. Hayes, yesterday you said that in going out to the Hill house, the former Hill house, your basic concern was that the house physically would be consistent with the house or home involved in your play. Is that correct?

A. That's correct.

Q. And isn't it a fact that if the Life article were to be photographed in any other hostage home, so long as that

hostage home were physically consistent with The Desperate Hours that would have been agreeable to you?

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

The Court: If he understands it, I will permit him to answer it.

A. From my point of view, that's true.

[fol. 139] Mr. Garment: That's all I have.

The Court: You may cross-examine, Mr. Malino.

Cross examination.

By Mr. Malino:

Q. Was the Life article of February 28, 1955 an advertisement of your play The Desperate Hours?

\* \* \* \* \*

A. It was in no way an advertisement.

Q. Did you solicit it?

A. I did not.

Q. Did you pay for it?

A. I did not.

Q. Did you have anything to do with the contents of it?

A. I did not.

Q. All that you did was to allow the actors to be transported to the house and have the Life people take pictures there?

A. That is correct.

Q. And to have the Life people take pictures of scenes from your play at the theater?

A. That's correct.

Q. Is that what is known as a photo call or a picture call?

\* \* \* \* \*

A. It's known as a picture call when we have it in the theater at night. And we did have such a call, not only to accommodate Life but we also took our own pictures at the

same time so that whatever small expense was involved would be to our advantage from our point of view as distinct from Life.

Q. Did you have any expense?

A. There was an expense of stagehands.

Q. How much was that?

A. Not more than \$150.

Q. Did you ever use the Life article in any way in your advertising or publicity?

A. No, sir, I did not.

[fol. 140] Q. Did you quote from it?

A. I did not.

Q. Did you refer to it?

A. In no way.

Q. You did have advertising, though, and publicity, did you not?

A. Yes, we did.

Q. There came a time that you had printed a souvenir program; is that correct?

A. That is correct.

Q. I show you this booklet and ask you if that's the souvenir program.

A. That's right.

Q. Do you know about when that was printed?

A. This must have come out somewhere within a month and a half or two months after we opened.

Q. So it would be around the beginning of April, would you say?

A. I would say at the end of March or the beginning of April.

Q. After the Life article?

A. After the Life article, yes.

\* \* \* \* \*

(The souvenir program referred to was received in evidence as Defendant Hayes Exhibit I.)

\* \* \* \* \*

Q. In this program there was reprinted your statement that appeared in the New York Times on January 30, 1955?

A. That's correct.

Mr. Malino: Which is in evidence as Defendant's Exhibit G.

Q. And there were photographs of the actors?

A. Of the actors and the stage.

Q. And scenes from the play?

A. Yes.

Q. Were any of these photographs copies of the photographs taken by Life?

A. No. These were our own photographs.

[fol. 141] Q. And then you also had excerpts from reviews of the play?

A. Yes.

Q. How Many?

A. There were eight quotes here.

Q. Any of them from Life Magazine?

A. No, I'm sure there were none.

Q. You gave a number of interviews to newspapers and magazines, I presume. I think you testified to that.

A. Yes, I did testify to that.

Q. That was before the play was created, as a matter of fact, wasn't it—in some cases?

A. Yes, in many instances it was.

Q. And in many instances, after the play was written?

A. That's correct.

Q. In any of those interviews did you ever use or mention that name James Hill?

A. Never.

Q. Or Elizabeth Selfridge Hill?

A. No.

Q. Or the Hill family?

A. Never.

Q. Or Hill?

A. Never.



Q. You were asked by Mr. Garment about your letter to Mr. Prideaux, which is Plaintiffs' Exhibit 18. And you said you never got a reply.

A. No, I don't believe I did.

Q. Did you ever get any acknowledgment?

A. Not that I know of. I just couldn't recall that at the time I did.

Q. Did you ever get any compliance with the letter in so far as it related to the way in which you wanted your play discussed?

A. Well, I would say reluctantly that the Life piece did emphasize the violence and it was my strong feeling early in the game that the emphasis on the violence would hurt us, and such suspicion was borne out in the failure of the play. It frightened people too much.

Q. Sometimes—I don't know if it was your practice as a theatrical producer—but it is the practice, is it not, of theatrical people to blow up an advertisement or a favorable [fol. 142] review or article and put it in front of the theatre?

A. Yes, that often happens.

Q. Did you do that with the Life article?

A. No, I did not.

Q. Did you know that Life would insert an article about your play at the time they took the pictures?

A. Well, I wasn't certain that they would.

Q. Did you know whether they would do it?

A. No, I had no idea.

Q. You said you found it out when you saw it at the newsstands. That's what you testified to before; is that correct?

A. That's correct.

Q. The article speaks for itself, but did it mention the name of the theatre in which the play was being shown?

A. I am sure it didn't.

Mr. Malino: That's all.

Cross examination.

By Mr. Medina:

Q. You testified previously in this action, didn't you, Mr. Hayes?

A. Yes, I have.

Q. And your deposition was taken on July 30, 1957, wasn't it?

A. That's correct.

Q. And your testimony then was consistent with the way you testified yesterday and today, wasn't it?

A. I think so, yes, sir.

Q. I show you Plaintiffs' Exhibit 10 and call your attention to the headline "True Crime Inspires Tense Play." Is that correct or incorrect?

A. I would have to say that that is certainly correct, that true crime did inspire my play.

Q. You used the expression "triggered" yesterday. What was it that triggered your novel?

The Court: Triggered your what?

Mr. Medina: "Your novel."

[fol. 143] A. Well, I testified in a very complex manner yesterday as to how a book is written, and if you will bear with me I will try to be equally complex in my answer now.

All of the elements that entered in yesterday were certainly a very important part of the creation of this story. Now, while I was writing this story, as I said, I did not have before me all of the slips and all of this information. I did have in mind various cases in a rough sort of memory way. I wrote the book. Now, since this action has been commenced, I have gone back and attention has been called to the various articles on the James Hill case in Philadelphia, which I had never seen. There are, of course, many similarities—

Mr. Garment: I object to this now. We are talking about what triggered him and not about a comparison of similari-

ties that he didn't see at the time of the writing of his novel.

The Court: I am going to sustain the objection.

In other words, just explain what you meant when you used the term "triggered."

A. (Continuing) I would think that this crime coming at this time, without my being completely aware of it, certainly triggered the writing of the book.

Q. I show you Exhibit B for identification, which is the New York Times for September 13, 1952, and call your attention to the article at the bottom of page 1.

Q. You had seen that article at or about the time it came out, had you not?

A. Yes, sir, I had.

\* \* \* \* \*

(The two photostats of pages of the New York Times for September 13, 1952, previously marked as Defendants' [fol. 144] Exhibit B for identification were now received in evidence as Defendants' Exhibit B.)

Mr. Medina: With your Honor's permission this is the New York Times of September 13, 1952 and the article starts at the bottom of the front page and runs over to the second page with a photograph taken of some of the children.

The headline is: "Three Escaped Convicts Seize Family, Hold Home 19 Hours to Elude Hunt.

"Hamburg, Pennsylvania, September 12th. The police mobilized Pennsylvania's biggest manhunt in years today against three shotgun-toting jail breakers who held a family captive in its home for 19 hours, then sped 65 miles to rob a roadside diner and a little later raced past a police roadblock on the main highway to New York. Hundreds of state and local officers and a hoard of agents of the Federal Bureau of Investigation joined in the search. They were cautioned by F. B. I. circulars that the convicted bank robbers were 'desperate and vicious.' The hunted men were

carrying shotguns and seven boxes of ammunition stolen from a sporting goods store in West Reading, Pennsylvania 24 hours after they had fled the Federal Penitentiary at Lewisburg in the foggy pre-dawn hours of Wednesday. In the next 48 hours of freedom they ranged 120 miles east, almost to Philadelphia, stole at least three cars and stabbed a private duty policeman who they feared had become suspicious.

"The police working on the case said it was not unlikely that the trio had decided to hole up again possibly [fol. 145] by capturing another family and taking refuge in its home. The fugitives are two brothers from Harlan County, Kentucky, Joseph Wayne Nolen, 26 years old, and Ballard French Nolen, 22, and Elmer Schuer, 21, of Chicago. The Nolen brothers were serving 25-year terms for a bank robbery in Cincinnati, in 1950. Schuer, a slender young man who had the word lucky tattooed over a horseshoe on his right arm and the motto 'Death or glory' over a dagger on his left arm, was serving 13 years for the 1950 robbery of a Chicago bank.

"The most sensational of the fugitives' escapades came together at about 5:00 A. M. Two men with shotguns walked into the Donald Heckman Diner on Route 22 in this quiet borough 35 miles north of Harrisburg. They lined up two employees and four patrons, scooped \$135 from the cash drawer and about \$105 more from the customers' wallets and quietly walked away, warning the six to lie on the floor. A third man was waiting in the getaway car which raced northeast toward Allentown on the main Harrisburg-New York route.

"45 minutes later the police, manning a roadblock near Allentown, saw a two-tone Pontiac sedan pass by and the search swung north to that area. Hours later James J. Hill, the sales manager of a hosiery plant at Lansdale, near Philadelphia, walked to a neighbor's home and telephoned the police that he, his wife and five children had been held captive by the fugitives at gunpoint for 19 hours in their home.

“Mr. Hill, who lives in the well-to-do Whitemarsh suburban area just north of Philadelphia, said the men had appeared at his home early today, had marched in and had told Mrs. Hill, alone at the time with three young sons, that they would not be hurt if no effort was made to inform the police. They were hungry, the men said and they needed rest. Through the day they took turns, two sleeping while the third stood guard. They ate several meals.

“As Mr. Hill and his two daughters returned from school and work, they, like the rest of the family were held prisoner. The fugitives were ‘perfect gentlemen,’ Mrs. Hill told the police. ‘They even apologized for interrupting the conversation,’ she said, and they seemed to amuse themselves by pointing shotguns at pictures on the wall and telling the boys, one 11 and the four-year old twins, that they wanted to ‘improve their aim.’

“Awakened at 3:30 a.m. Last night the Hill family went to a single room. At 3:30 a.m. they were aroused by the fugitives, who said they were leaving. They added that they had ripped out the telephone wires and warned Mr. Hill not to notify the police before 8 o’clock. He complied. He said none of his family had been harmed during the ordeal. The fugitives took some of Mr. Hill’s clothing and his car, a two-tone Pontiac sedan similar to the one that brushed by the Route 22 road block later after the robbery at the diner.

“The jail break Wednesday was the first at the Lewisburg Penitentiary in sixteen years. The three men climbed a thirty-foot wall by improvising ladders. A little later they stabbed a campus guard, Raymond Duir, at nearby Bucknell University, when he refused to drive them away in his [fol. 147] car. He was not injured seriously. Then the trio captured a salesman at the point of a knife, forced him to drive to a sporting goods store they intended to rob, then sped away in the car when the salesman ran away from them. That car was later found abandoned in Harrisburg. Another car was stolen there and it was recovered today in Hamburg after the diner robbery.”

And then this photograph with the caption "Pennsylvania family held captive nineteen hours by convicts."

It shows a photograph, I assume, of the Hill home with the children and it says, "Four children of Mr. and Mrs. James J. Hill on lawn of their home in a Philadelphia suburb after they and the three other members of the family were held prisoners. The convicts got away from the Federal Prison at Lewisburg on Wednesday and hid in the house until early Friday, taking turns sleeping while one guarded the family."

By Mr. Medina:

Q. You will note that it says that the convicts left at 3:30 in the morning, Mr. Hayes; and if you subtract nineteen hours from 3:00 in the morning you reach the conclusion that they arrived at 8:30 in the morning, do you not?

A. Correct.

Q. Back in December 1946 in a Woman's Home Companion article that you wrote, in that article the son was not actually held hostage, was he?

A. No, sir; the hero believed he was all the way through the story, and so did the audience—until the end.

Q. But thereafter you were on the lookout for clippings concerning hostage stories?

A. Yes, I was.

[fol. 148] Q. And you were aware, amongst other things, of the Snyder case in New York, which took place in June 1952, were you not?

A. Well, I am aware of it by name now. I wasn't at the time.

Q. I show you this paper. See if it will refresh your recollection that that took place on June 11, 1952 (handing paper to witness).

A. That's right.

Q. And the Snyder case was the case of a single convict who held a woman and her daughter prisoner or hostage; is that correct?

A. That is correct.

Q. And the daughter was killed?

A. That is correct.

Q. At that time you lived in Danbury, Connecticut?

A. In a town called Brookfield. It's just north of Danbury.

Q. And were you aware that the Hill family moved to Old Greenwich, Connecticut on November 24, 1952?

A. No, sir, I was not.

Q. In any event, in December 1952 you went down to Florida because of the illness of your child?

A. That's correct.

Q. And you wrote The Desperate Hours novel in Florida?

A. That is correct.

Q. Except for what occurred in that house, is there anything in the novel that did not come from the New York Times article of September 13, 1952?

Mr. Garment: Except for what occurred in the house?

Mr. Medina: Yes, sir.

A. Are you asking me—I want this clear—

The Court: If the question isn't clear, you may ask to have it cleared.

The Witness: That's what I would like.

[fol. 149] A. (continuing) Would you clear up the question? I don't quite understand. Except what happened in the house in my book?

Q. Yes, sir.

The Court: Let me hear the question.

The Witness: I would like to hear it, too.

(The reporter read the pending question.)

The Court: When you say in the house, do you mean in the Hill house or in the house in the play?

Mr. Medina: Both houses.

Mr. Malino: I object to that on the ground that there is no basis that has been laid that Mr. Hayes knew what happened in the Hill house other than what was in the Times article.

The Court: Objection sustained.

I think the question should be rephrased.

By Mr. Medina:

Q. The play opens with a scene with state and local police and FBI agents working on the case, does it not?

A. Well, except the FBI has not come into yet.

Q. But the FBI comes in very soon thereafter?

A. That's right.

Q. And the New York Times article opens up with the statement that local and state police and FBI agents are working on the case, does it not?

A. That is true.

Q. And the location was a suburban home and the time was in the fall, was it not?

A. That's correct.

Q. And the same was true of the Hill case, was it not?

A. Yes.

[fol. 150] Q. And the father and mother were in their forties in your novel, were they not?

A. That would be true.

Q. And, likewise, the Hills were in their forties?

A. True.

Q. And there was a late 'teen-age daughter in your story, was there not?

A. Yes, sir, there was.

Q. And there was a late 'teen-age daughter in the Hill family, was there not?

A. I didn't know that. I wasn't aware of that at the time. Apparently there was.

Q. Well, there was a picture of a late 'teen-age daughter right in the New York Times, on page 32, was there not?



A. That is true. There are also four other children in that picture.

Q. You had an 11-year-old boy in your play, didn't you?

A. That's correct.

Q. And the Hill family had an 11-year-old boy, did they not?

A. If you say so—

Mr. Garment: Wait a minute. One or the other is ten years old.

The Witness: I beg your pardon?

Mr. Garment: How old is the boy in the play?

The Witness: I don't remember.

Mr. Garment: Mr. Medina made a careful study of this.

You represent that the age of the boy in the play is 11 years old?

Mr. Medina: He was ten in the play and eleven in the Hill family.

By Mr. Medina:

Q. Do we agree on that?

A. If you tell me about the Hill family I will agree on the play.

[fol. 151] Mr. Garment: That isn't what he said at first. Let the record show that.

The Court: At any rate the question is now he was ten in the play and eleven in the Hill family.

Is that correct?

The Witness: That is probably correct, but I don't know what he was in the Hill family—at that point.

Q. Don't you remember the newspaper article said the boy was eleven?

A. I don't remember at this point. I will take your word that the boy was eleven.

Q. But you didn't have the four-year-old twins in your play, did you?

A. No, sir.

Q. And you had three convicts in your play, didn't you?

A. That is correct.

Q. There were three convicts in the Hill incident?

A. Correct.

Q. Two of the convicts were brothers in your play?

A. Very true.

Q. And two were brothers in the Hill incident?

A. Very true.

Q. And the name of the family in your play was Hilliard, was it not?

A. It was.

Q. Your play opens up at 8:30 A. M. on a fall morning, does it not?

A. Yes, it does.

\* \* \* \* \*

Q. And in your play, the convicts captured the father and the daughter when they returned from work, did they not?

A. That is correct.

Q. And the same was true of the Hill family incident, was it not?

A. Yes, sir.

[fol. 152] Q. And the family was not harmed either in the Hill incident or in your play; is that not correct?

A. They were not harmed.

Q. Do you know of any other actual incident in the slightest degree resembling The Desperate Hours other than the hostage theme?

\* \* \* \* \*

A. Other than the hostage theme certainly there are other cases. We discussed this at length yesterday—various other cases that involved captive homes. The hostage theme was part of the book and was not part of the Hill family. The hostage theme was in other cases. I can't answer this yes or no. I don't quite understand the question.

\* \* \* \* \*

The Court: I am afraid I don't understand the question either. Perhaps you ought to rephrase it, Mr. Medina.

Q. I thought you told us yesterday that there were numerous and many other hostage, actual hostage incidents that you knew about.

A. I tried, Mr. Medina, to make clear that there is a distinction between prisoner and hostage, and this is the reason I am confused by this. If this is based on my distinction I made yesterday, then I am confused by the question.

Q. You weren't confused yesterday when you talked about numerous hostage incidents, were you?

A. I do not consider the Hill incident a hostage incident, and that's the reason we are in trouble here. It's a matter of semantics. If we can clear it up I am sure we will—

Q. Do you remember that Mr. Garment asked you about numerous other instances which you read about in the newspapers?

A. Yes.

[fol. 153] Q. What kind of incidents were those?

A. We went over those yesterday. There was one in California—do you want me to go over the stories?

The Court: What kind of incidents were they?

The Witness: The invasion of a home by three men in California.

Q. Isn't it a fact that there were only five prior actual incidents that you ever testified to in your life, not numerous?

A. Well, now, I would have to count them up. It may be five.

Q. Go ahead. Take your time.

A. But I certainly told you that I did not keep my records, and I do not know how many. Over the years I kept a number of them and I wrote the book a long time ago.

Q. Don't you know there were only five that you ever testified to before at any time?

A. There may have been five that I testified to many years after writing the book. That may be true.

Q. Is that numerous?

A. Five would not be numerous, no, sir.

Q. So that when you testified yesterday as to numerous incidents you were incorrect, were you not?

A. I was not. I am still convinced there were numerous incidents.

Q. Can you tell us about more than five of them?

A. No, sir. At this stage of my life I cannot. This was a long time ago.

Q. You couldn't in 1957, either, when you testified then, could you?

A. 1957 was four years after I wrote the book.

Q. But you didn't tell us of any more than five at that time, did you?

A. No, sir. I had thrown away my clippings and I did not have all those clippings.

[fol. 154] Q. And you signed your deposition in 1959, did you not?

A. Yes, sir. You have the record. I suppose I did.

Q. And you didn't add the new incidents to it when you signed, did you?

A. No, sir, I didn't make any such attempt.

Q. Now, one of those five instances is the Snyder case in New York, in June 1952; is that not correct?

A. That's correct.

Q. And there a woman and her daughter were held by a single convict?

A. Correct.

Q. And the daughter was killed?

A. Correct.

Q. And you have a clipping on that, haven't you?

A. Yes, sir. I did have a clipping on that, apparently.

The Court: Wait a minute. Let's get this straight. The question is "And you have a clipping on it."

The Witness: No, had a clipping.

Q. Well, your counsel produced a clipping from your file regarding the Snyder case, did he not?

A. May I explain about this file?

Mr. Malino: Just answer the question.

A. Yes, he did.

Q. Now, the next incident was a Detroit incident, was it not?

A. Yes, sir, I mentioned a Detroit incident.

Q. And there a girl was driven around in an automobile?

A. That's true.

Q. Now, the next was this Ohio incident you have mentioned. Is that not correct?

A. I mentioned that.

Q. And there you said there were three convicts and a family in their home and the family was shot.

[fol. 155] A. I am not sure I said three convicts. Three men came into a home, that is true. I am not sure whether they were convicts—at this late date.

Q. And the family was shot?

A. Yes.

Q. Have you got any clippings or any piece of paper whatsoever to show that that actually ever occurred or was ever reported in any newspaper?

A. I don't have in my possession, but I would venture to say I could obtain that, because that was printed in a book.

Q. But you haven't produced it up to now, have you?

A. No, sir. I haven't kept all that.

Q. You haven't got a single scrap of paper to show that that ever took place or was ever written about anywhere, do you?

A. No, sir. When I write a book I don't anticipate having to prove that I am telling the truth.

Q. Now, the next incident is that California incident of the three convicts who accosted a car in the desert and went in the car to the man's home; is that not correct?

A. Yes, that is the California incident.

Q. When did that take place and when did you read about that?

A. I cannot give you that information. I don't know.

Q. Have you got any piece of paper to show that that was ever reported in any newspaper at any time?

A. I have no proof that I can produce on my own. However, the New Yorker Magazine spent three pages describing my play as a reenactment of that.

Q. Have you any piece of paper dated prior to the time that you wrote your novel which shows that California incident of which you have testified?

A. No, sir, I do not.

Q. The next incident was the Hill case, wasn't it, in Philadelphia?

A. The next incident after the Snyder case.

[fol. 156] Q. The Hill case.

A. Yes.

Q. So if you take the Hill case and the Snyder case, which is the little girl that was killed, and the Detroit case, with the girl driven around in an automobile, and the Ohio case, with the three convicts and the family shot, which you have no clippings on, and the California incident, with the three convicts in the car, those are the only incidents of which you had knowledge specifically at the time you wrote your play?

Mr. Malino: Just a minute. By incidents you mean reported in newspapers, right?

Mr. Medina: Yes, sir.

A. Those are the only incidents that I can now substantiate. I certainly can't go back over the history of the writing of this book and give you all of the incidents that might have entered into it, no, sir.

Q. Well, you couldn't give us any other incidents back in July 1957, when we examined you, could you?

A. No, sir, I wasn't prepared to do that. My files had been destroyed.

Q. And at that time you told us you knew of no other specific incident, didn't you?

A. I told you I couldn't recall at that time any other specific incidents.

Q. As a matter of fact, it was you yourself that created the idea that *The Desperate Hours* was based on the Hill incident, was it not?

Mr. Malino: I object to that.  
When?

Mr. Medina: Prior to the *Life* article.

\* \* \* \* \*

[fol. 157] A. No, sir, it was not.

Q. You signed your contract with Random House for the publication of the novel back in 1953, did you not?

A. That is true.

Q. And the Literary Guild, in July of 1953, bought the novel and scheduled it to come out in March of 1954?

A. That's true.

Q. And at the behest of the Literary Guild you drew up a little description of how you had come to write it, which appeared in the publication of the Literary Guild called "Wings" in March 1954, didn't you?

A. That is correct.

Q. Is this a copy of that publication as produced from your files (handing paper to witness)?

A. Yes, it is.

Q. When did you write that, in 1953?

A. I would think this was written in the fall of 1953. That would be my best recollection.

\* \* \* \* \*

(Two-page photostatic copy of "Wings" for March 1954 received in evidence of Defendant Time's Exhibit J.)

Mr. Medina: With your Honor's permission, this is the publication of the Literary Guild dated March 1954. It says:

“ABOUT The Desperate Hours.

“BY JOSEPH HAYES.

“From the top of our hill in Connecticut—Obtuse Hill, the highway marker reads—it is possible to see, at night, far off across a lake, the circle of lights that is the ‘Federal [fol. 158] Correctional Institution of Danbury. Bright as a carnival, sinister as a gun, they catch the imagination, hold it in pity, or horror or simple curiosity. Not as an author but as a husband and father, I have sometimes found myself asking the silent question: ‘What if—?’ The lights are not far away. ‘What if there were a prison break and one or more of those desperate men escaped in this direction?’

“Then, over a year ago, the newspapers carried accounts of two incidents, both front-page stories. These had no relationship to me, to my life with my lovely red-haired wife and my two lively red-headed sons. One described an occurrence in New York State, not far away. An escaped convict had forced his way into a home, held a woman and her small daughter at knife-point until the police closed in; in the subsequent and inevitable violence, while attempting to escape, the man had stabbed the child to death. Shortly after this, or perhaps a month or two before, three men escaped from a prison even further away from my secure and comfortable home. Holding a family hostage, they hid there, eating and sleeping and then left, without violence, without the inevitable bloodshed. Newspaper readers all over the country breathed relief, felt the chill leave them. But an astonishment lingered. These were vicious and frightened men. How fortunate that family had been! Then, like myself, how many readers ask themselves quietly: What if—?

“That question, the one which creates all stories, held me in its grip. Not only as a husband and father who could glimpse, between the cold black lines of newsprint, the fear [fol. 159] and horror that the innocent people involved in both cases must have experienced—but this time as a writer, too, I asked: ‘What if—?’



“Out of this conjecture grew the incidents and suspense of my story—and the characters.”

By Mr. Medina:

Q. The two incidents mentioned in that exhibit were the Snyder case and the Hill case; were they not?

A. That is correct.

Q. Of course at the time your novel came out you were keeping pretty close track of book reviews that were written about it and matters of that description; were you not?

A. Yes, sir.

Q. And did you have a clipping service on those reviews?

A. I think I did.

Q. I show you Exhibit 6, being a clipping from the Philadelphia Inquirer of February 21, 1954, and ask you if you saw that?

A. I don't recall ever reading that before, but I may have.

Q. Don't you recall having seen this review which read: “In this tense, compactly built tale of terror Philadelphia readers will recognize a slice of real life out of the fairly recent past.”?

A. I may have read it. I don't recall now. I received papers from all over the country.

Q. Did you ever protest to anybody about a story of that character?

A. No, sir, I did not.

Q. And, then, in the summer of 1954 you wrote the play?

A. Yes, sir.

Q. And in the fall of 1954 you were on the train going home and you saw Bradley Smith.

A. Yes, sir.

Q. And didn't Smith ask whether there was a similar case in Philadelphia and you replied that one of the cases [fol. 160] occurred in Philadelphia?

A. That's correct. I testified to that.

Q. And then in January 1955 you received a telephone call from Mr. Prideaux; is that correct?

A. That is correct.

Q. And did he say, isn't it true that a case somewhat similar to the story you were telling had occurred in Philadelphia, and you said yes?

A. I did.

Q. And you never discussed the matter of connection between the Hill incident and your play or novel again with the Life people, did you?

A. I did not.

Q. You did see Mr. Prideaux and Miss Ecker in Philadelphia on January 17, 1955?

A. Yes, sir, I did.

Q. You did go out with them to the house?

A. That's true.

Q. You made arrangements for the Hill house, didn't you?

A. At the suggestion of Mr. Prideaux I certainly did.

Q. And you saw Mr. Capa and Virginia Shevlin in Philadelphia on January 27, 1955?

A. I don't recall that. I said I do not recall their coming down previous to the shooting, but I am sure they did, and I am sure I did meet them.

Q. Now, at or about that time you wrote an article for the New York Times, didn't you?

A. That is correct.

Q. And that's Defendant Hayes' Exhibit G. You saw the title of that article, "Fiction Out Of Fact"?

A. Yes, sir, I did.

Q. And the title on the second page, "Transforming Fact Into Fiction"?

A. Yes. That was called to my attention the other day. Yes, I did.

Q. When you came to write this article, instead of there being two incidents there were four incidents, weren't there?

A. I don't know if I named the four. I suppose I did.

[fol. 161] Q. Well, didn't you say the novel and the play version of it was based on various news stories— "In California, in New York State, in Detroit, in Philadelphia,

frightened and dangerous men entered houses, and held families captive in their own homes. These were headline stories soon forgotten.”

A. That's right. That's exactly what I said.

Q. And the New York State was the Snyder case?

A. That would be the Snyder case.

Q. That was where the little girl was killed?

A. Yes.

Q. And the Detroit case was the case of the girl being taken around in an automobile?

A. Yes.

Q. And the Philadelphia case is the Hill case?

A. That's right.

Q. And the California case is the one where they picked up the car in the desert, which you haven't got any pieces of paper to show whether it ever happened, isn't it?

A. Something just occurred to me that I think will substantiate the California case, if you would like to hear.

Q. Can't you tell me if you have any pieces of paper to substantiate it?

A. No, I have no pieces.

\* \* \* \* \*

A. (continuing) I have no pieces of paper to substantiate, nothing that I have written. There is the New Yorker Magazine.

Q. I beg your pardon. There is no piece of paper prior to your writing your novel or play that substantiates that story of yours; is that right?

A. No, sir.

Q. And yet when you wrote this article, Exhibit G, instead of there being two incidents, you now had increased the number to four, hadn't you?

A. Yes, sir, because I didn't expect to be questioned on a thing like that.

[fol. 162] Q. And, of course, when you were down in Philadelphia and the play was running, you were looking at the local reviews of the play, weren't you?

A. Yes, sir, I saw those.

\* \* \* \* \*

(Photostatic copy of a page from the Philadelphia Inquirer for January 13, 1955 was marked as Defendant Time's Exhibit K for identification.)

Q. Do you recall seeing that review of your play in Philadelphia (handing Defendant's Exhibit K for identification to the witness)?

A. I am sure I read it. I don't recall the specific review.

\* \* \* \* \*

(The photostat of the page from the Philadelphia Inquirer for January 13, 1955, previously marked as Defendant Time's Exhibit K for identification was now received in evidence as Defendant Time's Exhibit K.)

Mr. Medina: Ladies and gentlemen, this is a review. It says:

"Locust offers Thriller in 'Desperate Hours.'"

I am just going to read one line. "This is the story based on an actual incident of the three-day terror of a family by three escaped convicts who invaded the home to wait for funds, first, to accomplish a vengeful scheme on the part of the gang leader and, second, to assure their getaway."

By Mr. Medina:

Q. When you saw this review which said that your play was based on an actual incident, did you get in touch with [fol. 163] the Philadelphia Inquirer and tell them they were wrong?

A. No, sir, I did not. I have no control over what news media print.

Q. But you never said anything to anybody about that, did you?

A. I did not.

Q. You did see the issue of Life for February 28, 1955, Plaintiff's Exhibit 10?

A. I did.

Q. And did you get in touch with Life at any time thereafter and tell them they were wrong?

A. No, sir, I did not.

Q. You expected coverage of the play due to its intrinsic quality, didn't you?

A. Yes, sir, I did.

Q. And, incidentally, this practice whereby if some news medium wants to take photographs of the actors of a play and you pay the actors' salaries during the time of the taking of those photographs, that is a customary procedure with regard to requests by any news medium; is that not correct?

A. It is a rather complicated question, because the actors are not normally paid. There is one photo call per production allowed, a three-hour minimum call, in which there is no extra money involved.

Q. And the reason for that photo call is for use in connection with any pictures you need in connection with that play?

A. Correct.

Q. And whether it was Life or the New York Times or any news medium who might request such photographs you would be glad to supply the actors for that purpose. Is that not correct?

A. We tried to limit it to one call so we can get our own photographs at the same time; that's true.

Q. And at this one call you get as many people taking pictures as you can?

A. Certainly.

Q. And hope that if your play has an intrinsic quality that it will be reviewed and put in the newspaper or magazine?

A. That is correct.

[fol. 164] Q. You knew at the time that your deposition was taken in July of 1957 that the complaint these plaintiffs then had in this action, which was verified July 3, 1956, claimed that your play invaded the Hill family privacy, did you not?

A. Yes, that's what they claimed.

Q. And that was the claim at that time, that your play was based on their story, wasn't it?

A. Yes, sir.

I think they went even further than that.

Q. And that was before they changed their claim to say that the play was not based on their story?

A. That's true.

Q. And even at that time you affirmed the correctness of the statement "Later they read about it in Joseph Hayes' novel, The Desperate Hours, inspired by the family's experience," did you not?

A. What did I do relative to that statement?

Q. Affirmed the correctness of that?

A. Yes, sir, I did.

Q. What is The Desperate Hours Company?

A. The Desperate Hours Company is a limited partnership composed of Mr. Erskine, myself and sixty-three investors, limited partners.

Q. Known as Broadway angels?

A. The sixty-three are known as angels, I guess.

Mr. Medina: That's all.

Redirect examination.

By Mr. Garment:

Q. Mr. Hayes, at the outset of your examination by Mr. Medina, he asked you whether the headline "True Crime Inspires Tense Play" was correct or incorrect, and you stated that it was correct.

A. Yes, sir. I think that there is a great distinction between inspires and based.

[fol. 165] Q. The distinction that you draw between inspires and based is that based would suggest that it was more closely connected, whereas inspiration indicates something that stimulates somebody to do something?

A. That's correct.

Q. In the first place, what do you understand—or what did you understand when you read this article—and when this question was put to you—as to the “True Crime” that was referred to as being the inspiration for *The Desperate Hours*?

\* \* \* \* \*

A. In yesterday’s testimony, I think I testified that various cases inspired this book. This is a true crime and it did inspire this book in that sense.

Q. You mean a great number of true crimes inspired the book.

A. I would think so, yes.

Q. Along with a number of other factors and elements that we talked about at some length yesterday.

A. True.

\* \* \* \* \*

Q. In any event, Mr. Hayes, it’s perfectly clear, is it not, that the Hill incident was not the sole inspiration for *The Desperate Hours*?

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

The Court: I will permit it.

The objection is overruled.

The Witness: Would you read it, please?

(The reporter read the pending question.)

A. That’s true.

Q. The article goes on, does it not, Mr. Hayes, from stating that “True Crime Inspires Tense Play” to state that “The ordeal of a family trapped by convicts gives Broadway [fol. 166] way a new thriller, ‘The Desperate Hours.’” Now, is that statement accurate?

A. In my pre-trial testimony you will recall that I said that I did not think that was accurate in the sense that I thought it was the writing of the play, the production of the play that gave the play to run on Broadway for a short time. Certainly it was the writing and the production that gave it, not the true incident. And so I argued with it on that level.

Q. Well, Mr. Hayes, was the writing of *The Desperate Hours* any more inspired by the Hill incident than it was inspired by any of these other incidents?

A. Well, I can only answer that consciously at the time it was not. But since that time and since I have found out more about the Hill incident, unconsciously the occurrences of the various things that happened must have been in my mind relative to the Hill incident, and because of its truth, I would think that the Hill incident—unconsciously—triggered the book in a very direct way.

Q. But you didn't tell anybody from *Life Magazine* that or anything like that in connection with the preparation of the *Life* article?

A. No, sir, I did not.

Q. When did you tell them that?

A. I have never told them that.

Q. Have you had any discussion with them in the last 48 hours with reference to your testimony?

A. No, sir, not relative to anything I have testified to.

Q. Well, did you have any discussion with them?

A. Yes, sir, I did.

Q. When was that?

A. In the corridor, just a few minutes ago.

Q. Anything before that?

A. No, sir.

Q. When were these other articles brought to your attention?

A. Which other articles?

[fol. 167] The other articles referring to the Hill incident.

A. The expansion of it?

Q. Yes.

A. They were brought to my attention within the last two weeks.

Q. Was that done by your own counsel?

A. That's right.

Q. Were you here in New York during that period?

A. Yes, sir.

Q. Did you have any recollection of any of those other news articles at the time of the discussions with the *Life* people?



A. No, sir, I didn't.

Q. No, there are other incidents that you testified yesterday took place and came to your attention over the years.

A. Both before and since.

Q. Of course those clippings haven't been brought to your attention.

A. No, sir.

\* \* \* \* \*

Q. Well, even on the basis of your general recollection of these other incidents, Mr. Hayes, they involved, did they not, the basic theme of a family held hostage by criminals or convicts? Isn't that correct?

Mr. Medina: I don't understand the question, your Honor. I don't see how the witness can.

The Court: Read it.

(The reporter read the pending question.)

A. They dealt with that theme, if you use the word prisoner as opposed to hostage. The hostage was my fictionalization of the situation.

\* \* \* \* \*

[fol. 168] Q. Is there any question, Mr. Hayes, but that The Desperate Hours is a work of fiction?

A. None whatever.

\* \* \* \* \*

Q. Mr. Hayes, to shorten this, would you look at some of these photostats of newspaper articles during the period from 1947 through 1950 or 1951 and tell us whether you recall having seen any of these articles or any articles about those incidents? (Handing papers to witness)

\* \* \* \* \*

A. I do recall this one, but I am not sure that I recall it previous or post my writing. I have read that story.

This one I have never seen. To my best knowledge now, I don't remember that at all.

I don't know whether I read this one or not, but this has been used also in the novel, and I may have read the book. And this is the same case.

The Court: Put the ones on the side that you have read.

A. (Continuing) All I can say is this sounds familiar. I couldn't do any better than that.

Q. What would be your best recollection?

A. I think I have read this. I read an awful lot of these things.

The Court: We will take a recess at this point.

(A short recess was then taken.)

JOSEPH HAYES, resumed.

Redirect examination.

By Mr. Garment (Continued):

Q. Mr. Hayes, during the recess did you have an opportunity to look through a number of photographs of [fol. 169] newspaper articles that I showed to you?

A. Yes, sir. I didn't read them thoroughly, I glanced over them.

Q. From that collection did you select those which you recalled having seen?

A. Yes, sir, I did.

Mr. Garment: I would now like to offer these in evidence, your Honor.

Mr. Medina: The witness testified he saw them before he wrote the novel.

Mr. Garment: I will put that question.

Q. Do you recall you saw those before you wrote the novel?

A. No, sir, I couldn't say exactly when I saw them, I just wouldn't know. These I have seen. I didn't look at the dates of these papers.

Q. I will ask you to look at the dates on the papers, Mr. Hayes, starting with the first one in 1947. Would you have seen that at or about the date?

A. I would assume that I saw it previously, but it would just be my assumption.

Q. Mr. Hayes, are these articles you saw and as to which you took clippings during the period prior to the writing of *The Desperate Hours*?

A. These may have been and they may not have been. I couldn't give you that answer because that file has been destroyed.

Q. What is your best recollection?

Mr. Medina: He has already said he does not know.

Mr. Garment: I am entitled to have his best recollection.

The Court: Yes.

Mr. Medina: You are not entitled to have a guess.

[fol. 170] A. My best recollection will be based on the assumption of the dates of these papers.

Q. Yes.

A. On that assumption I would say I probably read those that are dated that way, if they are so dated. I didn't look at the dates. My idea in glancing over them was to see whether I had ever read them before.

Q. I tell you, Mr. Hayes, all of those are prior to the year 1953.

A. Then it would be my assumption I read them prior. I didn't read these in these papers. I probably read AP squibs and smaller stories.

Q. These are all United Press, Associated Press releases?

A. I don't know that.

Mr. Medina: One moment. I don't want you testifying to what is in those papers. They speak for themselves.

The Court: He says he recalls having read those articles, perhaps not the same ones in those papers.

The Witness: Correct.

The Court: But having read about those incidents, you say it is your best recollection that it was about the date

which appears on those papers, which is before the writing of The Desperate Hours?

The Witness: That would be my assumption, that those dates coincide with that time.

Mr. Garment: I would offer these in evidence, your Honor, in chronological order.

Mr. Medina: I would like to have some preliminary voir dire with regard to these.

By Mr. Medina:

Q. Did you take the Chicago Daily Tribune?

A. No, sir, I did not.

[fol. 171] Q. Or the Detroit News?

A. No, sir, I did not.

Q. Or the Philadelphia Inquirer?

A. No, sir.

Q. When if ever have you seen any of those papers?

A. I don't hear your question.

Q. When if ever have you seen any of those papers?

A. I have seen all of those papers in times when I was in those cities or near those cities.

Q. Were you in Chicago in 1952?

The Court: Just a minute. When you say you have seen those papers, you don't mean those editions counsel has?

The Witness: No.

The Court: But did you see those newspapers, not those particular ones? His testimony is, as I understand it, that he recalls these incidents from having read them somewhere, but not specifically in the papers which are now before him.

Isn't that your answer?

The Witness: That is correct.

Mr. Medina: Then I object to these specific papers.

\* \* \* \* \*

(Copies of seven newspapers marked Plaintiffs' Exhibit 19 for identification.)

By Mr. Garment:

Q. Do you recall generally, Mr. Hayes, that prior to the writing of *The Desperate Hours* you read some clipping in a local newspaper, wherever you were then located, referring to a family held captive by three criminals, two of [fol. 172] whom were brothers named Bistrom, and a third named Allen Hartman?

A. When I read that I did recall.

Q. And the family came out of that incident unharmed in the sense of any permanent injury or physical injury?

A. Yes, sir.

Q. Do you recall again, generally, Mr. Hayes, that prior to the writing of *The Desperate Hours* you read some news account in a local newspaper, in or about the year 1951, about two brothers named Battershaw and a third criminal named Victor Sweet, who held a family captive in Omaha?

A. Yes, sir, when I read that paper I recall it.

Q. One of the Battershaw brothers, along with the criminal named Sweet, escaped from prison with the assistance of the other Battershaw brother?

A. Correct.

Q. Do you recall generally that the family involved in that episode came out of it physically unharmed?

A. I didn't finish the story, but I gathered, yes.

Q. Do you recall that in your direct testimony, and in the course of your cross-examination by Mr. Medina, reference was made to some news article about an assault on a girl who had been driving around in an automobile, and Mr. Medina asked you whether you saw any news clippings of that?

A. I do recall.

Q. Do you recall now having seen a newspaper account of that incident that took place in Wisconsin in or about the year 1947?

A. Yes, I do.

Q. And as part of that incident there was also a holding of a family captive by these criminals after the girl had been assaulted?

A. Correct.

Q. Do you recall that?

Mr. Malino: I didn't hear the answer.

The Witness: Correct.

[fol. 173] Q. You recall, Mr. Hayes, having read about an incident in Pennsylvania during the month of December, 1952—that is after the Hill incident—in which a family was held captive by five escaped convicts?

A. Yes, sir, when I read it I realized that I had.

The Court: What was your answer?

The Witness: Yes.

Q. Do you recall further that that family came out of that captive incident unharmed?

A. I don't recall that, but it must be true. I didn't read that whole story.

Q. Do you recall generally there were other incidents that you read about involving families held captive during these years?

A. Yes, sir, I have so testified, many times.

Q. Mr. Hayes, you had this questioning by Mr. Medina about various articles that you wrote, in which you sometimes referred to a family, two families held captive, four families held captive; do you recall that questioning?

A. Yes, I do.

Q. These articles you wrote were publicity articles to create interest in *The Desperate Hours*, and also to present your view of *The Desperate Hours* to the reading and theatre-going public; isn't that correct?

A. That was their function, yes.

Q. There wasn't any particular magic, was there, in referring to two families, or four families, or six families, or any number of families when you wrote these articles, was there?

A. No, sir, there was no reason one way or the other.

Q. The basic point you were making was that there had been incidents of this sort that you knew about; isn't that correct?

A. Yes, sir, that is correct.

\* \* \* \* \*

[fol. 174] Q. . . . You stated when you read a number of news accounts about the Hill incident that were brought to your attention in connection with the preparation for the trial of this action, that you then saw that there were a number of elements in the Hill incident that were presumably in your unconscious mind when you wrote *The Desperate Hours*?

A. I found a great many similarities, yes.

Q. The same would be true, would it not, about these other incidents being part of your unconscious as a writer, when you sat down to write *The Desperate Hours*?

A. This whole general background of knowledge was in my mind.

Q. That is what we were getting into yesterday when I was questioning you at length about this whole business of writing a book; isn't that correct?

A. True.

\* \* \* \* \*

Q. In these various news article or publicity articles you wrote about *The Desperate Hours*, you never used the name of any real live family; isn't that true?

A. No, sir, I never did.

Q. And specifically, you never used the name of the Hill family?

A. I never did.

\* \* \* \* \*

Recross examination.

By Mr. Malino:

\* \* \* \* \*

Q. I want to make clear, were you present during the entire procedure of Life taking pictures at the former Hill house in Whitemarch?

A. No, my recollection is I left early that day, and they continued.

Q. They continued. Did you see them take a picture which appears at the top of the article of just the house?

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

[fol. 175] Q. Did you see them take any picture of just the house?

A. Without the actors, no.

Mr. Malino: That is all.

Mr. Medina: In view of the nature of the questioning by Mr. Garment, I have no alternative but to offer Exhibit 19 in evidence, so that there will be no untoward inferences from those questions, Your Honor.

The Court: The plaintiff offered them and you objected. You withdraw your objection?

Mr. Medina: I withdraw my objection now. I have no alternative in view of the questions.

The Court: All right, Plaintiff's Exhibit 19 in evidence. I assume there is no objection by the plaintiff. Is there, Mr. Garment?

Mr. Garment: No objection by the plaintiff.

(Seven copies of newspapers, previously marked Plaintiffs' Exhibit 19 for identification, now received in evidence and marked Plaintiffs' Exhibit 19.)

Recross examination.

By Mr. Medina:

Q. In any of these cases shown in Exhibit 19, Mr. Hayes, did the family consist of a middle aged father and mother?

A. I couldn't answer that without going over them in more detail that I did just now.

Q. Can you tell us now?

A. No, sir, I can't tell you without going over them in more detail than I did in this hurried moment a while ago.

Q. In any of those cases, was a suburban home involved?

A. No, sir, I don't believe there were.

[fol. 176] Q. Did any of those cases occur in the fall?

A. Well, I couldn't answer that.

Q. Did the convicts arrive at eight thirty in the morning in any of those cases?



A. No, sir, I don't believe they did.

Mr. Garment: Technically, your Honor, the Hill case took place in the summertime. September 11th is still part of the summer, if you are going to get technical about this thing.

Mr. Medina: Thank you, Mr. Garment.

Q. In any of those cases, did the convicts arrive after the father and daughter left for work?

A. No, sir, I don't believe they did.

Q. In any of those cases did the convicts capture the father and daughter after their return from work?

A. I don't believe so.

Q. Three of the clippings relate to the Lerby Gagich family near Pittsburgh, do they not?

A. You will have to let me see them. Yes, I do remember the place.

Q. Can't you remember that now, having read these clippings?

A. I went through these clippings to see if there was anything in them which responded to any flicker of memory.

Q. There were eight convicts?

A. Yes, one of them had eight convicts.

Mr. Garment: Mr. Medina, five convicts held the family captive.

Mr. Medina: And that was the question I asked. Mr. Garment, you didn't produce these yesterday on direct examination, so I would have the opportunity of reviewing them last night. Since you have seen fit to hold them back [fol. 177] that long. I haven't had an opportunity to go through them carefully.

The Court: Gentlemen, no comments.

By Mr. Medina:

Q. Two of the clippings relate to the Bistrom brothers; correct?

A. Correct.

Q. One relates to a Nebraska case and one relates to a Wisconsin case?

A. Correct.

Q. So there are four incidents in all?

A. There are four additional incidents that have been produced, yes.

Q. I am sorry, I didn't hear that answer.

A. Yes, this is four additional ones we now have substantiation for. I claim there were many more than this.

Q. But you haven't been able to tell us about them?

A. No, sir, I haven't.

\* \* \* \* \*

Mr. Garment: May I indicate, your Honor, this testimony was taken under oath on December 3rd, 1957, and that the questioning at that time was conducted by myself.

The Court: All right.

Mr. Garment: This is at page 69, Mr. Medina.

Mr. Medina: Thank you.

(Mr. Garment and Mr. Zoeller then read from the examination before trial of Virginia Shevlin Addison, as follows:)

"Q. Miss Shevlin, you are an employee of Time, Inc.?"

"A. That is correct.

"Q. You were employed by Time, Inc. in January and February of 1955?"

"A. That is correct.

[fol. 178] "Q. In what capacity?"

"A. As a reporter, in the Television Department.

"Q. When and under what circumstances did you work on the Life article pertaining to The Desperate Hours?"

"A. Miss Ecker was going on vacation and Mr. Prideaux asked me to take over the shooting of the story in Philadelphia, which meant leg work.

"Q. Did you know anything about this article before you were assigned to it?"

"A. I did not.

"Q. What were you told about it when you were assigned to it?"

"A. I was told—

“Q. By whom?

“A. Tom Prideaux told me that there was a play in Philadelphia called *The Desperate Hours*; that we were going to shoot a photo call, as we usually do, and besides that were taking some of the cast out to a house where an incident similar to the one in the play had occurred.

“Q. Did he at that time tell you anything further about this incident?

“A. No, that is all he told me.

“Q. Or who was involved?

“A. No. I was told I would meet Mr. Hayes in Philadelphia. I was assigned a photographer and I got on a train.

“Q. You went down to Philadelphia with Mr. Capa?

“A. That is correct.

“Q. He was the photographer assigned to this job?

“A. That is correct.

“Q. What did you do when you got to Philadelphia in connection with this assignment?

[fol. 179] “A. We met Mr. Hayes. We had a personable lunch with him. We went that evening to see the show and we had a photo call that night. We shot the cast—I had been given a list of scenes that we were to shoot and the following day we took the cast—some of the cast out to the house which I had been instructed by Mr. Prideaux and Miss Ecker and with my second list, which I was instructed by Miss Ecker and Mr. Prideaux, we shot several scenes which we were going to play off against those scenes which actually occurred in the play, in doorways.

“Q. Did you know Mr. Hayes prior to meeting him on this occasion?

“A. I had never met Mr. Hayes.

“Q. Did you have any discussion with him about the projected article?

“A. We had a general discussion at lunch. I had no policy formation. I was merely there to assist the photographer and to be sure that the pictures came off, that we could get the props that we needed, to pay the lady whose house we used and just to do general—

“Q. Was there any discussion about the relationship between this real-life incident and the house and the play?”

“A. No, there was not.

“Q. You did not ask and nothing was said?”

“A. I have worked for Mr. Prideaux for five years and I take his word for everything he tells me.

“Q. In any event, nothing was said by Mr. Hayes on the subject of the house?”

“A. No, I don’t think so. We had a general discussion [fol. 180] about where the house was and about the fact that we were taking the actors to the house and that I thought it was an interesting way to shoot the story, as did Mr. Capa.

“Q. What do you mean by an interesting way to shoot the story?”

“A. Interesting gimmick to make it a livelier layout.”

Mr. Garment: Page 75.

“Q. Did you have anything to do with the actual research that was done on this project?”

“A. No.

“Q. Did you have anything to do with reading or checking the copy that was prepared?”

“A. No, I did not.

“Q. Did you have anything to do with the preparation of the captions and descriptive material for the photographs?”

“A. No. Miss Ecker had seen the play, so there was no need for me to add anything to her knowledge.

“Q. When did you first learn the name of the family who had occupied the house at the time of the actual occurrence?”

“A. I just don’t ever remember even knowing it, before I was asked to appear here.

“Q. At that time, do you recall whether you discussed with anybody the relationship between this real-life incident and *The Desperate Hours*?”

“A. No. I was merely told by Mr. Prideaux that there had been a similar incident occurring in Philadelphia where

the play was going on, as that incident appeared in the play, or what the play was similar to; so I never had any discussion with anybody about it. I was just told that there [fol. 181] was a similarity, it would be a good, as I said before, gimmick and would add to the interest of the story, rather than straight picture coverage, as Miss Ecker told you.

“Q. You say Mr. Prideaux had said there had been an incident similar to the subject matter of the play?”

“A. That is correct. I am using my own phraseology. I don’t know whether he said to me ‘similar,’ but that was the impression that I received. Three years later, I cannot quote exactly what he did say, but he led me to believe that this house, that an incident had occurred in this house that was similar to the one that was being portrayed in the play and that was my only knowledge about it. I had no discussion about any of the preliminary dealings with Mr. Hayes.”

\* \* \* \* \*

Afternoon Session.

\* \* \* \* \*

TOM PRIDEAUX, 51 West 53rd Street, New York, N. Y., called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Garment:

Q. Mr. Prideaux, by whom are you employed?

A. I am employed by Time, Incorporated.

Q. And in what capacity?

A. As a senior editor of Life Magazine.

Q. How long have you been employed by Time, Incorporated?

A. Since 1938.

[fol. 182] Q. What was your position with Life Magazine since February 1955?

A. Senior editor.

Q. And what is your present position?

A. The same.

Q. You say senior editor in 1955. Was there any classification as senior editor in 1955?

A. To the best of my knowledge, there was. I may be mistaken.

Q. Well, isn't it a fact, Mr. Prideaux, that the classification was associate editor at that time?

A. If you say so, yes, indeed.

Q. At the present time you are on the masthead as a senior editor of the magazine.

A. That's right.

Q. What department were you in charge of as associate editor in 1955?

A. Of the entertainment department.

Q. Did you have a staff?

A. Yes.

Q. And did you have assistant editors?

A. That's correct.

Q. And those assistant editors would handle specific entertainment departments other than the theater; is that correct?

A. That's correct.

Q. You would handle the theater; is that correct?

A. Correct.

Q. And you would have general supervision over the entire department as the editor in charge; is that correct?

A. There has been a slight modification—

Q. Would you simply answer my question as to what the procedure was in 1955?

A. That is correct, at that time.

Q. Now, there were various departments in *Life Magazine* in 1955, as there are now, in addition to the entertainment department; is that correct?

A. Correct.

Q. And that would be science, nature, news and so forth?

A. Right.

[fol. 183] Q. Each of those departments would have—at that time—an associate editor in charge; is that correct?

A. Right.

Q. And a staff working under that particular associate editor?

A. Right.

Q. Now, in addition to the various associate editors, Mr. Prideaux, there were in 1955, and there are at the present time, editors whose responsibility would cover all departments; is that correct?

A. Correct.

Q. And they would be senior to the various associate editors, would they not?

A. Yes.

Q. So that in 1955, there was, for example, the photo editor; is that right?

A. Correct.

Q. And did he have charge of photographs relating to the entire magazine; is that correct?

A. Not exactly.

Q. Well, in general terms he would have been in charge of the photographic department?

A. Yes, in general terms.

Q. And would there have been a director of research who was an editor, whose authority ran over all departments? Is that correct?

A. That's generally true, yes.

Q. And there was a copy editor?

A. Correct.

Q. And his authority ran over all departments? Isn't that correct?

A. Generally true, yes.

Q. He would edit copy coming from each and every department?

A. Correct.

Q. What was the name of the copy editor in 1955?

A. Mr. Joseph Kastner.

Q. And Mr. Kastner is still the copy editor of Life Magazine?

A. Right.

\* \* \* \* \*

Q. In addition to the supervisory editors that we have just talked about. Mr. Prideaux, was there a managing editor in 1955?

A. Yes, indeed.

[fol. 184] Q. What was his name?

A. Edward K. Thompson.

Q. And would he be the operating head of the entire magazine?

A. Yes.

Q. And is Mr. Thompson still in that position with Life Magazine?

A. Not exactly, no.

Q. What difference is there?

A. There is another managing editor now. Mr. Thompson still has an over-all supervisory position.

Q. That is what I was getting at. And his title at this point is editor?

A. Correct.

Q. Would you tell the jury what your responsibilities as editor in charge of the entertainment department consisted of in 1955?

A. Yes. It had to do with the obtaining of stories for Life Magazine. This consisted of deciding on what stories to shoot, what stories were suitable, what stories were newsworthy, requesting that photographers be assigned to these stories, in some cases the advisability of doing the story at all was decided by my seniors—in some cases—and then, in more detail, it meant making arrangements to have the stories photographed, and once they were photographed it meant presenting the photographs to the assistant managing editor or the managing editor, usually in conjunction with an art editor making layouts, and these, in turn, were submitted to the managing editor himself.



And when they were finally okayed if they were okayed, it was my problem and my job to do the writing on the stories in this department, particularly the ones that pertained to the theater.

Q. And by the writing, that would be the text and captions of the particular articles; is that right?

A. That's right.

[fol. 185] Q. Mr. Prideaux, how did you and other members of your department, to the extent that you know, receive information about entertainment events?

A. Well, in a variety of ways.

Q. Very briefly tell us.

A. Through reading the newspapers, reading trade journals, word of mouth and from stringers—that's a word that means usually part-time employees in other parts of the country who are on our staff, suggestions that they would submit and suggestions from bureau heads in other parts of the country.

Q. Would you also receive suggestions from press agents for story ideas?

A. From time to time.

Q. But you would receive them from press agents along with these others?

A. Yes, indeed.

Q. Now, was it your job in the first instance to decide what particular event you thought was suitable for coverage?

A. That's right.

Q. And would you then have to obtain somebody else's approval before photographing that particular event?

A. Yes.

Q. That would be the photo editor, would it not?

A. Yes.

Q. And in connection with obtaining the permission of the photo editor, you would prepare and submit a story memorandum, would you not?

A. Usually, yes.

Q. Did you prepare such a memorandum in connection with this article? And I am referring to The Desperate Hours article.

A. To the best of my recollection, yes.

Q. Is that memorandum any longer in existence?

A. No, it is not.

Q. Was it in existence when I examined you in 1957?

A. No, it was not.

Q. When did it cease to be in existence?

A. Sometime prior to that.

[fol. 186] I don't know when.

Q. After obtaining the consent of the photo editor, you would then photograph the particular article; is that right?

A. Yes.

Q. But that would not mean necessarily that the article was going to run, would it?

A. It would not.

Q. As you indicated before the photographs would then be prepared in a layout?

A. That's right.

Q. And submitted to the managing editor; is that correct?

A. Right.

Q. And would it be the managing editor who would have the final say as to whether or not a proposed story would run in Life Magazine?

A. Right.

Q. So that the initiation of the idea by yourself and the taking of photographs would not necessarily mean that the article would run?

A. Correct.

Q. And there have been many articles, have there not—I shouldn't say articles—there have been many stories which have been photographed, put in layout form, submitted and then junked for one reason or other?

A. Correct.

Q. Now, Mr. Prideaux, how did The Desperate Hours first come to your attention as a possible subject for an article in Life Magazine?

A. To the best of my recollection, it came first in a very brief item in a newspaper just announcing that such a production was on the board or scheduled. Then a group of editors had lunch with the producer of *The Desperate Hours*, Mr. Robert Montgomery—

Q. Mr. Prideaux, I asked you when it first came to your attention. That was by reason of some item indicating that the play was in production?

A. To the best of my knowledge, yes.

[fol. 187] Q. Did there come a time when there was a luncheon?

A. Yes, indeed.

Q. And was that a luncheon that was attended by Robert Montgomery?

A. Right.

Q. And Mr. Montgomery was, of course, the director of *The Desperate Hours*?

A. Right.

Q. And was that luncheon given for Mr. Montgomery by a group of editors of *Life Magazine*?

A. Right.

Q. What was the basic purpose of that luncheon for Mr. Montgomery?

A. Mr. Montgomery had a connection with Eisenhower and had been working with him for some time on his campaign, and the purpose of the luncheon was to hear Mr. Montgomery talk about his non-theatrical activities; and the theatrical activity was discussed in passing.

Q. Would this have been the first occasion that *Life Magazine* had discussed the matter of Mr. Montgomery's association with former President Eisenhower?

A. I don't know.

Q. Well, don't you know that there was an article in *Life Magazine* the year before about Robert Montgomery and his role as assistant to the President on television?

A. At this moment, I didn't recall it.

Q. In any event, Mr. Prideaux, there was this luncheon.

A. Right.

Q. And, as you say, The Desperate Hours was mentioned in passing.

A. Right.

Q. And was there some mention made by Mr. Montgomery at that luncheon about the stage setting for The Desperate Hours?

A. Yes, there was.

Q. And did he indicate or state that in his opinion The Desperate Hours would be an interesting play for Life Magazine to cover?

A. Yes, he did.

[fol. 188] Q. Because of the stage setting?

A. Correct.

Q. Do you recall the date that luncheon was held?

A. No, I don't.

Q. Have you made an effort to find out?

A. Pardon me?

Q. Have you made an effort to find out?

A. I am sorry.

Q. You were asked by our counsel on several occasions to locate the date of that luncheon, weren't you?

Mr. Medina: When was this request made?

Mr. Garment: It was made by me in 1957 and several times thereafter.

The Court: The question is have you made an attempt to find it.

Q. That's my question. Have you made an attempt to find out the date of the luncheon?

A. I believe the deposition is there.

Q. No, my question is did you make an effort to find out the date of this luncheon subsequent to that?

A. Yes.

Q. And have you been able to find out when that luncheon took place, the exact date?

A. I think so. I am not quite sure; I don't quite recollect what happened on that.

Q. Well, what date was the luncheon held?

A. I don't recall. I think it was put in the deposition as a correction or an addition.

Q. Well, when you testified in the first instance—that is, there were two sessions when I examined you; is that right?

A. Yes.

Q. And in your first testimony you recalled that the luncheon had taken place in the summer of 1954?

A. That's right. And that was inaccurate.

Q. And that was inaccurate?

A. Yes.

[fol. 189] Q. It subsequently turned out that the luncheon had taken place much later.

A. That's right.

Q. Your counsel stated for the record that it took place about December 1st.

A. Correct.

Q. Have you found out since then when the luncheon actually took place?

A. No.

Q. Have you endeavored to find out?

A. Yes.

Q. There is no record to indicate it?

A. No.

Q. After this luncheon did you see Mr. Montgomery again?

A. Yes.

Q. Where did you see him?

A. In his office.

Q. Did you make an appointment at that luncheon to see him again?

A. Yes, I did.

Q. And did you make that appointment in order to discuss *The Desperate Hours* with Mr. Montgomery?

A. Yes, solely.

Q. And did you meet with Mr. Montgomery in his office?

A. Yes.

Q. Did you talk further about *The Desperate Hours*?

A. Yes.

Q. Did you talk further about the stage setting?

A. Yes.

Q. Was there any talk about real life incidents?

A. Again, as best I recall, there was a passing mention of that, but at the time the stage setting seemed to have great photographic possibilities in that double decker set.

Q. So that you have no specific recollection of whether there was a reference made to real life incidents?

A. I have a pretty strong recollection, yes.

Q. Do you recollect whether there was a reference to an incident or to incidents?

A. I think it was an incident.

Q. Did you pursue the matter any further with Mr. Montgomery at that point?

[fol. 190] Mr. Malino: What matter?

Q. The matter of the incident or incidents.

A. No.

Q. What was the next thing that happened in connection with the Life article about The Desperate Hours?

A. In the sequence of events, I think the next incident was a conversation with Bradley Smith, a photographer sometimes hired by Life.

Q. That took place after this second meeting with Robert Montgomery?

A. That's right.

Q. And you hadn't come to any decision about photographing The Desperate Hours in any fashion?

A. No, that's correct.

Q. Where did you see Bradley Smith?

A. I saw him passing through the office on some office business of his own, and we stopped in the hallway.

Q. Did you have a brief conversation?

A. We had a brief conversation.

Q. Just for a few seconds, ten, twenty seconds?

A. I would say less than a minute, probably.

Q. Did Mr. Smith mention The Desperate Hours?

A. That was the purpose of his stopping me, yes.

Q. And what did he say?

A. He said that the play had a substantial connection with a true-life incident of a family being held by escaped convicts near Philadelphia.

Q. Did you ask him where he had gotten that information from?

A. He told me that he was a friend of Mr. Hayes—I knew that, anyway—I assumed—and he made comments that led me to believe that this was from Mr. Hayes himself.

Q. And you recall today that Mr. Smith said to you specifically in this conversation in 1955 that there was a substantial connection between a true-life incident in or near Philadelphia and *The Desperate Hours*?

A. The exact wording—

Q. That's the wording you used, Mr. Prideaux. I ask you whether that is your recollection today.

A. The exact wording of Mr. Smith's comment to me has long gone out of my memory.

Q. Long gone out of your memory?

A. Long gone out of my memory. But the impression he gave me is still very vivid.

Q. Well, you were examined by me in 1957, just about two and a half years after the incident in question; is that right?

A. Right.

Q. Some four years ago.

A. Right.

Q. Do you recall my asking you these questions and you giving these answers at that time?

Mr. Medina: Page?

Mr. Garment: Page 34.

Q. Referring to the discussion with Mr. Smith:

“Q. Can you be a little bit more specific about it?”

“A. I am afraid I can't because I would place it not very specifically between October 1st and December 15th. The timing of that remark made no impression on me at all because it was prior to the play.

“Q. What remark?

“A. Bradley mentioned that he thought it would be interesting since this play related to the specific incident, to follow a pattern which we have from time to time adopted of doing a restaging of incidents in the play away from the stage.

“Q. Suppose you go back to the beginning of this conversation and let’s try to develop it in some sequence. The [fol. 192] meeting took place between October 1st and December 15th, of 1954, under what circumstances?

“A. Under the most casual circumstances.

“Q. What were they?

“A. I will be glad to tell you. Each one of us was going rapidly through the halls and practically bumped into each other. Bradley said, ‘Say, by the way, you know about this play?’ I said, yes, and then he made his suggestion, and this occurred. I would say, roughly within a period of twenty seconds. He went his way and I went mine.

“Q. What did he say particularly, either the words or the substance, in connection with this real-life aspect of it?

“A. I can’t remember the words. The substance was simply that this might be an interesting play to treat as we have treated other plays, outside of the theater.”

Do you recall my asking you those questions and you giving those answers in 1957?

A. Yes, certainly.

Mr. Medina: Can I do a little more reading, your Honor?

Mr. Garment: I think that would be appropriate when you examine Mr. Prideaux.

The Court: No, no, because I don’t want any impression left in the minds of this jury.

If it immediately follows it, I will permit it.

Mr. Medina: Page 40:

“Q. Did you know that it involved a family known as Hill?

“A. Whether I remember the name Hill or not I don’t recall.



“Q. Did you know then?”

“A. I think this might help us all. I don’t think that [fol. 193] Bradley had any idea of going specifically to the Hill house. As I recall my mental process of that, I didn’t think generally of going to the Hill house. I think Bradley mentioned that the events took place near Philadelphia and that is as far as I absorbed at the time.

“Q. So that at that time what you knew was that it involved a real-life incident and that it presumably had as its situs Philadelphia or the area near Philadelphia?”

“A. That is correct.”

Mr. Garment: Continuing:

“Q. Do you know where Bradley Smith got this Philadelphia location from?”

“A. I don’t know. I would—I don’t know.”

By Mr. Garment:

Q. Now, Mr. Prideaux, after this discussion with Bradley Smith, what was the next thing that happened in connection with the article about *The Desperate Hours*?

A. I saw either in a newspaper or calendar of theatrical events that is sent to our department that the play was trying out in Philadelphia. In consequence, the thought occurred to me that this would be an opportunity to use this kind of coverage, which when it is feasible we like to do.

Q. Of course, at this point you didn’t have any actual knowledge as to the relationship, if there was one, between *The Desperate Hours* and this incident in Philadelphia; is that right?

A. Having not seen the play, that’s right.

Q. And having not spoken to the author.

A. Correct.

Q. And having not read any articles about the actual incident.

A. That’s not true.

Q. You read articles about the actual incident?

A. At the time it came out in the New York papers.

Q. Did you recall them at that time?

A. Yes.

[fol. 194] Q. Did you call the press agents for *The Desperate Hours*?

A. Right.

Q. And that would have been Phyllis Perelman and Marian Byram?

A. Right.

Q. You called them to try to find out where you could reach Mr. Hayes.

A. Right.

Q. And did you ask them what they knew about this incident in Philadelphia?

A. Right.

Q. And did they tell you that they didn't know anything?

A. Correct.

\* \* \* \* \*

Q. Did they suggest that you call the author about this?

A. I don't recall. I may have suggested that I call the author.

Q. Did you ask where you could locate Mr. Hayes?

A. Right.

Q. And did they tell you?

A. Yes, indeed.

Q. And did you call Mr. Hayes?

A. Right.

Q. You reached Mr. Hayes in Philadelphia, did you not?

A. Right.

Q. And that was at the Warwick Hotel?

A. Right.

Q. Before I take that up with you, Mr. Prideaux, that is the phone call to Mr. Hayes, at that time, that is, prior to your call to Mr. Hayes, did you then have a specific recollection that it was related to one incident or several incidents?

A. To my best recollection, one incident.

Mr. Garment: Page 39 of Mr. Prideaux's examination before trial.

Q. Do you recall, Mr. Prideaux, that when I examined you in 1957, I asked you these questions and you gave these answers.

“Q. First, to go back to your discussion with Bradley Smith, have you given us the discussion?

[fol. 195] “A. I have given you the substance of what at the moment seemed a very interesting suggestion. But it was made in such a hurry and I never saw Bradley until, I think, after the production of the play.

“Q. Again, did he say anything that you now recall about the real-life aspect of it?

“A. He assumed that I knew about the real-life aspect, which indeed I did.

“Q. On the basis of this editorial luncheon that you told us about?

“A. On the basis of not only the editorial luncheon, but the general publicity attached to the book.

“Q. Which was to what effect?

“A. Very briefly, that the germ of the idea was generated by a real-life incident.

“Q. By one real-life incident?

“A. I don't recall whether it was one incident or not.”

Do you recall my asking you those questions and your giving those answers?

A. No, I don't recall your asking that.

Q. You do not recall that.

A. Not at the moment, no.

Q. In any event, you had Mr. Hayes on the phone.

A. Certainly.

Q. And you discussed this idea with him?

A. Right.

Q. Did you ask him whether *The Desperate Hours* was based upon or inspired by this specific Philadelphia incident?

A. In so many words, no. It was assumed.

Q. It was assumed?

A. That there was a connection between *The Desperate Hours* and the Philadelphia incident.

Q. Mr. Prideaux, you were calling the author of the play and the novel *The Desperate Hours*, is that right?

A. Correct.

[fol. 196] Q. And you had in mind the possibility of doing a story connecting *The Desperate Hours* with a true life incident; is that correct?

A. Correct.

Q. And you had had certain discussions with various people about a real-life incident or real-life incidents and stage settings prior to that time; is that correct?

A. Correct.

Q. And you had spoken to the press agents, the publicity representatives of Joseph Hayes and asked them what they knew about a real-life incident in Philadelphia, and they said they knew nothing. Is that correct?

A. That's correct.

Q. Now, you had the author on the phone; is that right?

A. That's correct.

Q. And you tell the Court and jury that you assumed at that point—

A. I had read—

Q. One second, Mr. Prideaux—you assumed that *The Desperate Hours* was related to this specific Philadelphia incident.

A. Yes.

Q. And you did not ask Mr. Hayes that question?

A. No.

The Court: What was your answer?

The Witness: No.

The Court: No, you did not ask him.

The Witness: That's correct.

Q. Did you do anything thereafter to confirm the assumption that you made at that time?

A. Yes. Again to the best of my memory, I had read the review of this play or information about this play in *Variety*. I was not coming to the play with no knowledge of the content or the environment or the theme of the play.

Q. Mr. Prideaux, I would just like to ask you whether you did anything in particular to confirm the assumption or impression that you had as to there being a specific relationship [fol. 197] between this Philadelphia incident and the writing of *The Desperate Hours*.

A. Yes.

Q. Did you ask the author?

A. I assumed, again—the author and I knew our mutual feelings about this. That was the assumption of our relationship.

Q. You spent time with Mr. Hayes thereafter, didn't you?

A. That's right.

Q. And in the course of that you never asked him whether this was sparked off, triggered off, inspired or what by this incident in Philadelphia; isn't that right?

A. Mr. Hayes—

Q. Will you just answer my question?

Mr. Medina: Won't you let the witness answer the question?

Mr. Garment: The question calls for a yes or no, I think.

The Court: Read the question.

(The Reporter read the pending question.)

Q. Can you answer the question yes or no?

Mr. Medina: Will you let the witness answer?

The Court: You may answer.

If it is not responsive, I will strike it out.

A. A specific question of that nature was never asked, but a discussion of the play itself, what the play was about, in the light of my own knowledge of what the true incident was about, confirmed in my mind beyond any doubt that there was a relationship, and Mr. Hayes' presence at this whole negotiation was tacit proof of that.

Q. Mr. Prideaux, this incident took place in the fall of 1952; is that right?

A. Right.

Q. This meeting that you had with Joseph Hayes in Philadelphia was in January 1955?

A. That's correct.

[fol. 198] Q. When had you seen the article or articles about the Hill incident last prior to that date?

A. At the time of the incident.

Q. That was some two and a half years before?

A. Yes, indeed.

Q. And that was clearly in your mind at the time you were discussing this matter with Joseph Hayes?

A. Not clearly, but very—

Q. What was in your mind at that time?

A. The general circumstances of this very moving story, the kind of people involved in it and the kind of courage that the family displayed.

Q. What courage?

A. Level-headedness, the stamina, the sticking together. It was a very memorable story in the newspapers.

Q. In any event, Mr. Prideaux, when you were with the author in Philadelphia, you never asked him the specific question was this specifically inspired by the Hill incident. Can we just get a yes or no answer?

A. The answer is no.

Q. You made an appointment to see Mr. Hayes in Philadelphia?

A. That's right.

Q. And you and an associate of yours went down to see Mr. Hayes?

A. Right.

Q. And the purpose of that visit to Philadelphia was to see the play, was it not, among other things?

A. Correct.

Q. And there had also been some talk about a house with Mr. Hayes in the course of this telephone conversation?

A. That's right.

Q. You had asked Mr. Hayes to find out about this house, hadn't you?

A. I believe so.

Q. You asked him to find out whether that house was available for shooting a story like this if you decided to do it; is that right?

A. To the best of my recollection, yes.

Q. And to see who was living there?

A. I think so.

[fol. 199] Q. Did Mr. Hayes say that he would do what you asked him to do?

A. It's very hard for me to remember exactly. I believe so.

Q. You went to Philadelphia on January 17th?

A. Right.

Q. And Miss Laura Ecker accompanied you?

A. Right.

Q. Miss Ecker is or at that time, rather was a reporter on Life Magazine; is that right?

A. Right.

Q. And they are also sometimes described as researchers, are they not?

A. That's correct.

Q. Will you tell us briefly what the function of a reporter or researcher on Life Magazine was in 1955?

\* \* \* \* \*

A. There are various functions. One is the checking and ascertaining of facts. Every piece of copy is checked, after it is written, by a researcher. Another is keeping track of activities in the field in which she is involved.

Q. And they also serve the function of obtaining research materials for you on a particular assignment, do they not?

A. Right.

Q. You met Mr. Hayes in Philadelphia?

A. Right.

Q. And you drove out to the house?

A. Right.

Q. Then you spent some time at the house?

A. Yes.

Q. In the course of the trip out to the house or at the house, did you discuss with Mr. Hayes the relationship between *The Desperate Hours* and the Hill incident in terms of story?

A. May I answer that as to what exactly what happened or do you want a yes or no answer?

Q. Can you answer my question whether you discussed—

A. No, we did not—for good reasons.

Q. For good reasons?

A. I believe so.

Q. Tell us what those good reasons were.

[fol. 200] Mr. Malino: I object to this. We will never get through.

You didn't discuss it, did you?

The Court: He said no.

Mr. Medina: I am not quite clear on your Honor's ruling.

The Court: He answered the question. He said no.

Mr. Medina: Mr. Garment was saying, "Tell us what the good reasons were."

The Court: He said something about there being good reasons. If it is relevant I will permit it. Although I think Mr. Malino is correct. Getting into every one of these little incidents—I don't want to characterize them now as being minor or not, but it does seem to the Court that going into all these incidents we will never finish this trial.

Mr. Garment: I have no desire to prolong this, but when a statement is made like that—

The Court: If you want it and if it will save time in cross-examination, if Mr. Medina will ask this question, suppose we get it now and get it over with.

What were the so-called good reasons that you referred to?

The Witness: We were very concerned as to whether it would be feasible to set up a photographic situation with a cameraman, bringing the actors out, that would relate to this play. We were reporting on the play at that time.



By Mr. Garment:

Q. Well, you were planning—

Mr. Medina: Please let him finish.

[fol. 201] Q. Let's have the rest of the reasons, then.

A. We were very much concerned—I had not as yet seen the play—in finding out whether there were situations in the play that took place off stage that could be worked into the setting of the house. This was a technical problem involving camera angles, involving a shooting script, and we were very much concerned with it.

Q. Weren't you concerned, Mr. Prideaux, with finding out what the relationship was between *The Desperate Hours* and this real-life family that were going to be involved in this article?

A. We were pretty well convinced by this time that it was a very strong relationship.

Q. Who is "we"?

A. My researcher and I.

Q. You did not feel it was necessary or appropriate to ask Mr. Hayes what incidents in *The Desperate Hours* were drawn from the actual Hill incident?

A. No.

Q. And there was no discussion of that subject at all?

A. I don't recall any.

Q. At the house, was there any discussion on that subject?

A. No.

Q. Was that a matter of any interest to you?

A. It was of considerable interest in the overall story, but on that particular pilgrimage we made there it was of very little interest at all.

Q. Did you speak to the occupant of the house?

A. Yes, indeed.

Q. And you made arrangements for the use of the house for the photo work?

A. Yes.

Q. And then you returned to Philadelphia?

A. That's right.

Q. And did you obtain any newspaper clippings about the Hill incident at that time?

A. Not at that time.

Q. Did you ask Mr. Hayes for any clippings or research materials?

A. No.

[fol. 202] Q. Did you know the name of the family when you were in that house? I mean the real-life family.

A. I don't recall.

Q. Did either you or your associate raise any question as to what had actually happened in real life to this family?

Mr. Malino: When?

Q. At the house?

A. There was no occasion to. They were not there.

Q. Was there any question as to how they had fared in the course of the incident or where they were at the present time?

A. We had heard they were in Connecticut.

Q. You had heard that they were in Connecticut?

A. Yes.

Q. Where did you hear that from at that time?

A. I don't recall.

Q. Mr. Hayes testified that he didn't even know the name of the family on that occasion. You were here and heard him testify to that. Isn't that true?

A. That is true.

Q. Well, how did you know that they were in Connecticut?

A. I said I heard, and I don't recall where I heard.

Q. Do you recall from whom you heard it?

A. No, I do not.

Q. In any event, that evening you saw the play?

A. That's right.

Q. And then you went back to New York?

A. That's right.

Q. After that, you submitted your story memorandum to the photo editor; is that right?

A. That's right.

Q. And he approved the assignment of a photographer to the story?

A. Yes.

Q. And Mr. Cornell Capa was assigned and went down to Philadelphia; is that right?

A. Right.

[fol. 203] Q. And he was accompanied by Miss Shevlin; is that right?

A. That's right.

Q. And photographs were then taken in the house and in the theater; is that right?

A. Right.

Q. Very briefly, these arrangements with respect to the division of expenses, is that the standard policy of Life Magazine?

A. Yes, it is.

Q. Does it make any difference what the size of the stage-hands' overtime expense may be?

A. No.

Q. That has to be absorbed by the producer of the play?

A. That is the general arrangement.

Q. And you take care of transportation and other expenses?

A. Extras, yes.

Q. Ultimately you received the photographs; is that right?

A. Pardon me?

Q. Ultimately you received the photographs?

A. Yes.

Q. And there were a great number of them?

A. (No reply.)

Q. Well, there were many photographs?

A. Many.

Q. And you prepared a layout of the article; is that right?

A. Eventually, yes.

Q. You hadn't written any text as yet?

A. No.

Q. And the layout simply consisted of the photographs mounted on cardboard or some other substance, and then photographed?

A. Right.

Q. And distributed to various people?

A. Yes.

Q. And then there was a conference with the managing editor, was there not?

A. They were submitted to the managing editor.

Q. Did you say that that conference takes place with the managing editor of Life Magazine and the art editor and yourself?

A. The word "conference" does not seem quite accurate, but it will do.

[fol. 204] Q. Well, those pictures have to be displayed, do they not?

A. Certainly.

Q. There is no text.

A. Certainly.

Q. So that there is some kind of a meeting in the course of which you would explain it?

A. That's right.

Q. To the managing editor, as to what the story was all about?

A. Right.

Q. What did you tell Mr. Thompson at that time?

\* \* \* \* \*

A. I don't recall word for word the conversation at all. I remember the essence of it.

Q. What was the essence of it?

A. The essence of it was here was an important play which we had seen and endorsed first and foremost as a theatrical play that deserved to be covered in Life; that, also, there was a strong connection between the play and

the incident, and that we proposed to draw this connection by certain devices in the layout.

Q. What devices would those be?

A. By the photograph of the house itself and by a headline, one of the many headlines from the Philadelphia papers.

Q. And by the text?

A. That's always assumed, yes.

Q. Did you have a headline at that time?

A. I don't recall.

Q. Well, you must have had. It would be part of the layout.

A. To all intents and purposes, yes. Whether we literally had it in our hand, I don't know.

Q. Did Mr. Thompson ask you what the basis was for your conclusion that there was a direct relationship between The Desperate Hours and a specific incident?

A. I don't recall that he did.

[fol. 205] Q. Did he ask you whether you proposed to mention the name of any particular family in your article?

A. I don't recall.

Q. Did he approve the story idea at that conference?

A. Yes, he did.

Q. And did you then go ahead and start writing the text?

A. Eventually, yes.

Q. Now, you have seen, and I have read to the jury, the finished article as it appeared in Life Magazine, Mr. Prideaux.

A. Right.

Q. But that article, of course, went through various drafts. Isn't that correct?

A. Right.

Mr. Garment: May I have the carbon morgue file, Mr. Medina?

(Mr. Medina handed papers to Mr. Garment.)

Q. I show you this manila folder that bears the printing on it "Morgue—Carbon File" and ask you whether among

the contents of that file would be the drafts of the article about The Desperate Hours and the Hill family.

A. That's correct.

Q. Would you hold onto this for just a moment, Mr. Prideaux.

Did you assemble the various drafts at some point after the initiation of this case?

A. To the best of my recollection, yes. If I didn't, somebody did for me.

Q. Would you let me have the first draft of the article.

Would that be the first draft, Mr. Prideaux (indicating)?

A. I believe it would, yes.

[fol. 206] Q. I wonder if you could explain what these other drafts are.

A. When the first draft is written it is sent to what is called the copy room. The copy room makes various copies, five or six copies of the original draft, which are, in turn, sent to various departments in the magazine. One would be sent to the checker, Miss Ecker, another would be sent to Mr. Kastner, the copy editor, another would be sent to the lady who is in charge of personnel—

Q. That would be Miss MacPhail?

A. That's correct—and a copy comes to me, also.

Q. Would anybody else also receive copies?

A. I'm not sure.

Q. How long have you been with Life Magazine?

A. I mentioned that in my testimony, since 1938.

Q. But you are not sure who else would receive copies?

A. That's changed from time to time, the procedure. But I know the principal ones.

\* \* \* \* \*

(The first draft of the Life article was received in evidence as Plaintiffs' Exhibit 20.)

Q. Mr. Prideaux, the typewriting in this article was by you, was it not?

A. Yes.

Q. And the handwritten insertions and changes would have been by you, also?

A. That's correct.

Q. Would you read that to the jury?

Mr. Malino: What?

Q. The first page, representing the body of the text of the article.

Mr. Malino: Before it was changed, as it was first typed?

[fol. 207] Q. With the changes in your own handwriting.

A. "In 1952 a young Indianapolis author, Joseph Hayes, read a hair-raising report of a suburban Philadelphia family held prisoner in their home by three escaped convicts. This true story sparked off Hayes to write a novel, *The Desperate Hours*, which he did later as a screen play. While it was being filmed, a New York producer persuaded Hayes to turn his novel into a Broadway play. The movie producers agreed not to release the film for a year in order to give the play a chance to play off. Now that *The Desperate Hours* is a Broadway hit and two more companies are rushing into production, Hayes stands to make a half million dollars on his Philadelphia horror story."

The Court: Philadelphia what?

The Witness: "—horror story."

Q. Would you go ahead.

A. "Directed by Robert Montgomery and expertly acted, Hayes' play is a somewhat fictionalized but heart-stopping account of how one family rose to heroism in a crisis. Life photographed this play at its Philadelphia tryout and transported some of the actors to the actual house where the family, who no longer live there, were besieged. On the next page scenes from the play are reenacted on the original site of the crime."

Mr. Garment: Your Honor, at this point I would like to use the first of the blowups of certain of these pages so that the jury can follow the questioning. May we have a very brief recess to set that up?

\* \* \* \* \*

[fol. 208] Q. First I show you this four and a half page document with the name "Kastner" written in pencil at the top right, and I ask you whether that is the copy of the initial draft that went to Mr. Kastner.

A. I'm sorry, I don't understand the question.

Q. I will try again. Is this a copy of the original draft as it was retyped, incorporating your handwritten changes and then distributed to Mr. Kastner?

A. That's correct.

\* \* \* \* \*

(Draft of Life article that went to Mr. Kastner received in evidence as Plaintiffs' Exhibit 21.)

Q. I show you a nine-page collection of typing and handwriting and ask you whether that is the researcher's copy of the original draft as retyped together with a subsequent draft of the article that went to your researcher?

A. Yes, it is.

\* \* \* \* \*

(Copy of Life article that went to the researcher received in evidence as Plaintiffs' Exhibit 22.)

Q. I now show you a six-page document with typewriting and handwritten materials and also crayon marking in green and red. Would that be a copy of a subsequent draft of this article—would you explain what that is?

A. Yes. This is a subsequent draft to the one you see there. This is after it was edited by the copy editor, and this comes back to me with instructions to make minor cuts and additions, purely to accommodate the printer.

[fol. 209] Q. That is, the red notations would be notations as to the number of additional characters to be added or subtracted for purposes of space?

A. Correct.

Mr. Medina: Can we call this the greening copy?

The Witness: We call that the greening copy because we do that in green pencil.



The Court: Greening, g-r-e-e-n-i-n-g?

The Witness: That's correct, your Honor.

Mr. Garment: I offer that in evidence.

Mr. Medina: No objection.

(The greening copy of the Life article was received in evidence as Plaintiffs' Exhibit 23.)

Q. I now show you a seven-page document bearing the red stamp notation "Duplicate of printer's copy," which also shows various penciled and crayon markings, and ask you what that document is.

A. This is the final copy on which all greens—as we call them, those are instructions to the printer—have been consolidated. This is the copy that includes the final initials of the managing editor as well as the copy editor, and it is ready for being set up in type.

\* \* \* \* \*

(The final copy of the Life article was received in evidence as Plaintiffs' Exhibit 24.)

Q. Now, Mr. Prideaux, the blow-up is a magnification of the first page of the first draft of this article prepared by you; is that correct?

A. Correct.

Q. What materials did you have available to you at the time you wrote that first draft?

A. I had our own morgue materials and I had seen the play twice at that point.

[fol. 210] Q. Did you have any news clippings relating to the actual Hill incident?

A. The actual clippings and their content I don't completely recall. There were many.

Q. I know there were many, but I am asking you whether you had available to you at that point, when you sat down to write the first draft of this article, did you have any clippings of the Hill incident before you?

A. To the best of my recollection, yes.

Q. What did you have before you?

A. I don't recall in detail.

Q. Well, we have heard reference throughout this case to the New York Times.

A. I honestly don't recall which clippings I had at that time.

Q. Isn't it a fact, Mr. Prideaux, that you didn't have any clippings before you?

A. No, it is not a fact.

Q. Well, let me show you what is the fourth page of Exhibit 20, representing your first draft of the captions under the two photographs of the actual article. Would you have reference to the document in front of you?

A. Yes, I see it.

Q. Now, I draw your attention, Mr. Prideaux, to the first caption which would have appeared below the photograph of the newspaper headline. Is that right?

A. That's right.

Q. Originally you said "Real crime." Do you recall that?

A. I don't recall it, but it's here that I said it.

Q. Yes. In any event, "Actual event" was your first revision. "Actual event in 1952, as reported in newspaper above, took place in isolated house ten miles outside Philadelphia, where three convicts from Koming Penitentiary held family of James Hill as prisoners until they could obtain money. All three convicts were caught later."

[fol. 211] Now, there is no such place as Koming Penitentiary, is there?

A. May I explain that, please?

Q. Let me ask you the question. Koming is a word that you use in Life Magazine for material that is not available at that moment; isn't that right?

A. That's correct.

The Court: What is your answer, "that's right"?

The Witness: That's right.

Q. It means coming, c-o-m-i-n-g?

A. That's right.

Q. To be supplied later; is that right?

A. That's right.

Q. And at that point you did not know what penitentiary these men had come from?

A. That's not necessarily true.

Q. Isn't it a fact, Mr. Prideaux, that the New York Times article and every article that referred to the actual Hill incident reported the fact that they had escaped from Lewisburg Penitentiary?

A. I am sure they did.

Q. And yet when you sat down and wrote that first draft with one or more news clippings in front of you, as you told this jury, you put in Koming Penitentiary; is that right?

A. That's right.

Q. You also said "held family of James Hill as prisoners until they could obtain money."

Now, that was just plain wrong, wasn't it?

A. That's correct.

Q. That's what happened in The Desperate Hours. Isn't that the fact?

A. That's right.

Q. And all you knew at that time was what happened in The Desperate Hours?

A. Mr. Garment, when you have—

Q. Will you answer my question?

Mr. Medina: Won't you please let the witness finish an answer?

[fol. 212] The Court: Let's see if he can answer the question.

Q. Isn't it a fact, Mr. Prideaux, that all you knew when you wrote the first draft of that article was what you saw in The Desperate Hours and you didn't know anything at all about the Hill incident?

A. That is not true.

Q. In any event, you didn't know what penitentiary the criminals had escaped from?

A. That's correct.

Q. And you didn't know that they were in a house simply to hide out from a manhunt?

A. That seems to be the case.

Q. And the statement that you made was a statement referring to what took place in the play? Isn't that a fact?

A. That's true.

Q. Do you recall, Mr. Prideaux, that when I examined you about news clippings and asked your counsel to produce each and every news clipping that could be found in the entire Time, Inc. morgue, all that could be produced after a recessed session was one clipping from the general Time, Inc. morgue, that being from the New York Times for September 12, 1952? Do you recall that?

A. No, I don't recall that.

Mr. Garment: Will you concede that that is the fact?

Mr. Medina: I wasn't there at the deposition, Mr. Garment.

Mr. Garment: All right.

I read, your Honor, from the second section of the pre-trial examination of Mr. Prideaux.

Mr. Medina: What page?

Mr. Garment: Page 114. And I am reading a statement that was made by Mr. Biddle here in response to a request [fol. 213] that I made at the first session to produce from the entire Time, Incorporated collective morgue any and all news clippings relating to the Hill incident.

"Mr. Biddle: I referred at the outset of this morning's testimony to the Time, Incorporated reference files on the various topics. Under the topic 'Crime' there was located a clip from the New York Times dated September 13, 1952, and the headline of that reads 'Three Escaped Convicts Seize Family, Hold Home 19 Hours To Elude Hunt,' and on the inside page is a picture of the Hill family. There is no notation or memorandum in that file as to whether or