

not it was withdrawn by Mr. Prideaux. Mr. Prideaux does not remember whether he saw it or did not. That completes all the morgue files that would have been available.”

Mr. Medina: Mr. Garment, you know there is a morgue file in addition to the specific file for the story.

Mr. Garment: All right, let's get to the story file.

By Mr. Garment:

Q. In the story file, Mr. Prideaux, was there a single newspaper clipping referring to the Hill incident?

A. I am not sure.

Q. It's in front of you, Mr. Prideaux.

Mr. Medina: The clippings from that file, Mr. Garment, as you know—

Mr. Garment: I would rather get this from the witness, Mr. Medina, at this point.

[fol. 214] Mr. Medina: I know. But you give him a file which contains—

Mr. Garment: Let me ask the witness a couple of questions.

Q. Mr. Prideaux, you are going through some clippings that you took out of a green envelope that was in the carbon morgue file; is that correct?

A. Right.

* * * * *

(Green envelope, containing clippings, from the Time, Incorporated file, was received in evidence as Plaintiffs' Exhibit 25.)

Q. Mr. Prideaux, that folder in front of you, including that green envelope, is the story file in *The Desperate Hours*; is it not?

A. It's the play file, right, reviews of the play and articles about it.

Q. It is what Mr. Medina had reference to as the story file?

A. I am sure that's correct.

Q. So that there is no confusion between us as to terms.

A. Yes.

Mr. Medina: Carbon file is the term I used.

Q. Is it carbon file also; is that right?

A. (No reply.)

Q. It's whatever Mr. Medina is referring to. That is what I am getting at.

A. The term "carbon file" I am not familiar with. We are talking about this green envelope now.

Q. In any event, Mr. Prideaux, this manila folder, including this green envelope and these clippings, represents all there is with reference to the materials on The Desperate [fol. 215] Hours story that appeared in the February 28, issue of Life Magazine; isn't that correct?

A. I am not sure.

Q. Well, do you know of anything else?

A. I don't know of anything else.

Mr. Medina: I will agree that that's all we have now.

Mr. Garment: Well, we will take that up later on.

Q. What is that green envelope?

A. This green envelope is a collection of clippings pertaining directly to the play. That includes articles written about the play and reviews of the play from the New York papers.

Q. Is there a single clipping of or relating to the actual Hill incident in that file?

A. I don't believe so.

Q. There is, however, in this file all of the reviews by the New York drama critics of The Desperate Hours after it opened, isn't that right?

Mr. Medina: I object to the form of the question. The documents speak for themselves.

A. I am not sure—

The Court: The question is whether they were all of them; and the documents will not give that information.

Would you say they are all of the reviews in the New York newspapers?

The Witness: I would say not, most likely not all of them.

Q. In any event, in addition to the reviews of the play The Desperate Hours, there is one other article, and that is Defendant Hayes' Exhibit G.

A. Right.

[fol. 216] Q. And that is the article, Mr. Prideaux, in which Mr. Hayes said that The Desperate Hours was based on various news stories in California, in New York State, in Detroit, in Philadelphia—"frightened and dangerous men entered houses," and so forth. He did no research into any of these cases. The final product was different from all of the elements. Do you recall this article?

Mr. Medina: Can't we have a question that isn't a speech, your Honor? I don't think that's intelligible in the form in which it was put.

The Court: Is that the article that Mr. Hayes wrote that appeared on January 20, 1955 in the New York Times?

The Witness: Right.

Q. You recall that.

Mr. Medina: There is no question about that. You don't have to make a big thing of it.

Q. Mr. Prideaux, you had this green envelope available to you when you wrote this first draft of the article, didn't you?

A. I'm sure I did.

Q. And you read the contents of it?

A. Among other things, yes.

* * * * *

Q. You say among other things. Among other things this appeared in that file?

A. No, among other material.

Q. Where is that other material?

A. I don't know.

Q. Have you made any attempt to determine where it is?

A. Certainly we have.

Q. Well, does Time, Inc. throw away news clippings?

A. Sometimes they disappear.

Q. They disappear?

A. Yes.

[fol. 217] Q. Well, we are talking about a great deal of news clippings that referred to the Hill incident. Are you telling me that all of those news clippings with the exception of one from the New York Times disappeared?

A. I am telling you we haven't found them.

Q. Have you made a real effort to find them?

A. I most certainly have.

Q. Let's talk a little bit about the Time, Inc. morgue facilities. How many floors of your building do they cover?

A. To my knowledge, one.

Q. And in 1955 how many floors did they cover?

A. That was a different building.

Q. Yes.

A. Again, to my knowledge, one.

Q. And you have in that morgue clippings, newspaper articles, other research material, relating to countless persons and events?

A. Correct.

Q. And there is a definite procedure, is there not, in Time, Inc., with respect to returning news clippings to that morgue.

A. The procedure is simply to stuff them back in the envelope and return them.

Q. Well, isn't the morgue the library of Time, Inc.?

A. In effect, yes—one of the libraries.

Q. It's a very important part of the library system of Time, Inc., is it not?

A. Correct.

Q. And every effort is made to preserve that library intact?

A. That's right.

Q. Has an investigation been made to determine what happened to all of these news clippings about the Hill incident that you have been testifying about?

A. I am sure we were asked to produce all that were available, all that could be found. There is no question about that.

[fol. 218] Q. Do you remember that an article was written about the Hill incident called "House Party" in Time Magazine for September 22, 1952?

A. I do.

Q. The point of that article was that nothing had gone wrong in the Hill household. Do you recall that?

A. Recently I saw the article, yes.

Q. Your counsel showed it to you?

A. That's right.

Q. And the entire treatment of the Hill incident in the publication of Life's sister magazine, Time Magazine, was a light treatment, was it not?

A. Indeed, it was.

Q. And it ended up with the notation that the convicts faded into the night and Mr. Hill was left wondering about his house guests. Is that right?

A. Yes, it did.

Q. And that fitted in with the heading "House Party," is that right?

A. Right.

Q. In connection with the publication of that article, Mr. Prideaux, there would have been news clippings relating to the actual Hill incident, wouldn't there?

A. I assume so.

Q. Where are they?

A. I don't know.

Q. Has anybody looked for them?

A. I am sure they have.

Q. Have they looked for that file?

A. I am sure they have.

Q. Relating to that particular article?

A. I am sure they have.

Q. And that hasn't been found?

A. Correct.

Q. Well, let's go back to the first page of your first draft. Referring to the second paragraph, Mr. Prideaux, you say there that *The Desperate Hours*—"Hayes' play is a somewhat fictionalized but heart-stopping account of how one family rose to heroism in a crisis."

The reference is to the Hill family, is it not?

A. Right.

[fol. 219] Q. And you are saying that *The Desperate Hours* was somewhat fictionalized.

A. Right.

Q. Did you know how fictionalized it was?

A. In detail, no.

Q. In any detail.

A. No play has been written—do you want an answer?

* * * * *

Q. What did you actually know to be the correspondence in fact between the Hill incident and this dramatic, violent melodrama, *The Desperate Hours*, when you sat down and wrote that paragraph?

Mr. Medina: I object to the form of the question in its characterization.

Mr. Garment: I will withdraw the characterization, dramatic, violent.

Q. Between the Hill incident and *The Desperate Hours* when you sat down and wrote that paragraph.

A. The exact state of my knowledge on the Hill case I do not recall.

Q. You hadn't discussed it with Mr. Hayes, had you, when you were in Philadelphia?

A. No, indeed.

Q. Whatever you knew as to fictionalization you stated in that paragraph, is that right, that is, you made a reference to the fact that it was somewhat fictionalized?

A. Certainly.

Q. At this point you can't say whether you at that time thought it was a little bit fictionalized, moderately fiction-

alized or almost substantially fictionalized; is that right?

A. That's not right.

Q. Well, tell me what you can say.

A. I would say that I knew it was between a little bit and moderately fictionalized, but the heart and soul of this play was based on the true incident.

[fol. 220] Q. How did you know that, Mr. Prideaux?

A. Because I had read enough of the incident to know it. I had seen the play twice. I was completely familiar with Mr. Hayes' work. I read a fair amount on the case itself and the details. And the important—let me put it this way—the important quality of this play was, beyond doubt, provided by the Hill case, which was the case of an American family in a crisis, respected middle-class people that could be identified with by an audience. That's the heart and soul of his play.

Q. That's what you were getting at, identification, wasn't it, between your readers and a particular family?

Wasn't that the point of this article?

A. I am sorry, I don't understand.

Q. You don't understand that?

A. No.

Q. I say the point of this article was to create a sense of identification on the part of your readers with a particular real-life family.

A. No. I think that was the point of Mr. Hayes' play.

Q. Well, why do you do true life articles relating drama to true life?

A. We don't, unless there is a legitimate basis for it.

Q. Let's forget about legitimate basis. What's the editorial reason that you do it?

A. (No reply.)

Q. Isn't it to add impact and drama to the article?

A. No; it is to tell the truth about the situation.

Q. You mean to tell the truth of the actual incident?

A. It is to report on what we think happened.

Q. Well, you are reporting on a play, Mr. Prideaux, aren't you?

A. In part.

Q. And you are relating it to real life?

A. And we are reporting on the origin of the play.

Q. But the point of drawing in real life and reporting on a play in Life Magazine is, in the first place, to give a [fol. 221] news aspect to it, isn't that true?

A. It is to report the news aspect of it.

Q. Let's say that you do report the news aspect. But one of the purposes is to give a news-like quality to the report on a theatrical event. Isn't that a fact?

A. No, it is not a fact.

Q. And isn't it a fact that the purpose in relating a particular dramatic work to real life people is to add impact and drama to the article?

A. If the impact and drama comes out of reporting the truth we are very pleased.

Q. But you don't start off with that idea in mind.

A. No. We start out from the facts themselves.

Q. Well, let's talk about some of these facts again in this article. Let's go up to the first paragraph, Mr. Prideaux.

* * * * *

Q. Mr. Prideaux, this article would not have taken place and the Hills would not have been in Life Magazine connected with The Desperate Hours were it not for the assumption in the first paragraph, namely, that The Desperate Hours was sparked off by the Hill incident, isn't that a fact?

A. That's a fact.

Q. And you had never, prior to writing that article, asked the author—

A. It was staring us in the face. The evidence was quite conclusive.

Q. Mr. Prideaux, you have been a writer and have worked in an editorial capacity for many, many years; isn't that true?

A. That is true.

Q. Is there any person that's better qualified to state what inspires a particular creative work than the author himself?

A. That's questionable.

[fol. 222] Q. Weren't you even curious when you were with him all that time in Philadelphia?

A. There were other things on our minds.

* * * * *

April 11, 1962

(Same appearances.)

(The trial was resumed pursuant to adjournment.)

TOM PRIDEAUX, witness for the plaintiff resumed the stand and, still being under oath, testified further as follows:

Direct examination.

By Mr. Garment (Continued):

Q. Mr. Prideaux, towards the end of yesterday's session you will recall I asked you whether it wasn't a fact that the Hills would never have been involved in this article in Life Magazine but for the assumption in the first paragraph that The Desperate Hours was sparked off specifically by their incident and you responded that that was a fact. Do you recall that?

A. I do indeed.

Q. At an earlier point you testified that your view as to the relationship between the two, namely, the incident and The Desperate Hours, derived from a feeling that the heart and soul of The Desperate Hours was supplied by the Hill incident. Do you recall that testimony?

A. That was one feeling. Yes, I do.

Q. Now, I just want to back up briefly so as to furnish a connection with the questions that will follow. Yesterday [fol. 223] you testified, in substance, that after your discussion with Bradley Smith there was a meeting with Robert Montgomery, and you had the idea at that point that there was a relationship between The Desperate Hours and an incident or incidents in real life.

A. To the best of my knowledge, yes.

Q. And then you called the press agents for The Desperate Hours, Miss Perelman and Miss Byram, spoke to one of them, asked them about the incident in Philadelphia and they said they knew nothing about it. Do you recall that?

A. That's correct.

Q. And that you then, in substance, asked them, "Well, how do I find out?" And they said, "Well, call the author." Do you recall that?

A. Yes, indeed.

Q. And then you called the author, and as you told us yesterday, you did not feel that it was necessary to ask him whether The Desperate Hours was inspired by the Hill incident.

Mr. Medina: I object to the form of that question as incorrectly stating the testimony.

The Court: I think the testimony was not that he didn't think it was necessary but he did not ask them.

Mr. Medina: He did not ask them whether it was inspired. He said that in specific language—no.

By Mr. Garment:

Q. In any event, you assumed that there was a very direct connection, that the heart and soul of The Desperate Hours was furnished by the Hill incident; isn't that correct?

A. My assumption that the heart and soul of The Desperate Hours was furnished by the Hill incident was after I had seen the play. I assumed a connection, to begin with.

Q. You assumed the specific connection to begin with.

A. Right.

Q. And then after seeing the play the assumption as to heart and soul came from seeing the play.

A. Exactly.

Q. And at no point did you feel it was necessary really to discuss this relationship in more detailed terms with the author.

A. Correct.

Q. Would it be fair to say, Mr. Prideaux, that in your capacity as a senior editor of Life Magazine for many, many years that you would take very seriously the accurate presentation of facts and the fair comment on them?

A. Exceedingly seriously.

Q. And if anything had come to your attention that raised any doubt as to these assumptions that you had made, you would then have gotten in touch with the author, wouldn't you?

A. Certainly.

Q. Now, as the entertainment editor of Life Magazine, isn't it a fact that from time to time you would read trade publications in the entertainment field?

A. Correct.

Q. And one of those well-known trade publications is Cue Magazine, is it not?

A. No.

Q. Well, in any event, Cue Magazine describes entertainment events, does it not?

A. Yes. I seldom see it.

Q. You seldom see it.

A. Right.

Q. Then let me ask you this. I read to you one paragraph from Plaintiffs' Exhibit 17, which is an interview with Mr. Joseph Hayes reported in the issue of Cue Magazine for February 5, 1955, about two and a half weeks before the Life article was published, and I ask you whether you read this interview:

[fol. 225] "The Indiana author explained that the idea for the novel came from newspaper accounts of manhunts, not any particular one, but several."

Did you read that interview?

A. To the best—

Mr. Medina: One moment. I object to the form of the question simply because you keep making speeches, Mr. Garment.

Mr. Garment: I don't think I made a speech.

Mr. Medina: Yes, you did. You said two and a half weeks before the magazine was published. The date of the magazine is February 28th. It was published February 21st.

Mr. Garment: Conceded.

By Mr. Garment:

Q. Well, that is two and a half weeks—

The Court: At any rate, did you read this article which counsel has just read from to you?

The Witness: I don't recall.

Q. You don't recall?

A. No.

Q. Do you recall not reading it?

A. I don't recall that.

Q. Now, there were a great number of people from Life Magazine who were working on that article at that time, were there not?

A. No.

Q. Well, there were persons in addition to yourself?

A. Correct.

Q. There was Miss Ecker?

A. Right.

Q. There was Miss Shevlin?

A. No.

Q. Well, she had done some work on the article?

A. As soon as Miss Ecker returned, Miss Shevlin automatically went back to her job.

[fol. 226] Q. Yes. But Miss Shevlin knew that the article was in the process of being prepared, did she not?

A. She knew.

Q. There was the managing editor, with whom you had had a layout conference; isn't that correct?

A. He knew.

Q. Would there be any other persons who knew about it?

A. (No reply.)

Q. Let me suggest a few names to you. The photo editor would have known about it, Mr. Ray Macklin?

A. He knew, indeed.

Q. Anybody else that you can think of?

A. It's hard to say who might have overheard such a thing.

Q. Did anyone of those persons call to your attention the fact that there had been a report in Cue Magazine that The Desperate Hours, the idea for The Desperate Hours, came from newspaper accounts of manhunts, not any particular one but several?

A. Not to the best of my recollection.

Q. Do you have a recollection to the contrary?

A. I have no recollection at all.

Q. You read the New York Times?

A. Usually.

Q. You read the Sunday Times?

A. Usually.

Q. And when you read it, do you read the entertainment section?

A. Usually.

Q. Well, you testified, as a matter of fact, before trial that you read the New York Times avidly; isn't that correct?

A. That's the word I used, right.

Q. And I believe you said you read the Sunday Times even more avidly. Do you recall that?

A. Correct.

Q. You recall we were talking yesterday about the article that was published in the Sunday Times for January 31, 1955 authored by Joseph Hayes?

A. I do, indeed.

Q. And that article made a number of points that the jury is well acquainted with, namely, that The Desperate Hours was based on a number of headline stories none of which were researched by the author. Do you recall that?

A. Yes.

[fol. 227] Q. Did you read that article in the Sunday Times?

A. Again, I do not recall specifically.

Q. Do you have a recollection to the contrary?

A. No, I do not.

Q. Well now, that article was published on the very day that your staff and your photographer were photographing The Desperate Hours in Philadelphia; isn't that right?

A. I didn't realize that.

Q. January 31, 1955. Does that refresh your recollection as to whether you read that article in the Sunday Times?

A. No, it does not.

Q. Well, in any event, when you sat down to write the first draft of this article, there was placed before you by your researcher this green envelope, Plaintiffs' Exhibit 25 in evidence, bearing the name of Laura Ecker in red crayon and the date February 11th, which contained clippings, is that right?

A. When I sat down to write the article—

Q. I just asked you about this envelope. This was placed before you?

A. I am answering your statement, not about the envelope. You asked me if that is correct. I would say it's not correct.

Q. That was not placed before you?

A. At the time I—may I answer freely?

Q. Yes, go ahead.

A. At the time I sat down to write that article, Miss Ecker did not come and place that before me.

Q. I understand; I am not making a point as to the actual physical event. But when you were writing the first draft of this article, you had available to you this research material, these clippings in this envelope, is that correct?

A. That and more.

[fol. 228] Q. Well, we had some discussion about the other clippings yesterday.

A. Right.

Q. Those are no longer around; is that right? Let's get that clear.

A. That's correct. They are automatically discarded periodically at Life Magazine.

Q. Thrown away?

A. Every two years.

Q. What is thrown away every two years?

A. These folders are weeded out every two years.

Q. I am not talking about the folders. I am talking about newspaper clippings. You don't throw away newspaper clippings, do you, that are part of the morgue?

A. When newspaper clippings have been used on a story they automatically go into what is known as a morgue carbon file so we have a record of what clippings were used on a particular story. After an interval of time the morgue carbon files are thinned out.

Q. Isn't it the procedure at all of the Time, Incorporated publications for the clippings which bear the stamp "Morgue" and the indication as to the newspaper from which the clipping came, to have that clipping returned to the morgue, the library of the magazine, after it is used?

A. Not invariably.

Q. Not invariably?

A. No.

Q. Well, what procedure is there? Is there some procedure that the various personnel are supposed to follow or is it left to the discretion or whim of each individual?

A. It is not left to the discretion or whim of each individual. There is a general policy about that.

Q. What is the general policy?

A. The policy is when a carbon file, which includes the carbon papers that you have seen here, it also includes some research that is used on the story, has been returned to the [fol. 229] file, after a period of time a good deal of the research is thrown out. The same happens with photographs. Otherwise they would bust out of the building.

Q. Mr. Prideaux, the newspaper clippings represent history of the news, do they not?

A. That's right.

Q. And the business of Time, Incorporated is news, is it not?

A. That's correct.

Q. And the library of Time, Incorporated is a library of the history of the news, is it not?

A. The library has microfilm also.

Q. Have you checked the microfilm to determine whether these clippings were placed on microfilm when the actual clippings were thrown away?

A. The clippings are never placed on microfilm, the newspapers are.

Q. Then there is no point in referring to microfilm. I am talking about clippings at this point. Do you say that newspaper clippings that reflect the history of events are thrown away haphazardly?

A. Not haphazardly, but they are discarded.

Q. Do you mean they are discarded deliberately?

A. Certainly not.

Q. Well all right, Mr. Prideaux, in any event, there was available to you on that date in this green envelope furnished to you by your researcher the article written by Joseph Hayes telling about the writing of *The Desperate Hours*. Isn't that right?

A. To the best of my recollection it was included in the material.

Q. Did you read it then?

A. I can't recall.

Q. Did you read anything in this envelope?

A. I read a great deal of material.

Q. Did you read anything in this envelope?

A. That I can't recall.

[fol. 230] Q. Did you read the reviews—

A. I have no recollection—

Q. —let me finish—did you read the reviews by the New York critics of *The Desperate Hours*?

A. Again I do not recall.

Q. Well, let me try two or three on you and see if they help refresh your recollection.

I read to you from a clipping bearing the red stamp February 11, 1955, which is in Plaintiffs' Exhibit 25, by John Chapman in the Daily News: "Not since mobsters Ross Hertz, Tom Fadden and Humphrey Bogart held as prisoners Leslie Howard and all the other innocent people they found in a lunchroom in 'The Petrified Forest' has there been as ruthless an invasion as there is in Joseph Hayes' play 'The Desperate Hours.'"

Do you recall reading that review?

A. No, I do not.

Q. I read to you the first two paragraphs from the review by William Hawkins in the New York World Telegram & Sun:

"'The Desperate Hours' is a melodrama that frankly sets out to pulverize your nerves. Before it is over, it does just that. And it also does the same thing to the nerves of most of its characters.

"In this Barrymore Theatre presentation Joseph Hayes has played a variation on a classic thriller theme. Three escaped criminals sneak into the quiet home of an innocent family and set up a siege."

Do you recall reading that?

A. No, I do not.

Q. I read a clipping to you from Exhibit 25, the review of Walter F. Kerr, in the New York Herald Tribune of The Desperate Hours:

[fol. 231] "Suburban Jungle.

"As slam-bang melodrama, with a glowering figure behind every door and a nervous finger on every trigger, 'The Desperate Hours' is a beaut. Joseph Hayes has made a lightning-paced thriller out of his novel about an ordinary household invaded by killers, and while the material isn't exactly new—a couple of films, 'He Ran All The Way' and 'Suddenly,' come to mind—the author has worked out a dozen or so breath-taking twists on it."

Do you recall reading that?

A. No, I do not.

Q. You don't recall any of these clippings?

A. Mr. Garment—

Q. Just one second, Mr. Prideaux. I am conducting an examination. You will have an opportunity to say anything you want on examination by your own counsel.

Did you ever hear of a movie called "Blind Alley"?

A. Yes.

Q. Which was also produced as a play and then again as a movie called "The Dark Past."

A. I don't recall "The Dark Past." I recall "Blind Alley."

Q. Do you recall that in general "The Blind Alley" involved an escaped convict killer who, with two accomplices, takes over the home of a doctor and his wife, and I believe there were children involved, also? Do you recall that?

A. I recall the outline of the story, yes.

Q. In the story they have to wait until the money arrives or a boat arrives for a getaway. Do you recall that?

Mr. Medina: One moment. I object to this line of questioning. If he has some other things to offer, let's put the play in.

[fol. 232] The Court: I will permit it.

Overruled.

Q. Did you have that in mind when you came to the conclusion, the assumption, that the heart and soul of *The Desperate Hours* was the story of the James Hill family?

A. Yes, I did.

Q. It raised no question in your mind about this being a classical fictional theme?

A. Not at all.

Q. There was reference by Mr. Hayes yesterday to a review of *The Desperate Hours* by Mr. Wolcott Gibbs in the *New Yorker Magazine*. You were present in court and heard Mr. Hayes make reference to that review, were you not?

A. Yes.

Q. Do you, from time to time, read the New Yorker Magazine?

A. Yes.

Q. Did you, during that period, read the reviews by the drama critic in the New Yorker Magazine?

A. Usually.

Q. When was this article actually—I believe Mr. Medina said the Life article was published on February 25th.

Mr. Garment: Is that right?

Mr. Medina: No, I said the 21st.

Mr. Garment: Published on February 21st and bearing the date February 28, 1955.

Mr. Medina: The issue of Life at that time bears the issue date of the week following its publication. So that for an issue bearing the date February 28th it would be out on the newsstands commencing February 21st—at least en route—and it would have been printed several days prior to February 21st.

[fol. 233] Q. In any event, Mr. Prideaux, there was nothing that came up during any of this period that you recall that raised any question in your mind about this basic heart and soul relationship between The Desperate Hours and the Hill incident?

A. No, indeed.

Q. Isn't it a fact, Mr. Prideaux, that you knew from the very beginning that The Desperate Hours had no relationship to the Hill family other than that a family in Philadelphia was held hostage by escaped convicts?

A. That is emphatically not true.

Q. Isn't it a fact that you couldn't have cared less as to the relationship between the two?

A. Emphatically not true.

Q. Isn't it a fact that it just happened that the play was opening in Philadelphia and that it was convenient to move the actors from The Desperate Hours into the Hill home and take pictures there for your article, and that's why this article appeared using the name of the Hill family?

A. That is equally untrue.

Q. And isn't it a fact that you couldn't have cared less what the facts were when you sat down to write that first draft?

A. Untrue.

Q. Now, Mr. Prideaux, apart from this business of sparking off or inspiring the text, of the first draft, it then goes on to get a little bit more specific about the relationship between *The Desperate Hours* and the Philadelphia home involved in this Philadelphia horror story. Is that right?

A. Correct.

* * * * *

Q. Now, you told us yesterday that you knew there was a certain amount of fictionalization in *The Desperate Hours* in terms of its relationship to this Hill incident. Is that right?

A. I don't recall telling you, but it's true. I did know.

[fol. 234] Q. You said that you weren't sure whether it was moderately fictionalized or a little bit fictionalized—

A. Right.

Q. But you knew it was fictionalized?

A. To some degree.

Q. And you put that down in the first draft?

A. That's correct.

Q. “—somewhat fictionalized but heart-stopping account of how one family rose to heroism in a crisis.”

A. Right.

Q. The sole reference to the Hill name in the first draft was in the caption to one of the photographs.

* * * * *

A. Correct.

Q. And that's where you said the “Actual event in 1952—took place in isolated house—where three convicts from Koming Penitentiary held family of James Hill as prisoners until they could obtain money.”

The Court: There is no question about that. The exhibit is in evidence.

Q. You told us yesterday that this first draft, typed up to reflect your changes, was then distributed to various persons, including the copy editor, Mr. Kastner, and your researcher, Miss Ecker.

A. Right.

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

Your Honor, Mr. Garment keeps doing this time and time again and shifting a little emphasis as to what the evidence was.

The Court: This has all been covered in the testimony yesterday. We have in evidence the different exhibits that were sent to the different people.

[fol. 235] Q. Now this paper that we are looking at that is now on the easel is a blow-up of the first page of Exhibit 22 in evidence here, is it not?

A. Yes.

Q. And that is the copy that went to Miss Ecker, your researcher.

A. The first copy, right.

Q. Would you explain to the jury what those check marks are that appear over each of the words.

A. Yes, indeed. It is customary when a researcher is checking on a piece of material to put a dot over every word, testifying to the truthfulness of that word. The researcher, in the course of the story, may get two or three different versions of the same story. She begins, in order to gain time, on the first version that comes through and does as much checking as she can and carries on with the subsequent copies that are given to her.

Q. What is the difference between the red checks and the plain pencil checks?

A. Names.

Q. In other words, names are checked with a red indication and other words bear a simple pencil check?

A. The spelling of names, yes. They are trickier, more difficult.

Q. And the use of a red check mark is designed to make sure that there is no error with respect to the spelling of any names.

A. That's correct.

Q. I notice that there is a question mark next to the whole first paragraph. Do you know who put that question mark there?

A. No, I don't. I could make a speculation, if you want me to.

Q. Give me your most reasonable belief as to who put that question mark there.

A. I would think that Miss Ecker did.

Q. I also note that there is a question mark over the fourth word in the first sentence of the second paragraph. Is that right?

A. Yes, that's right.

[fol. 236] Q. And that word is "somewhat" before the word "fictionalized."

A. Correct.

Q. And would it be your best recollection or belief that Miss Ecker also placed a question mark over the word "somewhat"?

A. Indeed it would be.

Q. Is it fair to say that a question mark was being placed over the word "somewhat" to draw to your attention the fact that *The Desperate Hours* was or might be completely fictionalized?

A. Not to draw to my attention.

Q. Well, was it done to draw it to anybody's attention?

A. It was to draw to her own attention.

Q. Then wouldn't she draw it to your attention?

A. No.

Q. What is her function as a researcher?

A. Her function is to ascertain facts.

Q. And not draw them to anybody's attention?

A. At a later stage of the process, yes.

Q. Well, ultimately to draw them to your attention?

A. Ultimately, certainly.

Q. Was that drawn to your attention?

A. It must have been.

Q. Do you have any recollection?

A. No.

Q. Now, this next page, Mr. Prideaux, is the first page, is it not, of Exhibit 21?

A. That's right.

Q. And that would be the copy of your first draft that went to Mr. Kastner, the copy editor; is that right?

A. That's correct.

Q. And just for a moment or two, Mr. Prideaux, I want to ask you a few questions about Mr. Kastner. How long has Mr. Kastner been with Time, Incorporated?

A. I can't tell you exactly—many years, long before I was.

Q. Let me tell you exactly. Isn't it a fact that he started with Time, Incorporated in 1924?

A. I told you I can't answer that.

[fol. 237] Q. Do you know that he was employed in the first instance by one of the original co-founders of Time, Incorporated, Britton Hadden?

A. I think I recollect that.

Q. Mr. Kastner was on the original masthead of Life Magazine when it was first published in 1936, was he not?

A. Yes.

Q. And he has been one of the supervising editors, senior to yourself and all other department editors, for many years, has he not?

A. Correct.

Q. And Mr. Kastner's function is to copy edit so as to give a consistent tone to the articles that appear in Life Magazine from the point of view of style and language; is that right?

A. Right.

Q. And that's a very important consideration, is it not, among all of the publications of Time, Inc., style, language?

A. I would say it is a consideration.

Q. It is the usual and ordinary procedure and it was the usual and ordinary procedure for you to sit down with

Mr. Kastner and discuss the copy editing of your first drafts after they were submitted to him, was it not?

A. Usually.

Q. Usually?

A. Right.

Q. Almost invariably. Wouldn't that be true?

A. Usually.

Q. Well, it would be with Mr. Kastner or some other copy editor?

A. That procedure varies.

Q. In any event, you sat down with Mr. Kastner in connection with this article?

A. I don't recall that. It seems likely.

* * * * *

Q. Mr. Prideaux, isn't it your best recollection that you and Mr. Kastner discussed the various changes that were being made in your first draft of this article?

A. I don't recall.

[fol. 238] Q. You have no recollection at all?

A. I don't literally recall.

Q. Maybe this will refresh your recollection, Mr. Prideaux, at page 122 of your deposition:

"Q. Mr. Prideaux, would you tell us something about the copy writing process after the draft is furnished to the copy editor?

"A. Most always in every case it is done with the copy editor and myself working together in the same place. Editing changes may be written into the story by him or by me. And by editing changes being written, I mean the literal writing thereof. The editing changes are usually determined by the copy editor himself.

"Q. Then all of the handwritten changes appearing on the copy given to Mr. Kastner were made either by you or Mr. Kastner in the presence of both of you?

"A. Correct."

Does that refresh your recollection now that you and Mr. Kastner sat down and made these changes together?

Mr. Medina: That wasn't the question you asked.

You asked whether there was any discussion.

The Court: The question was did he talk to Mr. Kastner. He said he didn't recall. Let's not waste any time.

Does that refresh your recollection?

I think the witness is shaking his head. He says it does.

The Witness: Yes.

Q. In the first instance Mr. Kastner struck out part of the first sentence. Do you recall what, if anything, he said in that connection?

A. No, indeed.

[fol. 239] Q. Did he indicate to you in words or substance that he disagreed with your approach to this article?

A. I don't recall.

Q. Didn't Mr. Kastner say that the article as drafted by you was not newsy enough?

A. I have no recollection of that.

Q. Well, let's pass that for a moment. Do you have any recollection at all at this point, any idea at all, why Mr. Kastner struck out part of that first sentence?

A. I have no specific recollection. I can give you a guess.

Q. Give me your best recollection.

A. I have no recollection.

Q. I don't want you to guess about anything, Mr. Prideaux.

Wouldn't you say, looking at that first paragraph, that Mr. Kastner by drawing his pencil through those first two lines indicated, whether he said so or not, that the approach was wrong?

A. Not necessarily.

Mr. Garment: Page 128:

Q. "Q. Do you recall any particular circumstances that led to the rewriting of that first paragraph?"

"A. None whatsoever. I can reconstruct it to you by imagination, but I recall no circumstances.

"Q. Would you reconstruct for me as best you can.

"A. I think perhaps the copy editor felt I was not getting into the story fast enough and chose a different be-

ginning; in other words, I was making the author the lead subject, and I think he felt that that was not a newsy enough beginning.”

Do you recall that Mr. Prideaux?

A. No, I don't recall, but obviously it's there.

[fol. 240] Q. Well, then, Mr. Kastner, whether he said so or not, went down beyond the first paragraph and then after a change, inserting the words “The play,” and so forth, ran his pencil through “somewhat fictionalized but.” You see that, do you not?

A. Yes, indeed.

Q. Do you recall any discussion about his striking out “somewhat fictionalized but”?

A. I do not recall.

Q. Did you protest to him when he struck that out?

A. I do not recall.

Q. Did he ask you what the relationship was between The Desperate Hours and this Hill incident?

A. I recall no conversation at that time.

Q. Mr. Prideaux, by striking out “somewhat fictionalized,” Mr. Kastner was making this a statement that The Desperate Hours was an account of how the Hill family fared in this real-life incident; is that not true?

A. Not necessarily.

Q. Well, aren't you very careful at Life Magazine about the use of language such as “somewhat fictionalized—frankly fictionalized—partly fictionalized,” and so forth?

A. We are careful about language.

Q. Well, don't you make it a point in article after article to indicate what the relationship is between a work of fiction and a true-life event when you go into this kind of true-life coverage?

A. We do.

Q. Well, don't you have any recollection at this point as to why that was stricken out and what, if anything, you said about it?

A. I have testified that I have no recollection.

Q. Don't you recall even protesting that?

A. No, I do not.

Q. Mr. Prideaux, two weeks before this article appeared—and I am referring to the issue of Life Magazine for [fol. 241] February 14, 1955—there was another true-life drama article, was there not?

A. I don't recall.

Q. Mr. Prideaux, wasn't that a true-life drama article that appeared as the leading article in Life Magazine?

A. I do not recall.

Q. Did you write the review or have any hand in the review of Anastasia?

A. Yes, the issue that it was in was what confused me. I don't recall what issue it was.

Q. Do you recall that that appeared as the leading article, event of the week, in Life Magazine?

A. Yes, indeed.

Q. Had that ever happened before?

A. Had what ever happened?

Q. That a drama review appeared as the leading article in Life Magazine in the section usually reserved for affairs of state—if you recall?

A. I don't think so.

Q. That was a very unusual event, was it not?

A. Yes.

Mr. Garment: Before discussing this article, your Honor, I think it would be appropriate to offer it in evidence.

Do you want to look at it, Mr. Medina?

(Handing magazine to Mr. Medina.)

Mr. Medina: No objection.

(The issue of Life for February 24, 1955 received in evidence as Plaintiffs' Exhibit 26.)

By Mr. Garment:

Q. Mr. Prideaux, this article was a review of the play Anastasia.

A. Right.

Q. Is that correct?

A. Yes, that's correct.

[fol. 242] Q. And the true life theme was set by the headline "Is This Princess Alive?" Is that right?

A. Yes.

Q. And on the next five pages there is a discussion both of the play and of what was actually known about the actual Anastasia?

A. That is true.

Q. Now, very briefly, the actual Anastasia was one of the daughters of the Czar, about whom a legend had grown up that she survived the execution of the royal family; is that right?

A. As I recall it, yes.

Q. And there was a woman who for many years had claimed to be the true Anastasia; is that right?

A. As I recall it.

Q. And she had been involved in many proceedings, legal proceedings, in other words, in an attempt to establish that she was the real Anastasia?

A. As I recall.

Q. And as you noted on the fourth page of this article under the headline "The Princess as a Pauper," she had never been able to satisfy any judicial tribunal that she was the actual Anastasia; is that right?

A. I believe so, yes.

Q. And Life arranged to have somebody take photographs of Mrs. Von Heydebrand, who claimed to be Anastasia, in Germany, did it not?

A. In Europe, probably in Germany. I just don't recall.

Q. And she collaborated fully in that article; did she not?

A. I can't answer that.

Q. And she had also sold or had participated in some arrangement with the producers of the play and the motion picture whereby she was to receive money from them in connection with the play and movie Anastasia; is that right?

A. My recollection of the details is hazy on that.

Q. Well, that appears right in the text on the first page of your article, all of those details.

[fol. 243] Mr. Malino: I don't like to interrupt, but I would like to have it made clear to the jury that Mr. Garment is making no claim on behalf of Mr. Hill as against The Desperate Hours Company as to participating in that picture.

Mr. Garment: Of course not.

Q. That article was prepared with a great deal of care and concern as to the documentary facts of the actual princess, Anastasia; is that right?

A. I believe so.

Q. Photographs were obtained and published, were they not?

A. Yes, they were.

Q. Research was conducted into the details, such as were known to exist, about the actual Anastasia before she vanished into legend to come out as this claimant, Mrs. Von Heydebrand; is that correct?

A. That's correct.

Q. And in the text of that article about the play Anastasia, you make careful reference to the fact that this was—and I quote—"a frankly fictional account of how Anastasia runs afoul of Slavic scoundrels," and so forth.

A. Yes.

Q. There are other articles, true life articles, in which Life has been very, very meticulous about indicating the extent of fictionalization when dealing with public figures who make claims to publicity; isn't that right?

A. It seems reasonable.

Q. But in relation to the Hill family, about whom you knew nothing at all, you sat by while the words "somewhat fictionalized" was struck out of that article, and you have no recollection now of having protested.

A. No, I do not.

The Court: We will suspend at this point.
(A luncheon recess was then declared.)

[fol. 244]

AFTERNOON SESSION

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

Direct examination.

By Mr. Garment (Continued):

Q. Mr. Prideaux, just before we adjourned for lunch we were talking about the practice of your department through the years to use precise words to convey precise meanings and, in particular, we discussed the use of the term "frankly fictionalized" in the Anastasia story that preceded the story of *The Desperate Hours* by two weeks. Do you recall that?

A. Right.

Q. Just by way of two further examples of this procedure, I show you the review of *The Winslow Boy* at page 97 of the issue of *Life Magazine* for November 24, 1947, and ask you whether you recall that.

Mr. Medina: I object to the form of the question simply because of the introductory remark, which characterized the manner.

The Court: You can ask about that, if he recalls it, and if you want to offer it in evidence, all right.

By Mr. Garment:

Q. Do you recall it?

A. Yes.

Q. Did you write that review?

A. Yes.

Q. That was the review of—

Mr. Garment: Withdrawn.
Your Honor, I offer that in evidence.
Mr. Medina: No objection.

[fol. 245] (Issue of Life Magazine for November 24, 1947, received in evidence as Plaintiffs' Exhibit 27.)

Q. Very briefly, Mr. Prideaux, The Winslow Boy was a play based upon a very well known English case, namely, The Archer-Shee case?

A. That's right.

Q. There was never any question in anybody's mind about the Archer-Shee case having been the inspiration for The Winslow Boy and the basis for that play?

A. Right.

Q. And you noted, nevertheless, in that article that the author created some fictional embellishments.

A. Right.

Q. I show you a review of a motion picture called They Were Expendable in December 31, 1945 issue of Life Magazine, appearing at page 61, and ask you whether you recall that review?

A. No, I don't.

Q. Well, that review was by your department, was it not?

A. I was not the head of the department at that time. There was a change of position completely. I had just returned from the Army—you want me to explain?

Q. No, it is not necessary. At any rate, that article appeared in that issue of Life Magazine?

A. Obviously.

* * * * *

(The issue of Life Magazine for December 31, 1945, was received in evidence as Plaintiffs' Exhibit 28.)

* * * * *

Q. I understand from your testimony, Mr. Prideaux, that you did not participate in the preparation of this review.

A. That's correct.

Q. However, would you read the text of that review and would you agree with me that it is fair to say that Life Magazine was careful to draw the distinction between fact [fol. 246] and fiction in the case of They Were Expendable and to make its precise editorial point in precise editorial language?

Mr. Medina: I object to the form of the question, your Honor. It speaks for itself.

The Court: No. This man has been in this field for many years and he is an expert on this, and this is something that might not be perfectly obvious to the jury.

I will permit it. Overruled.

A. Yes, I have read it.

Q. Would you like the question read back?

A. Yes.

(The reporter read the previous question.)

A. Yes.

Mr. Garment: With your Honor's permission, I will read just the text of this review to the jury:

"Movie of the Week:

"They Were Expendable.

"Robert Montgomery returns to the screen in the story of Lieutenant Bulkeley's Valiant PT boats.

"Since the end of the war, Hollywood's moguls have lengthily and anxiously debated their chances of profitably making any more war pictures. This month a test case, in the form of They Were Expendable, goes to judgment at the box office. Since its director, Captain John Ford, USNR, has expertly adapted William L. White's book and since the picture provides an excellent performance by one of Hollywood's returning old hands, Commander Robert Montgomery, just out of the Navy, Expendable may tip the scales in favor of further war movies.

[fol. 247] "An atmosphere of quiet courage pervades this account of a handful of battered PT boats fighting doggedly

against overwhelming enemy forces in the Philippines. The battle scenes, shot with real motor torpedo boats at Key Biscayne, Florida, are spectacular, although Navy veterans will have no difficulty spotting the miniature Jap cruisers and the other necessary fakes.

“Movie goers will notice, however, that *They Were Expendable* changes the names of the principal heroes, Lieutenants John Bulkeley and Bolling Kelly, to Brickley and Ryan. One possible reason is that the movie repeats almost verbatim a story of dubious accuracy told in White’s book: the ‘romance’ between Kelly and a Corregidor Army nurse named Peggy. Kelly, now married to another girl, thinks White built up the romance a little; Peggy, who in real life is Lieutenant Beulah Greenwalt told *LIFE*, “We were just good friends on the Rock. I haven’t seen him since . . .”

Q. Mr. Prideaux, would you examine this list and tell me whether that would appear to be a list of true-life reviews of various dramatic productions, that is, true-life type reviews of movies and plays that appeared in *Life Magazine* during the ten-year period prior to the publication of *The Desperate Hours* (handing paper to witness).

A. I don’t understand your question.

* * * * *

A. I can tell you, sir, right now, without recalling the specific content of each *Life Story*—

Q. That’s all I am asking for.

A. Which I can’t do.

[fol. 248] Q. I am not asking you to do that. I am asking you whether those stories appeared.

* * * * *

By Mr. Garment:

Q. Mr. Prideaux, would you just read through that list. It would take you a moment.

A. To the best of my recollection—this, again, involves memory—there was a true-life incident behind all of these

pictures mentioned, to some degree. To what degree I can't say. And, again to the best of my recollection, all of these items appeared in Life.

The Court: All of them what?

The Witness: All of them appeared in Life.

* * * * *

(The list of articles appearing in Life, referred to, was received in evidence as Plaintiffs' Exhibit 29.)

Q. Mr. Prideaux, before we come back to the article itself, there are just one or two points that I want to get clear.

This morning and yesterday I asked you a number of questions relating to events that took place quite some time ago; is that right?

A. Right.

Q. The lawsuit, you recall—if you do recall—was started approximately six or seven months after the publication of the article.

A. I didn't know that.

Q. Wasn't that called to your attention at or about the time the summons and complaint were served upon the defendant Time, Inc.?

A. I truly don't remember that.

[fol. 249] Q. But there did come a time when you were notified about it and discussed the matter with counsel?

A. Yes.

Q. There did come a time when you discussed the matter with your various associates on Life Magazine?

A. Right.

Q. Including those who were involved in the preparation of this article?

A. That's correct.

Q. And that would include Miss Ecker; is that right?

A. Right.

Q. Miss Addison?

A. To a lesser degree.

Q. Mr. Kastner?

A. To a lesser degree.

Q. And Mr. Thompson, of course, the editor-in-chief?

A. I don't recall that.

Q. You don't recall ever having any discussion with him about this lawsuit?

A. No, I don't—not at that time.

Q. But since that time, of course, the matter has been discussed by you and these other three editors—that is, Mr. Kastner and Mr. Thompson, rather; is that right?

A. Since that time, yes.

Q. And, of course, you were examined before trial about two years after the article appeared?

A. By deposition, yes.

Q. Let's come back to this exhibit here. These changes that appear on the first page of the draft which went to Mr. Kastner are all in Mr. Kastner's handwriting, are they not—except possibly “an average”?

A. I think that's my handwriting.

Q. However, “The play—”

A. I think that's mine.

Q. How about “Hills”?

A. I think that's mine.

Q. Look at the original exhibit before you.

A. You see, I think “The play” is Mr. Kastner's. I think the word “during” is mine. I think the deletions are Mr. Kastner's, and I think “Hills” is mine.

[fol. 250] Q. That would certainly refresh your recollection that these changes were made by you and Mr. Kastner in each other's presence?

A. It should, and it does.

Q. After that first part was struck out and as a result of your meeting with Mr. Kastner, did you prepare a new first paragraph?

A. I don't recall whether I prepared it or whether Mr. Kastner prepared it.

Q. Now, Mr. Prideaux, this gets quite close to the text of the first paragraph of the Life article as it actually appeared?

A. Right.

Q. And by this paragraph the Hills and their relationship to *The Desperate Hours* was made the first paragraph of the article; is that right?

A. Correct.

Q. Whereas in your original draft the James Hill name appeared only as a caption to a photograph?

A. The first caption, yes.

* * * * *

Q. I wonder if you could—the handwriting might be a little obscure—I wonder if you could read that revised first paragraph including the handwriting changes.

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

Q. What is your best recollection as to who typed the revision of the first paragraph before the handwritten changes were placed there?

A. I don’t recall who typed it. But from the evidence [fol. 251] of what I see here, I think I typed it.

Q. And then you went back in to Mr. Kastner who then copyedited it with the various handwritten notations; is that right?

A. That’s right.

Q. Now I wonder if you could tell us what that blow-up represents, Mr. Prideaux (indicating). I might draw to your attention that it is the first page of Plaintiffs’ Exhibit 24. But tell us what it is in relation to the preparation of this article.

A. Yes. This is the original, what we call white copy of the article which I submitted—the original copy which I

submitted to Mr. Kastner. It was never retyped. Changes were made on the copy, as you can see, and Mr. Kastner's initials, which are normally put on the yellow copy that goes to him personally, were transferred to this copy, and the managing editor's initials were added and it became the printer's copy.

Q. And the remaining pages of that exhibit similarly represent the final or close to final version of the article with the approval initials of Mr. Kastner and "EKT"—that would be Mr. Edward K. Thompson, the editor in chief of the magazine, is that right?

A. That's right.

Q. I notice that there are certain typewritten insertions, "Lewisburg" instead of "KOMING PENITENTIARY," "While they hid from the manhunt" instead of "until they could obtain money," and so forth.

A. That's right.

Q. Those details were supplied by the researcher, were they not?

A. Yes.

Q. Some time after you had prepared your original draft of the article?

A. It depends upon what you mean by some time.

Q. After.

A. After, yes.

[fol. 252] Q. Let me ask you this, Mr. Prideaux. In your original draft of this article, you inserted a running head on the second and third pages, did you not?

A. No.

Q. I draw your attention to the typewritten matter "Desperate Hours."

A. I am mistaken. I can explain that to you if you would like to know.

Mr. Medina: To what page are you referring?

Mr. Garment: I am referring to the second page of Exhibit 20.

Q. You said you wanted to explain something to me. Go ahead, Mr. Prideaux.

A. There is a general rule at the magazine that the writer should not attempt to use a carry-over title. A carry-over title is something that briefly identifies what the story is about. Am I being clear?

Q. Yes. But let's get it a little bit clearer. You say the writer. You are referring to yourself?

A. I am referring to myself or any writer.

Q. Well, you are also an editor of the magazine.

A. That's right.

Q. In the initial draft, whether or not it conformed to established policy or not, you typed in as the running head, "Desperate Hours," did you not?

A. I did.

* * * * *

By Mr. Garment:

Q. In Life Magazine, the first page generally carries the indication of the department, "Theater," for example?

A. Usually.

Q. And the running head is an indication of the subject matter of the article?

A. It identifies the article, right.

[fol. 253] Q. And it identifies the basic subject matter of the article; is that correct?

A. It's strongly related to it, yes.

Q. For example, if your Nature department were doing an article on birds, the first page would show "Nature" as the department name; is that correct?

A. That's right.

Q. And the second page would have the running head "Birds," is that correct?

A. No. May I explain?

Q. Well, I am offering a specific illustration. I drew that illustration from the magazine itself. I am simply trying to have this point illustrated, Mr. Prideaux.

A. I will be glad to help.

Q. I draw your attention to page 30 of Exhibit 10. There is an article about a snowbound meadow lark under the heading "Nature"; is that right?

A. We don't call this a heading. This is the headline—

Q. I mean the department.

A. The department is identified in a rather inconspicuous way, small type, in other words.

Q. And the following headline was "Birds"?

A. That's right.

Q. Indicating that the article was about birds?

A. That's right.

Q. That's all I was getting at.

* * * * *

Q. Somewhere along the line the running head for this article was changed, was it not?

A. Right.

Q. And it became changed to what?

A. As I recall, it became changed to "True Crime."

Q. From "Desperate Hours."

A. Right.

Q. After all of the revising was completed and the article finally appeared, Mr. Prideaux, was there anything in the text of that article or in the photographs or captions to [fol. 254] make clear or to suggest that The Desperate Hours was anything but a dramatic portrayal of the James Hill family and the events in which that family was involved in September 1952?

A. Yes.

Q. You are referring to a specific word or words?

A. Yes.

Q. And that word is what?

A. That word is "inspires."

Q. Now, Mr. Prideaux, the article starts off with the statement, "True Crime Inspires Tense Play."

A. In the headline.

* * * * *

Q. All right, Mr. Prideaux, you will agree with me that the word "inspires" can have a number of meanings; is that right?

A. Many meanings.

Q. It can mean that a particular work was sparked off by a particular event; is that correct?

A. I think, upon more thought, that the word "inspires" connotes something a little more having to do with inspiration than sparked.

Q. Well, all right, let's put it that way. But the point I am getting at is this, Mr. Prideaux: When you say that something inspires a novel or a play, you don't necessarily say that the play is the story of the event.

A. Not necessarily.

Q. There are instances where a particular person or event has inspired a dramatic work; is that right?

A. Right.

Q. And the work was then a complete work of fiction; is that right?

A. I wouldn't say that.

Q. Well, let's talk about Anastasia. That was inspired by the Anastasia legend, wasn't it?

A. Right.

[fol. 255] Q. And you said it was frankly fictionalized.

A. I didn't say it was a complete work of fiction. That's very important.

Q. All right, substantially a complete work of fiction.

A. I would say—substantially a complete work of fiction does not describe Anastasia.

Q. Mr. Prideaux, when you say frankly fictionalized in relation to Anastasia, do you have in mind what in Anastasia was confirmed by any known verified fact?

A. My recollection of the facts of Anastasia, I am frank to confess, is rather hazy now.

Q. Isn't the point that was made in your article about Anastasia that it was a take-off starting with the legend and then was a frankly fictionalized dramatic story?

A. As I recall Anastasia and recall my article, we pointed out that the background or the exposition for the play was based on the best facts anybody could have, and the play itself made a great deal of the exposition of the background. However, the play at that point took on on its own steam, so to speak.

Q. So far as the world knows, so far as anybody has proved anything, the actual real-life Princess Anastasia died along with the other members of that family when the Czar's family was assassinated; isn't that a fact?

A. I can't tell whether that's a fact.

Q. Well, you said so in the article, that her claim had never been proved.

A. In 1955. I don't recall.

Q. All right, Mr. Prideaux. I don't want to get into too much of an argument about specific words here. On the other hand, there are works of fiction which are inspired by real-life events and hew closely to those real-life events; is that right?

A. I think there are, yes.

Q. I will give you an example from Life Magazine. [fol. 256] "Compulsion" is known to hew closely to the events of the Leopold-Loeb case?

A. Yes.

Q. And to be inspired by it?

A. I would say that's practically a documentary.

Q. You said in Life Magazine, did you not, that "Compulsion"—supposedly only inspired by the Leopold-Loeb case—in fact hews fairly closely to the facts?

A. I don't recall what we said in Life on that.

Q. I will show it to you to refresh your recollection.

Mr. Garment: I offer in evidence the issue of Life Magazine for April 13, 1959.

Mr. Medina: No objection.

(The issue of Life for April 13, 1959 was received in evidence as Plaintiffs' Exhibit 30.)

Q. Mr. Prideaux, I show you page 60 of Exhibit 30, particularly the sentence, "The plot supposedly only inspired by the original case"—that is, the plot of "Compulsion"—"supposedly only inspired by the Leopold-Loeb case, actually hews closely to the real events."

A. Yes.

Q. Does that refresh your recollection? Well, in any event, it appears in the magazine.

A. Yes.

Q. Again that's another example of the precise use of language by Life Magazine to make its editorial points in clear English.

A. Right.

Q. Well now, in your article you start off with the basic premise that *The Desperate Hours* was specifically inspired by the Hill incident; do you not?

A. That's correct.

Q. And then we go on then to the second feature, which would be the extent of the actual connection between the purported source of inspiration and the dramatic work; is that right?

A. I don't understand the question.

[fol. 257] Q. Well, after the general heading "True Crime Inspires Tense Play," under the headline of the White-marsh incident and the picture of the house, you then go on to say: "The ordeal of a family trapped by convicts gives Broadway a new thriller, 'The Desperate Hours.'" Now you are beginning there, in that subheading, to get closer in your description of the relationship between *The Desperate Hours* and the Hill incident beyond that of "inspires." Isn't that a fair statement?

A. That's correct.

Q. What was your original statement or subheading which now in the final appears as "The ordeal of a family trapped by convicts gives Broadway a new thriller, 'The Desperate Hours,'" and I direct your attention to the last page of Exhibit 20.

A. "Case of a family trapped by convicts moves author to write novel, movie and now a Broadway thriller."

Q. That was changed somewhat along the line in the editing process.

A. That's right.

Q. By whom?

A. I assume Mr. Kastner.

Q. Do you recall who it was?

A. No, I don't. I can only assume.

Q. Getting to the text of the article, Life then describes specifically the relationship between the Hill incident and The Desperate Hours beyond that of inspiration, does it not?

* * * * *

A. Life uses the word "ordeal." If that's a specific word, then it describes it specifically.

* * * * *

Q. In the first sentence you state: "Three years ago Americans all over the country read about the desperate ordeal of the James Hill family, who were held prisoners [fol. 258] in their own home outside Philadelphia by three escaped convicts."

In the second sentence you say: "Later they read about it in Joseph Hayes' novel 'The Desperate Hours,' inspired by the family's experience."

Now "Later they read about it," is a reference to the experience, the desperate ordeal of the James Hill family, is it not?

A. That's right.

Q. And in the following phrase "Now they can see the story reenacted in Hayes' Broadway play based on the book"—"The story that they can see reenacted," according to Life, is the story of the James Hill family. Isn't that what you intended to convey?

A. No. I think it's the story of the novel which, in turn, was inspired by the family.

Mr. Garment (Reading from deposition): At page 109—

“Q. The reference to ‘Later they read about it’ is a reference to the desperate ordeal of the James Hill family; is that right?”

“A. In essence.

“Q. Subsequently, through that descriptive material, the reference is to the story reenacted in Hayes’ Broadway play, which is the story of the Hill family; isn’t that correct?”

“A. Generally speaking.

“Q. And the reference to ‘next year Americans all over the country will see it in his movie’ is again a reference to the incident involving the Hill family?”

“A. It is a reference to the incident.”

Do you recall that I asked you those questions and you gave those answers?

A. No, I don’t recall that you did, but I am sure you did.

Q. Didn’t you read this testimony before you came here to testify, Mr. Prideaux?

A. Several weeks ago, yes.

[fol. 259] Mr. Medina: There is nothing inconsistent with that testimony, what he is saying here. Are you purporting to say there is?

Mr. Garment: Of course, that is for the jury to determine.

Q. Apart from the word “inspired” in the headline and in that second sentence, Mr. Prideaux, would you tell this jury any other words or phrase or picture or anything in that article or in the three pages of the article that would indicate that *The Desperate Hours* was anything but a dramatic portrayal of the Hill family and what took place in their house?

A. I would like to tell the jury that a word that’s put in the headline is put there because it is a key position, and a word that’s put in the first paragraph of a text is put there because it is a key position.

Q. All right.

Do you expect that the readers will read something more than just the headline?

A. Hopefully.

Q. Well, you expect them to look at the pictures, don't you?

A. Yes.

Q. And you expect their eye to first catch the words "actual event," don't you?

A. I think it will catch "inspires," don't you?

Q. Again these are matters for the jury to determine.

The words "actual event" below the headline were placed in there, were they not, specifically to indicate or suggest to the readers that the incident in which the Hills were involved is what is involved in the play?

A. No, it was not.

Q. And you say you hope that the readers will read beyond the headline?

A. I said that.

Q. Well, on the assumption that they do, Mr. Prideaux, I repeat my question to you. Would you go through the [fol. 260] article—take your time—and point out to the Court and jury anything in that article that would indicate that there was any difference between *The Desperate Hours* and the incident in which the Hill family was involved?

A. I don't think that will be necessary, because I am sure that establishing the original premise is done only in the covering headline and in the first paragraph of the text.

Q. Look, Mr. Prideaux, I am giving you a free reign on this.

A. I don't need it.

Q. I am telling you to take your time and to point out one clash, to point out one clash in points of the time of the actual incident as opposed to the time sequence of the play, to point out anything about the size of the family that would indicate that there was a clash, to point out anything about the events that took place, anything in any picture, in any caption, in anything in the text.

A. That would be a waste of everybody's time for me to do that.

Q. You mean it would be a waste of anybody's time to publish an article designed to show that this was the story of a real family and put anything in that article that would suggest to the reader that this was a work of fiction?

A. It's not a work of fiction.

Q. You say that *The Desperate Hours* is not a work of fiction? You tell this jury that this was not a work of fiction?

A. It's a combination that's inspired by a true event. It has its basis in a true event. It's not a whole cloth piece of fiction.

Q. Well, let's not worry for the moment about whole cloth pieces of fiction. Answer my question and tell me whether there is a single clash, anything in that article that would indicate to the reader that there was any difference at all between *The Desperate Hours* and the so-[fol. 261] called desperate ordeal of the James Hill family.

A. Yes. I think the word "inspires" takes care of that.

Q. Beyond the word "inspires."

A. It was not necessary beyond the word "inspires."

Q. It was not necessary.

A. No.

Q. Wasn't there a point at which you had the number of hours that the family was held hostage, in one of the drafts of your article, namely, nineteen hours?

A. I don't remember that.

Mr. Medina: Which page are you referring to and of what exhibit?

Mr. Garment: Exhibit 24, the second page.

A. Yes. That was put in—

* * * * *

Q. By that I mean the Hill family.

A. Yes.

Q. The actual time sequence in *The Desperate Hours* is roughly 48 hours.

A. Right.

Q. Nineteen hours does not appear in the final article, does it?

A. No.

Q. Is there any reference in that article to the size of the real-life family?

A. No.

Q. But there is a reference and the pictures show the size of the fictional family, four in number, mother, daughter, father and son?

A. That's correct.

Mr. Medina: It seems to me we can keep on indefinitely in this vein.

The Court: The exhibit speaks for itself as to what is in there. I have permitted you to ask this witness what was his intention or what he meant by certain language, [fol. 262] but it seems to the Court that you have covered that point.

Q. Mr. Prideaux, when this case started, there was some reference to the fact of your being on trial here, and I want to make clear to this jury that the defendant is Time, Inc.

* * * * *

Q. Would you read this document (handing paper to witness)?

A. Out loud?

Q. No, to yourself.

(The witness examined the paper referred to.)

Q. Without getting into the substance of it, Mr. Prideaux, that is a statement by the editor in chief of Life Magazine, Mr. Edward K. Thompson, as to the editorial techniques involved in the preparation of a Life article; is it not?

A. That's correct.

* * * * *

Q. Is that correct?

A. In general, yes.

Q. And it is a fair statement of the policy which you and your associates have followed in preparing articles that appeared in Life Magazine, isn't that true?

A. I think it covers many aspects of our preparing articles. I think that the philosophy—if that's the word for it—suggested there covers a great deal of our activities.

Q. And this is something that relates to the collective efforts of all the personnel involved in preparing a Life article, yourself, as writer-editor, the copy editor, the editor in chief and the other persons involved? Wouldn't that be [fol. 263] a fair statement?

A. I would amend that to say something that we strive for when possible.

* * * * *

(Photostatic copy of "How Life Gets The Story" received in evidence as Plaintiffs' Exhibit 31.)

* * * * *

Q. Now, Mr. Prideaux, while all of these changes were going on in the Life article, in the drafts of the Life article about The Desperate Hours, was there, to your recollection, any discussion about the Hill family?

A. I don't recall.

Q. Do you recall whether anybody raised any question about who they were or where they were or what they were?

A. The only honest thing I can say is I don't remember.

Q. Mr. Prideaux, do you feel that you alone are responsible for the preparation of this article?

A. Yes, I do.

Mr. Garment: That's all I have.

Cross examination.

By Mr. Malino:

Q. As I recall it, Mr. Garment asked you about a number of different departments in Life of which the theater department was one. Do you recall that?

A. Yes.

Q. The other departments he mentioned were other editorial departments; is that right?

A. Well, would you be so kind as to refresh my memory as to what I said, or do you want me to remember it?

Q. If you remember it.

A. It seems to me I mentioned departments like science, nature and so on.

[fol. 264] Q. That's right.

A. But the theater is sort of a sub-department of the entertainment department.

Q. He didn't mention the advertising department.

A. I know so little of it I shouldn't mention it.

Q. I say he didn't mention it.

A. No.

Q. In your examination that Mr. Garment conducted a few years ago were the following questions asked of you and did you make the following answers:

"Q. Is the advertising for Life Magazine handled completely separate from the subject material?

"A. Yes.

"Q. But is it handled on the premises of Time-Life Publications?

"A. I know so little about it that I can't give you an accurate answer. My impression is that it is handled on the premises.

"Q. Is there any policy with respect to clearance of material in terms or problems with advertisers or potential advertisers?

"A. Not to my knowledge.

"Q. At any stage of the preparation of the magazine are proofs made available to the advertising department?

"A. Not to my knowledge. I would say emphatically no.

"Q. Except presumably if any request was made?

"A. I doubt it. I am speaking out of my depth, but I do know that the editorial content of the magazine is entirely separate, and it is a matter of editorial policy to keep it that way."

Were you asked those questions and did you make those answers?

A. Yes.

[fol. 265] Q. If you were asked those questions today, would you make the same answers?

A. Yes, indeed.

Mr. Malino: That's all.

Cross examination.

By Mr. Medina:

Q. What is the basis, Mr. Prideaux, on which you wrote this story?

A. It seemed from the very beginning that this was an important news event in the entertainment field for reasons that I think we have talked about before, that it was a play based on a novel that was very well received. There was something quite unusual about it in that the movie had already been made and kept aside as the play was being developed. The production itself was of interest, as we stated, and when we were told about the connection with the Hill incident, that seemed to augment the interest of this whole production.

Q. What was the basis on which you included a reference to the Hill incident?

A. Being told by a source, to begin with, which I trusted, namely, a friend and neighbor of Mr. Hayes', and by the fact that Mr. Hayes, who it seemed to me realized that we were closely connected with or were interested in this incident, was cooperating and the fact that we were—our hope was to make this connection as part of the entire combination of events that made this an interesting news item.

Q. Do you recall that telephone conversation you made to Mr. Hayes after you talked to the press agents?

A. I don't recall word for word. I remember that I introduced myself by saying that I was a friend of Bradley Smith, who was his neighbor and friend. I remember telling him—although again I can't do any word for word re-

counting of what I said—that we understood that there was [fol. 266] a connection and it seemed like—from my point of view—an obligatory thing to do, to point out this connection.

Q. Had you ever met Mr. Hayes or Mr. Erskine before this article?

A. Never.

Q. And after this article when did you next see them?

A. Well, I met Mr. Hayes—under surprising circumstances—this past winter in Sarasota.

Q. Incidentally, what was Virginia Shevlin's connection with this article?

A. She was a substitute for Miss Ecker. Miss Ecker was away on a short vacation and Miss Shevlin came in to give us her help. At the actual shooting of the story she was given a shooting script and instructions of what to do, and as soon as she did that she withdrew from the story, as we expected her to do.

Q. So her only connection was to accompany the photographer on the shooting of the pictures?

A. Yes, to expedite the shooting of pictures.

Q. And Miss Ecker had been with you before Miss Shevlin came into the picture?

A. Yes.

Q. And then came in later to do the actual checking?

A. That's right.

Q. Did it ever occur to you at any time that you were invading anybody's privacy in connection with this article?

A. The question of privacy never crossed my mind, because I felt it was a matter of public record—a very public record, inasmuch as it had been so well publicized across the country, and the newspapers that I had seen, that were sent to us from Philadelphia, were screaming headlines.

Q. And you certainly were operating under good faith at that time?

Mr. Garment: I object to that question.

The Court: Objection sustained.

[fol. 267] Q. How many articles have you done since February 1955?

A. Well, I would say I have done about, roughly, 40 a year or more, between 40 and 50—times seven, that's 350 articles.

Q. Can you remember precisely what you did with respect to each of those articles?

A. No.

Q. Can you remember precisely what you read in connection with each of those articles?

A. No.

Q. Can you remember precisely what you read in connection with this article, back in February 1955?

A. No, I can't. I wish I could.

Q. Do you know what your morgue does with clips of out of town newspapers when they are sent to the morgue?

A. I think it throws them away. I think we keep New York papers and throw away the out of town papers.

Q. And that's the general policy?

A. Yes.

Q. Unless someone specifically directs them to be kept?

A. Yes.

Q. You were asked about the motion picture, I believe, "Blind Alley." Will you tell us about that.

A. Yes. I have a recollection that that particular picture centered around an escaped convict who found himself in a family where there was either a school teacher or a psychiatrist or a psychologist, some man very versed in this field, who broke down the man's confidence by pointing out that instead of being a strong, effective individual, he was, in fact, a very weak individual, and it was the gradual disintegration of this bully as he realized that he was not in fact a bully but was a weakling.

Q. Do you have Exhibit 22 in front of you, which is the so-called checking copy?

A. Yes.

* * * * *

[fol. 268] Q. That page was included together with eight other pages as a so-called checking copy to the magazine. Isn't it a fact that these nine pages are a composite of some partial checking on the first draft of the story and complete checking on the final story?

A. That's correct.

Q. So that when there are no check marks on a portion of that paragraph, on the first page of Exhibit 22, that simply means that Miss Ecker had started to check that and then when she received the later draft of the story dropped that and checked the final draft?

A. That's correct.

Q. And what does that question mark mean?

A. I don't know. It can mean several things there, because this is something—she was making a notation to herself, either to make a phone call or to check up in a reference book or to find out from somebody about something in that area of the text.

Q. Isn't it common for the researcher who is doing the checking, if she wants to look into something further, to put a question mark to remind herself that she has got to look for something further?

A. That's the purpose of the question mark.

Q. Incidentally, in one of the copies of the exhibits, there was the word "KOMING" which you had written. Tell us about that and what you use that for.

A. It means information coming later. I use it very often—and we all do, when we are not sure of a spelling of a place name, a figure or even something that has been forgotten or something that we know is very easy to get. It's the kind of a thing that is usually put in as a substitute for some information that we know will be available when the checking time comes.

Q. Included in the sheets of Exhibit 22, these checking sheets of Miss Ecker, are sheets with the entire article as [fol. 269] it finally came out and Miss Ecker's check marks over each word. Correct?

A. That's correct.

Mr. Medina: That's all.

Redirect examination.

By Mr. Garment:

Q. Mr. Prideaux, Mr. Medina just asked you about that question mark. Correct me if I am wrong, but you said it's customary or quite usual for a researcher to make a question mark as to some specific item as a reminder to herself to check it in the future. Is that right?

A. I believe that's what I said. That's what I mean.

Q. There is no specific item to check there. There is no specific item questioned. It's the entire paragraph that was questioned.

A. I am sure that's not what was in her mind.

Q. You know what was in her mind?

A. To a point, to a degree.

* * * * *

Q. There are areas of this first paragraph that are unchecked. Plainly enough, that's something that Miss Ecker realized she had to check.

A. Correct.

Q. There is a specific question mark over the word "somewhat" as a reminder to her—

A. In the next paragraph.

Q. About the word "somewhat"?

A. Right.

Q. There to raise that or to think about it or to say something to somebody about it?

A. Right.

Q. And you are telling this jury that the question mark next to the first paragraph was with reference to some specific item in that paragraph?

A. Perhaps two specific items. It was a reminder to herself, a notation to herself.

Q. Did she ever tell you that?

A. I don't recall.

[fol. 270] Q. Well then, how can you state positively that that's what it was?

A. I am not stating positively what it was. I say I am thinking that's what it was.

Q. Could it have been a question as to the truth of that whole paragraph?

A. I doubt it very strongly.

Q. You doubt it, but you recognize that possibility, don't you?

A. Remotely.

Q. You tell this Court and jury that every single word bearing a check mark in that first paragraph and the sense of that first paragraph is true and honest?

A. Certainly the final thing that was in print was true and honest.

Q. I am talking about this paragraph here. The final thing went far beyond this paragraph, didn't it, Mr. Prideaux?

A. I don't believe so.

* * * * *

A. Will you repeat the question again, please?

Q. I asked you whether she might have had a doubt about the truth of that whole paragraph.

A. I don't think so. But again I am second guessing it.

Q. And you are telling this Court and this jury that there is no doubt about the truth of that paragraph and the honesty of the statements made there?

A. I am not saying it. I think in the mind of the checker—and I have to put it this way, because I am trying to enter into her thinking on this—that there were all kinds of statements here that she wanted to double check.

Q. You wrote that paragraph, didn't you?

A. Certainly.

Q. I am asking you whether it was truthful when you wrote it.

A. To my knowledge, it was completely truthful.

Q. Now Mr. Prideaux, you were talking about that reference to Koming and Mr. Medina drew out from you the [fol. 271] fact, as you testified to this jury yesterday, that

that is a reference to some item that is not at hand, still to be found or checked.

A. Usually readily available but not at hand.

* * * * *

Q. You say the information is readily available to you, Mr. Prideaux. Then what necessity was there for you to use a code word?

A. Because the information, no doubt,—I don't remember specifically, but it often occurs this way: It is on Miss Ecker's desk in the next room, and I am busy on the telephone, and I am not going to stop and ask her to bring me in a clipping on it.

Q. You told this jury yesterday and you told this jury just before in the cross-examination by Mr. Medina that there were screaming headlines that were at hand about the Hill incident.

A. That's right.

Q. And, isn't it a fact, that every one of those news accounts referred to the Lewisburg Penitentiary?

A. I don't know whether it is a fact that they all did. I assume so.

Q. You know that the New York Times referred to it.

A. I don't remember, but I would assume so.

Q. Didn't you look at that before you came here to testify, Mr. Prideaux?

A. The New York Times?

Q. Yes.

A. No.

Q. The article referring to this incident.

A. No.

Q. You didn't look at that?

A. Not two or three days ago, no.

Q. Now, let's talk about these screaming headlines. That's one of the screaming headlines that you received, the one that appears up at the top left (indicating)?

A. That's correct.

[fol. 272] Q. Whom did you get that from?

A. From one of our stringers in Philadelphia. That means someone who is usually employed full time some place else but who can be on call if we need anything done.

Q. And his name was Adrian Lees?

A. Right.

Q. And he just sent you a headline?

A. No, I don't believe so.

Q. With reference to this. Wasn't it your testimony that you asked Mr. Lees to furnish you with a headline and he furnished you with that headline?

A. I don't recall the precise wording of the testimony.

Q. What do you recall the facts to be?

A. To the best of my recollection, we asked for several headlines.

Mr. Garment: At page 76.

Q. Do you recall my asking you this question and your giving this answer under oath back in 1957 about this time subject matter:

"Q. In any event, Mr. Capa was not a staff photographer for Life Magazine but was assigned to this job?

"A. That is my impression. The only research that we did was to ask our Philadelphia stringer, whose name I gave you, Adrian Lees, to find us a headline there—I think he works on the Philadelphia Bulletin—from the morgue of that newspaper that we could use to establish that this had been a very well known incident. Once we had established that, once we had shown the picture of the house, that it still existed, we felt as far as the incident was concerned that we had done all we had to do."

[fol. 273] Do you recall being asked that question and giving that answer?

A. Yes. We were looking for a single headline. But, again,—

Q. Mr. Prideaux—

Mr. Medina: Let the witness finish his answer, please, Mr. Garment.

The Court: Yes, let him finish his answer.

Mr. Medina: It's most unfair of you.

A. We were looking for a single headline, but, as I truly recall, we asked him to send several, depending on the form of the layout. If it were going to be—that's almost a square box that worked out there; we would use that kind of a headline. If it were a different sort of layout we might need a different headline. It was a mechanical problem. In my deposition I said we wanted a headline, which is true. But the wording and the shape of the headline was relevant to the layout itself, and we were trying to foresee that.

Q. Well, headline or headlines, all you asked him to furnish you with were headlines.

A. That is right, at that time.

Q. And ultimately you selected this one from the Philadelphia News?

A. The News, yes.

Mr. Garment: I ask Mr. Medina to produce the original, complete headline.

Mr. Medina: We haven't got the headline. That's lost, too. We just have a photostat of it in our files.

Mr. Garment: That's lost, too?

Mr. Medina: Here it is and I produce it.

Mr. Garment: I offer this photostat of this partial headline in evidence, your Honor.

[fol. 274] Mr. Medina: No objection.

(Photostatic copy of headline from the Philadelphia Daily News was received in evidence as Plaintiffs' Exhibit 32.)

* * * * *

By Mr. Garment:

Q. Is that a photostatic copy of that headline?

A. I would say yes.

Q. What did you receive from Mr. Lees, the actual headline?

A. I don't recall.

Q. You don't recall.

A. Whether he had the photostat made in Philadelphia and sent it on or whether he sent on the actual newspaper. My impression again is from recollection that he had several photostat headlines, sent them to us, because that was the form that we could use them most easily in. I think he did that as a favor to us.

Q. Mr. Prideaux, look at this. This is a photostat or a photograph of a headline that was taken some place. You can see the binder on the left, can't you?

A. I don't know what you mean by that.

Q. I don't know where it was, but it is obviously a photograph taken not of a headline but of a headline in a book of headlines or newspapers.

A. That doesn't seem obvious to me.

Q. It doesn't?

A. No.

Mr. Garment: Your Honor, I have a blowup of this headline, and with your Honor's permission—

The Court: You can show this to the jury.

[fol. 275] (Plaintiffs' Exhibit 32 was then circulated among the jury.)

The Court: Mr. Medina, do you expect to recall this witness in the defendants' case?

Mr. Medina: No. At the same time, I just want to state for the record, and for Mr. Garment, that I have available Mr. Edward Thompson and I also have Mr. Kastner available. I have Miss Shevlin available and I have also Miss Ecker available.

Mr. Garment: Well, you can call some witnesses on your own case, Mr. Medina.

Mr. Medina: Just a moment—

Mr. Garment: Don't make that kind of a speech to the jury.

Mr. Medina: Let me finish this up. If you want them at any time, they are available. I intend to call Miss Ecker and not the remaining people to this courtroom.

The Court: All right. The lawyers can try this case any way they think is best, most advantageous for their own clients.

By Mr. Garment:

Q. I ask you this. Do you recall what appeared in the portion that was cropped off that headline?

A. No, I don't.

Q. Was it something that clashed with the idea that this was the story of the James Hill family?

A. I have no idea.

[fol. 276] Q. When was this thing cropped?

A. That I do not know.

Q. Take a look at the back of it.

* * * * *

Q. When was that cut, before or after this article was published?

A. I don't find any evidence here one way or the other, but I would assume that it was used in Life February 28th. It was returned to the Time, Incorporated file on April 8th of the same year, and there is a date on here "New York Supreme Court Exhibit No."

Q. The reference "Used in Life February 28, 1955" was originally a red stamp, and that part was cut off, wasn't it?

A. I don't understand what you mean. There is the stamp on the back.

Q. Let me just ask you a couple of questions and I will pass it around to the jury. And then at a subsequent time after that stamp had originally been placed on, somebody wrote in again in black crayon "February 28, 1955, page 75," referring to the page of the issue in which this had appeared?

A. That I do not know.

(Plaintiffs' Exhibit 32 was again circulated among the jury.)

Q. Now Mr. Prideaux, you testified about your familiarity with the play and with the real-life incident. I ask you whether it was your understanding when this article was prepared that the scene depicted in the top photograph actually took place in the real-life incident?

A. No.

Q. Was it your understanding when you prepared this article that the scene depicted in the middle photograph took place in the real-life incident?

A. No.

[fol. 277] Q. Was it your understanding when you prepared this article that the scene depicted in the final photograph took place in the real-life incident?

A. No.

Q. Was it your understanding that the scene depicted in this photograph took place in the real-life incident?

A. Specifically, no.

Q. Was it your understanding that the scene depicted in the bottom left photograph took place in the real-life Hill incident?

A. Specifically, no.

Q. Was it your understanding that the scene depicted in the bottom right-hand photograph took place in the real-life incident?

A. The same answer.

Q. Well, you told Mr. Medina that when *The Desperate Hours* came out, you felt it was obligatory to connect this family with *The Desperate Hours*. Is that right?

A. Yes.

Q. Did you feel it was obligatory to involve them in this kind of violence and in this kind of a display?

A. No. I think we were—

Q. Did you give any thought to it?

A. A great deal.

Mr. Medina: Won't you let the witness finish his answer.

Q. Go ahead; finish your answer.

A. A great deal of thought.

Q. You gave a great deal of thought to what?

A. Whether it was obligatory to—no, I am confused, I am sorry—gave a great deal of thought to what we were saying, what impression we were creating, and we took special pains to identify the scenes that were from the play itself as being from the play itself.

Q. You didn't give one single thought to the Hill family while this whole article was being prepared, did you?

A. That is not true.

Mr. Garment: That is all.

[fol. 278] Recross examination.

By Mr. Malino:

Q. When Mr. Garment examined you before trial did he ask you these questions and did you make these answers:

“Q. Do you recall whether you made any inquiry or were told whether, in response to an inquiry or not, by Mr. Hayes or by Mr. Erskine or by anybody else connected with The Desperate Hours production the extent to which the play followed the real-life occurrence?”

“A. No, I don't recall.

“Q. That is you don't recall asking or being told or getting any information in that connection?”

“A. No. I assume the play took certain dramatic liberties with the story and I—and I rested on that assumption.”

Those questions were asked of you and those were your answers?

A. That's correct.

Q. While the drafts were being prepared and the corrections made, did you have any conversations with Mr. Hayes or Mr. Erskine?

A. No, I didn't.

Mr. Malino: That's all.

Recross examination.

By Mr. Medina :

Mr. Medina: I have taken this Exhibit 22, which is the checking copy, and divided it into two groups of papers, one, the last six pages, which I ask to have marked separately, I would suggest, as 22-A, and the remaining three pages, the first top three pages, we can leave as Exhibit 22.

(The six pages referred to were marked as Plaintiffs' Exhibit 22-A.)

[fol. 279] Q. I hand you Exhibit 22-A and ask you whether it is a fact that this is the checking copy of the article as it finally appeared.

A. That's correct.

Q. And these first three pages which are left are the preliminary checking which was done on the first draft. Is that not correct?

A. Yes. It was the checking that was interrupted, so to speak, when the second copy came along, and it was all transferred to the second copy.

Mr. Medina: That's all.

(The witness was excused.)

* * * * *

April 12, 1962

(Same appearances.)

(The trial was resumed pursuant to adjournment.)

* * * * *

(The jury was recalled to the courtroom.)

* * * * *

(The photograph previously marked as Defendant Time's Exhibit A for identification was received in evidence as Defendant Time's Exhibit A.)

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(The photostat of the New York Herald Tribune previously marked Defendant Time's Exhibit C for identification was now received in evidence as Defendant Time's Exhibit C.)

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(The photostats of a group of six newspapers previously [fol. 280] marked as Defendant Time's Exhibit D for identification, were now received in evidence as Defendant Time's Exhibit D.)

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(The photostat of the Conshohocken Recorder, previously marked as Defendant Time's Exhibit E for identification, was now received in evidence as Defendant Time's Exhibit E.)

* * * * *

(Photostat of Conshohocken Recorder, previously marked as Defendant Time's Exhibit F for identification, was now received in evidence as Defendant Time's Exhibit F.)

Mr. Medina: This is the Conshohocken Recorder for November 25, 1952 with an item headed:

"Hill Unhurt. Car Wrecked in Crash," and has a little article describing an automobile accident that Mr. Hill had been involved in.

Mr. Garment: Your Honor, I don't understand what that has to do with anything in this case.

Mr. Medina: Newsworthiness.

Mr. Garment: Newsworthiness?

The Court: All right, gentlemen.

Mr. Medina: We asked to be deemed marked for identification the original complaint, verified by Mr. Hill on October 13, 1955, the first amended complaint, verified by Mrs. Hill on March 7, 1956, and the second amended complaint, sworn to by Mrs. Hill on July 3, 1956. I have copies of those three complaints which I should like to offer in evidence at this time.

[fol. 281] Mr. Garment: I have no objection.

The Court: Are there three or two?

Mr. Medina: Original complaint, amended complaint and second amended complaint; three in all, your Honor.

The Court: Without objection, they will be received as Defendant Time's Exhibit H.

(The original complaint, amended complaint and second amended complaint, previously deemed marked as Defendant Time's Exhibit H for identification, were now received in evidence as Defendant Time's Exhibit H.)

* * * * *

LAURA LUDWIG, 133 East 95th Street, New York, N. Y., called as a witness on behalf of the Defendant Time, Inc., being first duly sworn, testified as follows:

Direct examination.

By Mr. Medina:

Q. Mrs. Ludwig, your maiden name was Laura Ecker?

A. Yes.

Q. And you were formerly employed by Time, Inc.?

A. Yes.

Q. And you have since left us to be married, have you not?

A. Yes.

Q. And now you are a housewife busily raising a family?

A. Yes.

Q. In 1955 you were employed by Time, Inc., were you not?

A. Yes.

Q. And did you have anything to do with an article which appeared in the February 28, 1955 issue of Life entitled "True Crime Inspires Tense Play"?

A. Yes, I did.

[fol. 282] Q. Can you tell us what you did in connection with that article?

* * * * *

A. I was a theater reporter for Life Magazine, and in that connection I worked on that story, went down to Philadelphia to see the play—

The Court: You will have to keep your voice up so all of the jurors and the lawyers can hear you.

A. (Continuing) —and I checked the story when it appeared in the magazine.

Q. When did you first hear about the story or the possibility of doing the story, roughly?

A. Roughly sometime in January 1955.

Q. And do you recall what the circumstances were?

The Court: I am sorry, but Juror No. 12 apparently can't hear you.

The Witness: I beg your pardon. Sometime in January of 1955.

Mr. Garment: I can't hear the questions or the answers.

Q. Do you recall what the circumstances were?

A. I don't recall them.

Q. Did you have a talk with Mr. Prideaux?

A. Yes. As we always did when we were planning theater stories, we discussed—

Mr. Garment: I object to any speeches.

The Court: He wants you to be specific with regard to this case.

The Witness: I was trying to be specific.

[fol. 283] A. (Continuing) We would discuss stories that we were planning to do. We had a discussion—

The Court: Did you do that in this case?

The Witness: In this case we discussed a play that was being produced that we might possibly cover in the magazine.

* * * * *

The Court: Now tell us what happened. In January what did Mr. Prideaux say to you and what arrangements did

you make with regard to covering this particular story which appeared in the February 28th edition of Life.

The Witness: I cannot tell you in Mr. Prideaux's words what he said to me.

The Court: Tell us the substance.

The Witness: In substance, I can say that we discussed the possibility of doing a story on a play that was being produced. Then that we would be going to Philadelphia to cover it.

By Mr. Medina:

Q. Did you have any discussion about any relation between the play and any real life incident?

A. Yes. As I recall, he told me that we were going down to Philadelphia not only to see the play, but there was a house that existed—

Mr. Garment: I am sorry. I don't hear the witness.

The Court: I will have it read so that everybody can hear it, after she finishes.

[fol. 284] The Witness: Would you begin again, Mr. Medina?

Q. Do you recall any discussions with Mr. Prideaux about any relationship between the play and a real life incident, in substance?

A. In substance I recall that I was told that the play had been inspired by a real life incident and there was the possibility of taking some pictures at a house not far from Philadelphia in connection with our coverage of the play.

Q. I show you Exhibit 22 and 22-A and ask you if you can tell me what those are.

A. Those are my checking copies of the story. This was the first one that I received, and this would probably be the final copy, I don't know.

Q. You refer to 22 as being the first one you received?

A. If this is 22, this would be the first.

Q. And 22-A, over here, as being the second one you received?

A. Yes.

Q. The final copy?

A. Yes.

Q. Can you tell us what a checking copy is?

A. Yes. When the story is first written, I receive a copy of the writer's work. I am given it to read for accuracy and, of course, it goes through various revisions because there are other editors, and as each revision is made I am given that to check. So that this would be the first one I receive and this (indicating) would be the final form that I am given to check.

Q. And when you get to the final form and you put those check marks over each word, what does that signify?

A. That I have seen this copy and that to the best of my ability and knowledge what is in here is accurate.

Q. What do you use to check the accuracy?

A. Well, I use various sources, depending on the story. I [fol. 285] used newspaper clippings or interviews that I had had, material gotten up from the morgue, books—you know, that kind of thing.

The Court: Now you are talking about generally?

The Witness: Generally.

The Court: In this specific case can you tell us?

Is that what your next question would be?

Mr. Medina: Yes.

Q. Can you remember what you had before you in this specific case?

A. Newspaper clippings and play reviews, probably the theater program, probably a dictionary, things like that.

Q. That's to the best of your present recollection on that.

A. Yes.

Q. If you look at Exhibit 22, which is these sheets over here, you see a question mark over on the left there, and there are certain lines that haven't got any check marks on them. Can you tell us what happened in connection with that?

A. Yes. My method was when I was given a first copy to read, I would read it all through and see if there was anything in it that I wasn't exactly sure of, that I just didn't have at my fingertips and I would have to go further into checking just to see if there were going to be any problems that would be complicated. I made little notes for myself, like a question mark, if there were some lines here that I would need to go back to.

This is opposite some sentences about the filming of the play. I was not certain about the information as to the filming and as to whether anybody else worked on the screen play, and I would say, maybe, about this sentence as to when the film was to be released. So that this in the first draft was a note to myself to call about it or look that up.

[fol. 286] Q. And, generally, when you put the question marks on the checking copy, would it indicate something along those lines?

A. Yes, that I wanted to make sure for myself before I checked.

Q. Will you look at Exhibit 22-A. I call your attention to the first paragraph and the handwriting which appears in that first paragraph, particularly where you have the phrase "Until they could obtain money" stricken out and put in "While they hid from manhunt."

Whose handwriting is that?

A. Mine.

Q. And is there any other handwriting in that paragraph that is yours?

A. No. And you see there is even an "X" in the margin which means that there was something that I wanted to bring up to change.

The Court: Something you wanted to what?

The Witness: To change, like another mark of mine, that I wanted to come back to and have it changed.

Q. So when you were checking the copy, you found an error and took it up with Mr. Prideaux; is that correct?

A. Yes.

Q. And then after you talked with him you wrote in in your handwriting that change so as to make the statement accurate?

A. Yes.

Q. Do you see the word "about" which is added before the words "ten miles"?

A. Yes.

Q. Whose handwriting is that?

A. Mine.

Q. How did you come to add that?

A. Because I was checking how far the house was from Philadelphia, and ten miles didn't seem to be quite right [fol. 287] to me. It was—I don't remember whether it was more or less, but it was not precisely ten miles. So "about" made me feel that was more accurate.

Q. So that you changed "an isolated house ten miles outside Philadelphia" to "an isolated house about ten miles from Philadelphia" because you thought that that was more accurate.

A. Yes.

Q. And you couldn't check out the first statement.

A. No.

Q. Are there any other changes which you made, do you recall, in that checking copy?

A. I notice some spelling changes that I made. I don't see any that I know I specifically made. There are some in my handwriting, but I could have gotten them, you know—there are changes that come onto this copy because an editor has made a change.

Q. And then when the change was made you checked that?

A. That's right.

Q. And when you got all through with Exhibit 22-A you had checked every word in the article—

Mr. Garment: I object to that as leading.

The Court: I don't think there is any question about it. Mr. Prideaux has testified—each time you marked a word there that meant you checked it; is that right?

The Witness: That is right.

The Court: And did you check every word there?

The Witness: Yes.

Q. And you were satisfied at the time that you finished your checking that that article was correct and accurate, were you not?

A. I was.

Q. Now, you note on the first page the words "True Crime Inspires Tense Play"?

A. Yes.

[fol. 288] Q. Did you check that caption?

A. Yes.

Q. And were you satisfied that that was a correct caption?

A. Yes.

Q. And you noticed in the text on the next page of 22-A the phrase "inspired by the family's experience." Did you check that out?

A. Yes.

Q. And you were satisfied of the correctness of that?

A. Yes.

Q. Can you tell us the basis on which you checked those two statements, if you can recall?

A. Well, that I had been told by Mr. Prideaux—

Mr. Garment: I move to strike that out. We had a day and a half of Mr. Prideaux. I don't think we should have it through hearsay testimony.

The Court: I am going to overrule the objection. This is already before this jury.

Mr. Prideaux has testified here at great length. I am going to permit it. Overruled.

A. Now where am I?

Q. What was the basis on which you checked—

A. I have to mention Mr. Prideaux. This is the man I worked with. This is conversation that I had with him about my work on the story. If I can't—

The Court: You are talking about this first conference you had with him in January before you went down to check on the play and this whole situation?

The Witness: I am talking about that and this: When I get my copy I read it and I go to him and say "You said to me Mr. Hayes told you about this."

And he would say yes, this is his understanding. And that was mine.

[fol. 289] The Court: You asked him specifically about those two phrases—what was it?

Mr. Medina: "True Crime Inspires Tense Play."

The Witness: I would have to say, seven years later, I don't recall specifically what questions I asked.

By Mr. Medina:

Q. But the substance you recall?

A. The substance is that I would have asked him about that and his saying yes, that's what he had been told would be my justification for saying that was accurate.

The Court: In other words, that's what you would call checking that particular phrase?

The Witness: Yes.

Q. Had you also been down to Philadelphia with Mr. Hayes and Mr. Prideaux?

A. Yes.

Q. And you had gone out to the house?

A. Yes.

Q. And had Mr. Hayes said anything to you about the house?

A. Not that I recall specifically now.

Q. Did Mr. Hayes ever tell you there wasn't a connection between the incident and the story?

A. No.

Q. Can you give us a little bit of your background, your employment by Time, how long you were employed, what education you had and so on. Just briefly so we know it.

A. Well, Vassar College graduate. Before working for Time I had worked for some movie companies as a production assistant.

Q. And then you came to work for Time?

A. Yes.

The Court: How long did you work for Time?

[fol. 290] The Witness: For over ten years.

Mr. Medina: That's all.

Cross examination.

By Mr. Garment:

Q. Mrs. Ludwig, isn't it a fact, that the job of researcher or reporter at Time, Incorporated was not always an easy one? Is that correct?

A. I think it's reasonably fair to say that about anything.

Q. Isn't it a fact that generally when you would start to do your work of checking an article—and by you, I mean researchers—

A. Now would you speak up, please.

Q. I'm sorry. Isn't it a fact that when you would start to do your work in connection with the copy on an article, that the article would already have been approved for purposes of publication, although the subject matter, the contents, had not already been revised and finally approved?

A. That is not necessarily true.

The Court: Wait a minute, Counsel, let me understand that.

In other words, you might check stories which never were printed. Is that what you mean to say now?

The Witness: That's true.

Mr. Garment: I see.

Q. I think I was a little vague. In connection with this particular article, Mrs. Ludwig, isn't it a fact that you first started to work on it after you came back from vacation?

A. You will have to tell me what you mean by the article.

Q. I mean the actual text of the article, taking the text of the article.

A. Yes.

[fol. 291] Q. That was after the layout conference had taken place; and the article had been approved for inclusion in the magazine. Do you recall that generally?

A. Can you break that down a bit?

Q. I will try my best. I understand, it's a long time—

A. It's a long time. I don't recall whether I was in at the layout session or not. I was probably back a few days before the story started being worked on. I don't recall whether I was. I might have been in it and I might not. I don't recall now.

Q. At any rate, Mrs. Ludwig, the editor, Mr. Prideaux, would and did start to write his actual copy after the layout conference, isn't that correct?

A. I would think so.

Q. And you would then start to check mark his actual copy; is that right?

A. I would have to be given copy before I could check it.

Q. Yes. And assuming that Mr. Prideaux started to write his copy after the layout conference, then that would be after the story idea had been improved for inclusion in the magazine, isn't that correct?

A. Yes.

Q. Then your task, like the task of the other reporters or researchers at Time, Incorporated, would be to check, place check marks on each and every word in the article to the end of verifying the accuracy of those specific words. Is that right?

A. Yes.

Q. Certainly you had no policy-making functions in connection with Life Magazine?

A. No.

Q. Certainly Mr. Prideaux and the other editors, Mr. Thompson and Mr. Kastner, were the policy-making personnel on the magazine. Is that right?

A. Yes.

Q. It would not be your responsibility or, for that matter, your function to argue against a decision made by the [fol. 292] editorial, your editorial superiors. Wouldn't that be a fair statement?

A. Well, it depends on what decision. If it was a matter of accuracy it would be my responsibility to say what I thought was right.

The Court: Well, Counsel, perhaps, if you will permit me—

Mr. Garment: Please.

The Court: I think what the lawyer is referring to is if the editors arrived at a conclusion that they wanted a certain story or a certain type of story, you would not be in a position, if you were given the job of checking it, to say "This is not a good idea" or "Don't do this."

The Witness: No.

The Court: Is that your point?

Mr. Garment: You put it very clearly, Judge.

Q. So that when you received the copy of the first draft of this article from Mr. Prideaux, you then proceeded to check mark so much of it as you could on the basis of the knowledge that you then had; is that correct?

A. Yes.

Q. And you made check marks over every word, including articles and prepositions and the like, is that correct?

A. Yes.

Q. And that is something that you do not because Mrs. Ludwig wants to do it but because that has been the policy of the research department of Time, Incorporated for many years, isn't that correct?

A. Yes.

Q. And there is a differentiation between plain pencil check marks and red check marks; is there not?

A. Yes.

Q. The red check marks deal with matters of primary importance?

A. Yes, you could say that.

[fol. 293] Q. And that would be the name of the author of the play?

A. Yes.

Q. And the name of the play?

A. Yes. I would like to volunteer that not everybody follows that system.

Q. I understand. But you followed that system?

A. More or less—when I remembered. I used to try to do that, yes.

* * * * *

Q. And you also checked physical facts, such as the location of the actual house?

A. If it was part of the copy, yes.

Q. Its actual distance in terms of miles in Philadelphia?

A. Yes.

Q. And you made a telephone call to determine that?

A. No, I don't recall that I made a telephone call.

Q. Do you recall how you determined that?

A. I think I probably looked it up in the Columbia Gazetteer.

Q. Mrs. Ludwig, it is true, is it not, that the Time-Life researchers have available to them research facilities that are unsurpassed in the world of journalism?

A. We have very fine facilities.

Q. There is no question about that, is there?

A. No.

Q. There is no stinting or limiting of what you do or whom you call or what steps you take in order to investigate an article and place check marks over each word?

A. We try to be as thorough as we can.

Q. And all that is to the end of avoiding any accidental or inadvertent mistake?

A. Yes.

* * * * *

Q. Is it a fact, Mrs. Ludwig, that over the years researchers and editors at Life Magazine have had a kind

[fol. 294] of running tussle about story ideas versus accuracy?

A. No, not that I know of.

The Court: Let me hear the question.

The Witness: I wish you would explain it again before I really answer.

Mr. Garment: Let me restate it.

Q. Did you ever read a book by Noel Busch, *The Life of Britton Hadden*, the founder of *Time Magazine*?

A. No.

Q. Did you ever read a book called "Such Is Life" by a former *Life* researcher?

A. No.

Q. Did you ever hear of a man named Edward Kennedy, who was an editor of *Life Magazine*?

A. No.

Q. Do you recall a memorandum that was circulated by some editor of *Life Magazine* in relation to the researcher holding his or her own against the editor in relation to matters of truth and accuracy?

A. No.

Q. Mrs. Ludwig, there has been a considerable amount of talk in this case about similarities between *The Desperate Hours* and the events in which the plaintiffs James and Elizabeth Hill and their family were involved.

I don't want to mislead you at all, so I am telling you that there have been statements to that effect made by *Time, Inc.* counsel and questioning about similarities.

Did you make an analysis of *The Desperate Hours* to determine and to list similarities between it and the Hill incident?

A. I don't recall having made a specific list.

Q. Mrs. Ludwig, you read the drama reviews and clippings contained in the green envelope bearing your name, which is Plaintiffs' Exhibit 25, did you not?

A. I think so, yes.

[fol. 295] The Court: What's the answer?

The Witness: I think so.

Q. You, of course, read those before this article was published and in connection with the checking of the article?

A. I don't recall specifically reading them, but I may well have.

Q. Do you recall making those clippings, including the article by Joseph Hayes which appeared in the Sunday Times for January 31, 1955, available to Mr. Prideaux?

A. They would be among the material that was available to him, yes.

Q. Is there something further you want to say?

A. My problem here is what I did specifically and what I recall. After seven years I can only say what I believe I did—or would have done.

Q. Well, you were examined some years ago by me in connection with this case, were you not?

A. Yes.

Q. And your recollection was, of course, clearer at that time?

A. That's right.

Q. And at that time you recalled making them available?

A. If I said so, then that is what I must have done.

Q. Mrs. Ludwig, there was a question mark placed by you over the word "somewhat" in the first checking draft, that is, the word "somewhat" in the phrase or in the sentence "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." The question mark was put by you over the fourth word, "somewhat"?

The Court: You are referring to Plaintiffs' Exhibit 22, the first copy she received.

Mr. Garment: Plaintiffs' Exhibit 22.

[fol. 296] Q. Do you see that question mark?

A. Yes.

Q. And was that also a reminder to yourself to check something or raise some question with Mr. Prideaux?

A. Yes.

Q. What was that question?

A. Whether it was fictionalized or somewhat fictionalized and to possibly go over with him some similarities in the accounts, the newspaper accounts of the incident on which the play was based and the play.

Cross examination.

By Mr. Malino:

Q. Mrs. Ludwig, Mr. Garment—I represent Mr. Hayes and The Desperate Hours Company. Mr. Garment referred to the examination he conducted of you in December 1957 at Mr. Garment's office, at which I was not present. I just want to ask you whether you remember the following question being asked and your having made this answer:

“Q. Apart from what Mr. Prideaux had told you in relation to Mr. Hayes' statement as to this connection, did you ever hear Mr. Hayes say anything about the connection between this real-life incident and his play?”

“A. I cannot recall anything specific.”

Did you make that answer to that question?

A. I made that statement.

Q. And you would answer it the same way today?

A. I would answer it the same way now.

Q. Then you were also asked by Mr. Garment—

Mr. Medina: What page?

[fol. 297] Mr. Malino: Page 18.

“Q. Do you recall whether anything was said about the real-life incident while you were touring around the house?”

A. No, because we were looking for scenes or things that were mentioned in the play as happening in doorways or outside the house, and our conversation was directed to where we could take certain pictures.”

Were you asked that question and did you give that answer?

A. Yes.

Q. You would testify the same way today if you were asked the same question?

A. I would.

Mr. Malino: That's all.

Redirect examination.

By Mr. Medina:

Q. Before you went on vacation back in 1955, you did do some work in connection with that article, didn't you?

A. Yes, I did.

Q. You went down to Philadelphia and saw this house?

A. Yes.

Q. And it wasn't until you got back from vacation that you started to work on the actual article?

A. That's right.

Q. And in between Virginia Shevlin was filling in for you on some purely routine picture assignments?

A. Yes.

Q. And your function as researcher and working on the checking copy was to insure that the article and each word in the article was accurate, was it not?

A. Yes, it was.

Q. And if you thought it was inaccurate in any way, would you argue about it?

A. Yes, I would.

[fol. 298] Q. Now, you say that you didn't make up any specific list of the similarities between the actual incident and the play. Were you aware in general of the similarities between the two?

A. Well, I had read the newspaper accounts. That's part of the research, and Mr. Garment asked whether I made a specific list. I don't recall making a specific list, but I observed that there were similarities.

Q. And you had seen—

A. I had seen the play and that satisfied me.

Q. And you put two and two together?

A. Yes.

Mr. Medina: That is all.

Recross examination.

By Mr. Garment:

Q. Mrs. Ludwig, just briefly, when you were putting two and two together—as Mr. Medina put it to you—did you have in mind that there had been violence in the Hill house?

A. I don't understand what you mean by did I have in mind.

Q. When you were thinking about similarities, reading newspaper accounts, and the relationship to *The Desperate Hours*—

A. I don't recall what I had in mind. Could you make your question clearer?

Q. Do you know whether there was any violence in the Hill incident?

A. Now I don't recall the details of the incident very clearly. At the time I must have satisfied myself as to whatever questions I had about it. That's the best I can say.

Q. Mrs. Ludwig, after you completed your work on the story, you had nothing further to do with the file, or documentary materials relating to the story; is that true?

A. After I finished my work?

[fol. 299] Q. Yes.

A. No.

Q. Whatever happened after that would have been the full responsibility of some other person or persons; is that a fair statement?

A. Yes.

Q. Do you have any idea what happened to the actual news clippings of the Hill incident?

A. No.

Q. Do you have any idea what happened to the layout?

A. The layout?

Q. The layout of The Desperate Hours story.

A. No.

Q. Do you have any idea what happened to the biographical file on Joseph Hayes?

A. I would think it was returned to the morgue.

* * * * *

Q. Would you have any idea as to what happened to the complete original headline from the Philadelphia Daily News that had appeared in The Desperate Hours article?

A. No.

Q. Would you have any idea what happened to the shooting script?

A. No.

Q. Do you have any recollection of what that full headline said after the semicolon?

A. No.

* * * * *

Mr. Medina: These are questions and answers, your Honor, of Mrs. Hill, taken on October 30, 1958.

I read first from page 128.

"The book, as I see by this copyright notice here, was published in March 1954 and went through three printings. Did the comparisons that were made to you by these friends of yours in New York, were they in reference to the novel [fol. 300] published in 1954?

"A. In reference to The Desperate Hours, either the novel or the play. Some of them read the book, some had seen the play, some had seen the movie; but they are all the same.

"Q. I am only talking about the period preceding the publication of the Life article.

"A. Preceding that period there was the play as well."

Page 129.

"Q. Did anybody call to your attention a publication in serialization form of the book in Collier's Magazine?

"A. I heard about that.

"Q. What did you hear about that? When?

"A. At the time it was published, I guess.

"Q. Was it your New York friends that you heard about this from?

"A. I don't remember which friends might have told me, but I wouldn't know if it was my New York friends or Connecticut friends; friends.

"Q. You can't be any more specific than it was just your friends?

"A. Just my friends.

"Q. Is it a fair statement to say it was all of your friends, as a general statement?

"A. Yes. I have more friends in Connecticut than I have in New York. So I would hear it more times there than I would in New York."

Page 130.

"Q. You testified earlier that when you moved to Connecticut, that on one occasion in 1954 you were having coffee with a circle of friends, the MacKenzies, as I recollect, when this subject came up of the comparison between [fol. 301] the novel and the incident at Whitmarsh. Is that correct?

"A. I believe so, yes.

"Q. Do you recollect how many people were there at the time? Was it a substantial group of friends?

"A. No, a small group of close friends.

"Q. Did this have anything to do with this PEO that you mentioned?

"A. No, sir. It was never discussed in the PEO.

"Q. Do you remember who the persons were besides, I think, this Mrs. MacKenzie from Philadelphia?

"A. She is the one who sent me the book.

"Q. Then there was her sister?

"A. Her sister-in-law, Mrs. Dorothy MacKenzie.

"Q. Who else was there?

“A. Mrs. Kirk, Mrs. St. John, Mrs. Lennhardt—I am guessing.

“Q. And what was Mrs. St. John’s first name?

“A. Mrs. William B.

“Q. Can you recall the month of the year that it was?

“A. It seems to me it was a cold month, as I remember it was cold outdoors, and the latter part of the year.

“Q. In the fall of 1954?

“A. Fall, probably, yes.”

Page 132.

“Q. Specifically in reference to the comparisons that were made between the book and the incident, how did this comparison come up?”

And then Mr. Garment put in:

“To the extent that you can recall.

“A. To the extent that I can recall, I believe it was said to me, ‘Your incident has been written in a book. Haven’t you read it?’”

[fol. 302] Page 135.

“Q. What did Mrs. MacKenzie say with respect to the comparison between the book and the incident at White-marsh?

“A. ‘Your story has been written up in a book. Have you read it? Think of it, your incident has been written up in a book.’ I said, ‘This is not our story. We have nothing to do with that story.’

“Q. Upon what did you base your statement that had nothing to do with your story?

“A. The fact that we had not told anybody our story.

“Q. Did you ask her upon what she based her statement ‘Your incident has been written up’?

“A. I don’t remember.

“Q. You don’t remember?

“A. No, I don’t remember.

“Q. Then, as I get the sequence, she said, ‘Your incident has been written up in a book.’ And you said, ‘This is not our incident,’ then, and you had never read the book?

“A. That is right.

“Q. Was there any explanation by anybody present with respect to the fashion in which your incident had been written up?

“A. I can't tell you exactly when or where or by whom that I heard about the book the first time, that I knew of the way in which it had been handled. I had been given enough information to know that it was very simple. But I knew that I had not or Mr. Hill had not given any information to be written up in a book. Whatever information would come would have to come from newspapers or what-[fol. 303] ever publicity they might find, but not direct from me or Mr. Hill. In other words, my objection would be to that 'Is it your story as given by you?'

“Q. Where did you learn of these similarities between—

“A. I said I can't tell you when or where.

“Q. But you had learned of the similarities at the time of this meeting, this conversation that took place with Mrs. MacKenzie?

“A. As far as I can remember, I probably said, 'Oh, yes, really?' and she said, 'Yes,' and probably told me about the story, and before we were through with the party that day I had told her and explained to all of them that whoever had written the book had not based any of his writings on any information that he had received from me or from Mr. Hill, and that it was not our story.

“Q. Do you mean that it was not your story in the sense that you had not authorized the story?

“A. Yes. I wouldn't know what the author's feelings were. If he felt that was our story or not I certainly wouldn't know.

“Q. That was all that you meant, that you had not authorized the author?

“A. We had nothing to do with the writing of that story.

“Q. I understand. You do remember having been informed at that time that there were a number of similarities between your story and the story in the book?

“A. Yes.

“Q. Do you remember what those similarities were?

“A. There were three convicts, their house was in a secluded spot, the occupants of the house were held hostage. [fol. 304] “Q. Those were the only similarities brought to your attention?

“A. I think they are very good.

“Q. When you said that you had not authorized the story, did you feel at the time that it was your story but that you had not authorized it? Did you feel the book was your story?

“A. I felt it was very similar.

“Q. Did you feel it was basically the story of the incident?

“A. It could have been basically the story of the incident.

“Q. Did you feel it was?

“A. When I hadn't read it, could I say?

“Q. You stated it wasn't at that conference.

“A. Yes, I guess I had feelings that it was.

“Q. Did anybody besides Mrs. MacKenzie say that 'This is your story written up'?

“A. Yes.

“Q. Who else said that?

“A. Mrs. John Anderson, who is also a resident of Philadelphia. I think she sent a clipping which stated that the book had been written, if I remember—and I can't word it, as far as I can remember—the story had been taken from an incident that happened to a family living in White-marsh, and this is written in a Philadelphia paper which she would be reading, living there, and she also happened to be a good friend of mine that I knew.

“Q. Prior to that time had anybody else mentioned to you that they thought this was your story?

“A. I can't remember. I don't remember when was the first time. I don't remember when exactly, the first time, or where or what person. But I know that shortly after [fol. 305] the book came out there were many of our close friends who heard of the incident. The children would talk,

naturally. They knew it all as well. They asked, they were interested, and their friends.”

Page 32.

“Q. Did anybody else on any other occasion after the book appeared bring up the incident of 1952 with you?

“A. Yes.

“Q. Who was that?

“A. Close friends.

“Q. On several occasions?

“A. I would say more than one. That would make it several, yes.

“Q. Then I take it that you recall the more than one occasion?

“A. Yes.

“Q. Were those occasions after this MacKenzie conversation that you told us about?

“A. Before and after.

“Q. Before and after?

“A. After the book. I can't tell you when she came with the book, how soon after it was.

“Q. Who else brought it up, as you recall?

“A. Close friends. You want names?

“Q. Yes, I do.

“And I would like approximate times, if you can give it to me, and the places.

“A. I can't give you the approximate times and places. The parties—well, I can give you Mrs. William St. John, my next door neighbor.

“Q. In Connecticut?

“A. In Old Greenwich.

“Q. Yes?

“A. Mrs. Garrett Kirk.

“Q. Also a lady who lives in Old Greenwich?

[fol. 306] “A. Yes. And then Mrs. M. K. MacKenzie, Elsie's sister.

“Q. She is one of the ladies who sat by?

“A. Yes, but we hadn't mentioned her name. She is a close friend who lives in Greenwich, Mrs. Richard Cluett. I think

some of the husbands of these wives had also brought it up at parties when the two of us, Mr. Hill and I, would be together. We were being connected with the book.

“Q. When you say you were being connected, were you asked about it or were you being told what their impressions were?”

“A. We were told, being told their impressions, and we were being asked about it.

“Q. Do you recall the conversation with Mrs. Kirk, or was there more than one conversation, by which I mean was Mrs. Kirk making it a subject of regular discourse with you?”

“A. If we would happen to speak about it, why, I imagine she would ask another question. She is a very dear friend of mine, and there was no time set when we would talk about it. If it was brought up in a group or she wanted to speak to me about it, she would. One question I would receive at times would be, ‘Is this your story?’

“Q. What position did you take?”

“A. I said, ‘That certainly is not our story.’

“Q. And you would point out differences?”

“A. Yes. ‘Do you mean to say you haven’t given any consent to have your story—’

“Q. This is somebody saying this?”

“A. This is comments made—that you haven’t given your consent for your story to be written?”

[fol. 307] “‘Of course not.’

“My own brother, Mr. Charles Selfridge, who lives not in Greenwich but lives in South Norwalk, and my own sister-in-law and Mrs. William Clarkson, in Darien, and Mr. William Clarkson—‘Very interesting, this story.’

“Q. Somebody is saying this?”

“A. Yes—‘Should be read. And the names they chose and the three convicts—’

“Q. And you kept pointing out differences?”

“A. ‘It isn’t our story.’

“Q. That is what you said, it isn’t your story.

“A. It is not our story. At least, we haven’t given the story to anyone at any time.”

Page 154.

“Q. Did anybody ever write to you with respect to the novel *The Desperate Hours*?

“A. To me?

“Q. Yes, to you?

“A. My friends?

“Q. Anybody.

“A. Yes.

“Q. Who did?

“A. Friends.

“Q. Do you remember their names?

“A. Mrs. Barhydt.

“Q. I think it would be helpful if you spelled that.

“A. B-A-R-H-Y-D-T.

“Q. Any others?

“A. Would you like a list of friends?

“Q. I think I can save some time here. Would you be good enough to go through your correspondence and collect all the writings that you have with respect to this subject.

[fol. 308] “And Mr. Garment would you produce those for us?

“Mr. Garment: Yes, if there are any, sure.”

And my understanding is that there are no such documents; they have been thrown out.

Mr. Garment: I really don’t recall.

Mr. Biddle: That’s what you wrote to me in a letter, Mr. Garment.

Mr. Garment: Fine, if that’s what I said.

Mr. Medina: Page 181.

“Q. Were you aware, Mrs. Hill, of the opening of the play before the publication of the *Life* article?

“A. Yes.

“Q. Had anybody called it to your attention?

"A. Yes.

"Q. What were the circumstances of that?

"A. To inquire if I knew that this play had opened, had I seen it, was I going to see it.

"Q. Who asked you that?

"A. I can't recall the exact persons.

"Q. Were there a number of persons who made that inquiry?

"A. I suppose there were several.

"Q. You don't remember their names?

"A. No.

"Q. Did they connect you or your family with the play?

"A. If they did they had presumed that themselves. They chose to decide that it was about the incident.

"Q. Did they?

"A. Yes, they did.

"Q. This was before the publication of the Life article.

"A. I say they presumed and would question me, and I answered any questions that I received: That we had never [fol. 309] given anyone any information about our incident.

"Q. In connection with those conversations that you had prior to the publication of the Life article but in connection with the play, did anyone point out to you any similarities between the play and the Whitmarsh incident?

"A. I believe they did.

"Q. Do you recollect what those similarities were?

"A. That the family's name was very similar to ours; that there were three convicts that had come into the family's home. Then they began to question me, was this the same, was that the same.

"Q. Do you mean was this particular incident in the play the same as what happened to you?

"A. Yes. Did it last for three days or 19 hours, which did it?

"Q. Did anybody either in connection with the novel or the play, and this is prior to the publication of the Life article, mention to you the name used in the play and in the book as Hilliard?

“A. I imagine they did. That was the name used.

“Q. What was your reaction to that?

“A. I thought it was very strange that out of the thousands, they chose to use the name Hilliard. Wouldn't you?

“Q. Why did you think it was strange?

“A. There are a lot of names.

“Q. Let me ask you this. Was it because of the similarity to your name?

“A. Hilliard to Hill?

[fol. 310] “Q. Yes.

“A. Yes. And also my feeling, my interpretation and feeling that there was a similarity in the play and in the book.

“Q. Did you feel that the number of similarities was beyond coincidence?

“A. I did.”

That's all I have at this time, your Honor.

Mr. Garment: We have some reading, and I will play the role of the witness.

* * * * *

(Mr. Garment then took the witness stand.)

Mr. Zoeller: I would like to start at page 31, Mr. Medina, just before that section on page 32 that you read.

Referring to the book:

“Q. I am asking you what your reaction was, if you please, Mrs. Hill.

“A. I am telling you the reaction as she explained part of the book. ‘As I have told you, I have not read the book.’ I, in turn, to show my feelings explained to her the difference in the situation.

“Q. What differences did you point out to her?

“A. The size of the family, incidents that the convicts had with the members of the family involved, and I also had the feeling that we handled the situation very well.

“Q. And you said so at the time?

“A. I said so.

“Q. Now, I ask you, aside from the explanation which you made to her of the contrast between what had happened at your home in Whitemarsh and what Mrs. MacKenzie indicated to you was in the book, I want you [fol. 311] to tell us now what your reaction was to Mrs. MacKenzie’s bringing up the subject at all at Old Greenwich in 1954 on the occasion of this social visit.

“A. I don’t think I particularly like to have her think or anyone else think that we were responsible for a story such as had been written; that we were certainly not responsible for it. That was the feeling I had.

“Q. In other words, did you say so?

“A. I am sure I did.

“Q. In other words, you indicated to her that in your viewpoint the book had no reference to what had occurred to you at Whitemarsh in 1952. Is that right?

“A. Yes.”

* * * * *

(The trial was then recessed until April 13, 1962, at 10:00 a. m.)

April 13, 1962

(Same appearances.)

(The trial was resumed pursuant to adjournment.)

* * * * *

STANLEY R. DEAN, M.D., 247 Ocean Drive West, Stamford, Connecticut, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

* * * * *

[fol. 312] Q. Mr. Medina asked you about the September 1952 incident and put certain questions to you about the harrowing nature of that incident.

A. Yes.

Q. When Mrs. Hill commenced her treatment with you, did you endeavor to obtain some objective evidence as to what her reaction had been at the time of the incident?

A. Yes, sir, I did.

Q. Briefly, tell us what you did without going into any statements that were made.

A. Well, I wanted to try to assess just how much of an effect this incident with the convicts did have on her state of mind, and although I listened to her history, I asked her if she could furnish any other indication of her state of mind, and she said that she could, that she had written to a friend of hers—I believe she called her Aunt Cokie—very shortly after the incident and was able to get a copy of the letter for me.

Q. Did she get a copy of that letter for you?

A. Not a copy, but the original.

Q. I mean the letter itself.

A. Yes, sir.

Q. In her own handwriting?

A. Yes, sir.

Q. Do you have that with you?

A. Yes, I have.

Q. Is it in the original envelope?

A. It is.

Q. What date mark does it bear?

A. September 15, 1952, only a few days after the convicts broke in.

Q. And is that letter within that envelope in Mrs. Hill's handwriting?

A. I believe so.

Mr. Garment: Your Honor, I offer that in evidence.

Mr. Medina: I object to it.

The Court: I am going to overrule the objection. This comes under the same heading as statements made to the [fol. 313] doctor to determine the history. This is the treating doctor, and the rule is different with regard to that, than what we call a testifying doctor, and therefore I am going to overrule the objection.

Mr. Medina: It doesn't relate to a statement actually made to the doctor, your Honor.

The Court: He has said that it did. This is one of the bases for showing what her state of mind was at that particular time.

Mr. Garment: Right at the time of the actual incident.

The Court: Let it be received in evidence as Plaintiffs' Exhibit 33.

(The envelope postmarked September 15, 1952 and letter contained therein addressed: "Dearest Cokie" received in evidence as Plaintiffs' Exhibit 33.)

The Court: When did you get this letter, Doctor, from Mrs. Hill?

The Witness: My recollection is about a month after I began to treat her, your Honor.

Mr. Garment: "Sunday night"—that would be September 14, 1952.

"Dearest Cokie, perhaps you would like to know first hand that our family is safe and unharmed after our Thursday experience. I can't write it now for it reads like a story book. But in spite of being nearly frightened to death we are really fine.

"The convicts were armed when they pushed in our kitchen, but from the moment they stepped in our house [fol. 314] they made it clear they wanted only to hide out through the day, leaving at darkness.

"They didn't add, of course, 'taking one of our cars, too.' They were courteous to me, kind to the children, respectful of our furniture and considerate of our feelings, as much as would be possible under such circumstances.

"Jimmy was a little man. There wasn't a tear or scream from any of us for nineteen hours. I suffered only in fear of what they might do at any moment. We have been surrounded by police, FBI, newspaper reporters and so forth. We are under guard as long as the men are at large.

“Don’t worry. As Jimmy whispered during that afternoon, ‘Today I know there is a God.’ It was our prayers that saved us.

“All our love, Elizabeth.”

That’s all.

* * * * *

HOWARD ERSKINE, 2900 Hutton Drive, Los Angeles, California, one of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Jackson:

Q. Are you and Joseph Hayes the only general partners in The Desperate Hours Company?

A. Yes.

Q. Did you have anything to do with the writing of the Life article?

A. No.

Q. Did you suggest that the article contain or did not know that the article would contain the name “James Hill” or a reference to the Hills?

A. No, I did not.

[fol. 315] Q. Did you hear Joseph Hayes make any such suggestion?

A. No, I did not.

Q. Did you use the Life article in any way?

A. No, I did not.

Q. Did The Desperate Hours Company use the article in any way?

A. No, they did not.

Q. Did the show The Desperate Hours pay off?

A. No, it did not.

Q. When did the show close?

A. In July of 1955.

* * * * *

(Mr. Garment continued with the reading from the deposition of Elizabeth Selfridge Hill.)

“Q. Tell us again in your own words what your reaction was to the article when you read it. I am speaking of the particular article of which you complain in your complaint.

“A. I found the article most distressing.

“Q. Yes?

“A. It tied the whole thing up in bold print, black and white; there was no—‘No, it isn’t; yes, it is.’ It was there. I could see the story again, all the questions and answers, what it would mean to the family, questions and answers. And again, why should such a thing have to happen? When I have given no permission, Mr. Hill has given no permission. Someone has taken it upon himself or themselves to do something. This is without their power.”

* * * * *

MOTION TO DISMISS AND DENIAL THEREOF

Mr. Medina: Your Honor, for the motion at the end of the plaintiffs’ case, I move to dismiss on the general ground of failure of proof and on the specific grounds that it [fol. 316] now affirmatively appears, first, that the connection between the play and the incident was not fictitious and, in any event, was not tenuous; secondly, that the defendant believed it to be true; and, thirdly, that the article was published as a report of a newsworthy event in the entertainment field and not with any purpose to sell tickets or promote the play.

In addition, I have a separate ground for dismissal as to the action by Mrs. Hill in that there was no use made of her name or photograph.

Additionally, I move to strike the testimony regarding Mrs. Hill as not being connected because of that lack.

The Court: I will deny all of your motions, particularly the motion with regard to Mrs. Hill, on which I have ruled earlier.

Mr. Medina: I am just putting it on the record with those other grounds.

The Court: I think that it's a question of fact as to whether the Life article was true or whether an inference could be obtained from reading it that it was not true. We will see what the jury has to say, sir; and then after they come in I will allow you to argue on the motion to set the verdict aside, if you should make such a motion or find it necessary.

Mr. Medina: I also renew that motion for my motion at the end of the entire case. And I understood your Honor was going to reserve decision on the motion at the end of the entire case.

The Court: I thought I would; but I have decided, in my opinion, there is enough to go to the jury as against all [fol. 317] of these defendants. Therefore, I am going to deny the motions.

However, as I believe you know, this doesn't proscribe me from ruling differently after the jury has returned a verdict. I am simply ruling at this time that there is enough to go to the jury on it. The plaintiffs have made out a cause of action against all of these defendants, and now it becomes a question of fact for the jury.

* * * * *

April 17, 1962

(Appearances same as previously noted, except for Mr. Berman.)

CHARGE OF THE COURT TO JURY

The Court: Before I start my charge, one of the lawyers has said or indicated to you that this is an important case, either very important or important.

In fairness to all the lawyers, I might say that, of course, it is important, just as every case is important. It is no more important, it is no less important than any other case that has been tried in this court. This very important to the parties, to the lawyers, and certainly to the Court.

So, I don't want you to feel, however, that because a particular lawyer may have emphasized the importance, that doesn't necessarily mean it makes it more important.

There is one other point. It is called to my attention one of the jurors has been reading a book, and I am talking about you now, Juror No. 4, by a lawyer, who is supposedly a prominent lawyer, and who talks in his book about suits along this line.

I want to caution you now. I believe you understand this, that I will give you the law. Nothing that you may have read anywhere, nothing that you may have seen in the movies or television is to influence you in any way as to the law which should be applied.

I am the sole judge of the law; you are the sole judges of the facts.

I tell you what the law is and, whether you agree with it or not, and whether you may have seen something in print or otherwise which doesn't go along with what I say, I want you to just let that out of your mind, because while if I am wrong, there are Appellate Courts to correct me, but certainly not any of you jurors—do you all understand that now?

So, if you have read anything outside that may conflict with what I tell you, with all due modesty, I might say I am right and the writer of the book is wrong.

Mr. Garment, I am going to deny your request for a special verdict. I will, however, give your requests to the stenographer so it may be incorporated in the record so the record may be accurate.

Mr. Garment: Thank you, your Honor.

The Court: Ladies and gentlemen of the jury, the plaintiffs, James C. Hill and Elizabeth Selfridge Hill bring this action to recover money damages from the defendants Joseph Hayes, Howard Erskine, The Desperate Hours Company and Time, Incorporated, for damages which the plaintiffs claim they sustained due to the violation of the plaintiffs' right of privacy under Section 51 of the New York Civil Rights Law.

[fol. 319] In September 1952 the plaintiff and their five children were held captive for 19 hours in their home in Whitemarsh Township, Pennsylvania, not far from Philadelphia, by three armed convicts who had escaped from Lewisburg Penitentiary.

The plaintiffs admit that the experience was a frightening and harrowing one, but claim there was no violence, no profanity, nor were the mother or daughters molested or threatened in any way.

The convicts arrived about 8:30 in the morning and left about 3:30 the following morning. The incident was widely reported in the press, with the cooperation of Mr. and Mrs. Hill, who gave to the press accurate details of what occurred during the 19 hours they were held captives.

The plaintiffs claim, however, that they refused offers from radio and television shows, columnists and magazine writers, to cash in on the incident by telling their experiences, for money.

Subsequently, in 1952, they moved to Connecticut where they now live. This move, however, was not wholly prompted by the incident.

In 1953 the defendant, Joseph Hayes, wrote a novel, *The Desperate Hours*, about a family called Hilliard, who are held captive by escaped convicts. The story is melodramatic containing violence and profanity.

You have heard in detail from the witnesses the details of the novel, and you have seen the motion picture made from it. In 1954 this defendant—that is the defendant Hayes—adapted his novel into a play by the same title. The play was tried out in Philadelphia in January 1955.

The article of which the plaintiffs complain appeared in the February 28th, 1955 issue of *Life Magazine*, published [fol. 320] by Time, Incorporated. You have been made familiar with the contents of the article and with the photographs published as a part of the article.

The plaintiffs claim that this article violated the right of privacy conferred on them by the statutes of this state.

They claim that the article in question did not report news but took advantage of plaintiffs' name and private life for advertising or commercial purposes or for purposes of trade, and to increase the commercial value of Life Magazine, and that it involved a publicity device promulgated in collaboration with the defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company, a co-partnership, for the purpose of increasing the financial return of the play and of the moving picture of the same title, and that the James Hill family was mentioned in the article for that purpose.

* * * * *

The defendant Time, Inc., the publisher of the magazine Life, denies it is in any way liable to the plaintiffs. It denies that the article in question was substantially fictitious or that it was published for purposes of trade, or advertising.

Time, Inc. claims that the article in Life reported news as a matter of general interest to the reading public. This defendant claims that the book and the play, The Desperate Hours, was called to the attention of its entertainment editor, who decided to include the article in the magazine, and since the play was trying out in Philadelphia, he decided to have photographs taken in the house where the plaintiffs had lived in Whitemarsh.

The defendant Time, Inc. claims that the opening of the play and the happening of the real-life incident were at the [fol. 321] time of the publication of the article newsworthy and constituted news of general interest, and that the article was not wholly nor substantially fictionalized, but stated facts as known to the writer of the article, and which he, the writer, believed to be true.

The defendant Time, Inc. denies, also, that the article in question was published by it as part of an advertising campaign in which Life and the other defendants were seeking to promote patronage for the play, The Desperate Hours.

The defendant Time, Inc. denies that it was at all interested in promoting patronage for the play and denies