that it acted in concert with the author and the producers of the play when it published the article in question, or that it was done for any other trade purposes.

The defendant Time, Inc. denies, also, that the publication of the article in question was the proximate cause of the injuries claimed to have been suffered by the plaintiffs.

The defendant Time, Inc. denies, also, that the plaintiffs suffered any actual damage from the publication of the article in question.

The defendant Time, Inc., accordingly, denies that it is liable to the plaintiffs in any amount.

The defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company, whom I will refer to as the theatrical defendants, denied that they in any way violated the plaintiffs' right of privacy.

These defendants deny that the article in question violated the plaintiffs' right of privacy. They claim that the opening of the new play was newsworthy, as a theatrical event, and the real-life incident was also newsworthy.

[fol. 322] Moreover, these defendants contend that they are in no way responsible for the contents of the article or for the mention of the plaintiffs therein.

They claim that the theatrical editor of Life contacted the defendant Hayes and told the latter that the magazine contemplated the publication of the article.

Hayes was asked to locate the house where the family involved in the real-life incident had lived. Hayes made the arrangements for the use of the house and, when the photographs were taken, these defendants furnished the actors from the cast of The Desperate Hours and they also paid the stagehands who were used in connection with the taking of the photographs.

These defendants contend that this did not constitute collaboration, in preparing the article as a part of an advertising campaign to increase the patronage for the play, and deny that they had anything to do with the writing of the article or, in fact, that they ever even saw the article before it was published. These defendants deny that the article was an advertisement for the play. They allege that they did not solicit Life to publish the article; that they had no voice in its preparation or content and did not pay for it.

They deny that they ever made any use of it. They contend that merely because the article was favorable did not convert the article into an advertisement.

These defendants deny that the publication of the article was the proximate cause of the injuries claimed to have been sustained by the plaintiffs.

They deny, also, that the plaintiffs suffered any actual damage from the publication of the article.

The theatrical defendants, accordingly, deny that they are liable to the plaintiffs in any amount in this action.

[fol. 323] You, as the triers of the facts, are required to seek out of all the evidence the truth concerning the facts involved.

You must disregard any colloquy between counsel or between the Court and counsel. In deciding the questions of fact, you will use your common sense and ordinary experience in life.

The plaintiffs have the burden of proving their case substantially as they have pleaded it in their complaint. They have the burden of proving by a fair preponderance of the credible evidence—that is the believable evidence—that the published article, so far as it referred to them, was a violation of their right of privacy.

By burden of proof is not meant the number of witnesses called by one side or the other, or the number of exhibits offered in evidence. The law does not count evidence, but weighs it.

By a fair preponderance of evidence is meant such an amount of credible evidence as, when measured by the evidence opposed to it, brings truth and conviction to your minds.

If the evidence is so evenly balanced that you are unable to say which side is entitled to your verdict, the plaintiffs have failed to sustain the burden of proof and your verdict must be in favor of the defendants.

It is your duty to deliberate and to determine this case in accordance with the evidence; that is the oral testimony given by the various witnesses together with the natural inferences which may be drawn therefrom, and any exhibits which may have been received in evidence.

In determining the facts, the law lays down certain rules for your guidance and assistance.

[fol. 324] In this case, as in every case, you will find testimony given by interested witnesses. The parties to the litigation are, of course, interested witnesses, but a witness not a party to the action may still be interested on account of friendship or relationship or employment and, therefore, it becomes important for you to apply the test of credibility to the testimony of such witness.

This does not necessarily mean an interested witness will not tell the truth; it does mean, however, that you are to determine from the demeanor of such witness on the stand, from his or her frankness or lack of it, and from such other tests as your experience may dictate, where or not the interest of the witness is such that the witness is liable, for any reason whatsoever, to color the testimony for the benefit of such witness or for the benefit of the party by whom the particular witness was called to testify.

You must determine what weight shall be given to the testimony of such witnesses. If you believe that a witness has willfully testified falsely to a material fact, you are at liberty to disregard all of the testimony of that witness or you may, if you see fit, accept that which you believe to be true and reject that which you believe to be false.

You have heard the Court direct that certain testimony be stricken. Testimony stricken from the record must be absolutely disregarded by you.

In determining the facts, you may also apply the test of probability. Probability is one of the most important factors in arriving at the truth.

In deciding what the facts are, you must rely on your own recollection of the evidence. Even though I have related during the course of this charge what I think the facts are, you need not be controlled by what I say on this point. [fol. 325] What counsel have said to you during the trial or when they summed up the testimony is merely their argument; it is not evidence, and must not be treated as such by you.

You must determine the facts without prejudice or bias, as a verdict founded on such elements are not sanctioned by the law.

Likewise, you must not be sympathetic in arriving at a verdict. A verdict based on sympathy is not only contrary to law but is contrary also to the oaths you took when you became jurors in this case.

Different versions of the facts and circumstances have been related by the various witnesses. You must decide which version is the truth.

No party to any litigation is obliged to call any witness, and the failure to do so is not evidence and does not prove any fact.

However, if a party does not take the witness stand or does not call a witness shown to be under his control, and the failure to do so is unexplained, you may assume that the testimony by such witness or party would not have contradicted any testimony unfavorable to his side of the case and, in that sense, such testimony would not have been favorable to the party who did not take the stand or call the witness.

* * * * * *

Section 51 of the New York Civil Rights Law, sometimes referred to as the privacy law, provides that any person whose name, portrait or picture is used within the state for advertising purposes, or for the purpose of trade, without written consent first obtained, may sue and recover damages for any injuries sustained by reason of such use, and if the defendant shall have knowingly used such per[fol. 326] son's name in such manner as is forbidden, the jury in its discretion may award exemplary or punitive damages.

There is no dispute here that the article was published in this state and that no consent in writing was obtained from the plaintiffs.

It is for you to determine as to the defendant Time, Incorporated whether the plaintiffs' names were used in the articles for purposes of trade or advertising.

As to the defendants Hayes, Erskine and The Desperate Hours Company, if you find against the defendant Time, Incorporated, then you must determine whether these defendants collaborated in the publication of the article in question for the purpose of increasing the patronage of the play.

This is not an action for defamation, and it makes no difference whether the article was defamatory or complimentary.

This case is not based on the book written by the defendant Hayes, called The Desperate Hours, or the play or the motion picture adapted from it, and the similarity or dissimilarity between the book, play or motion picture and the real-life incident involving the Hills, makes no difference in this case, except in considering the accuracy of the Life article of February 28, 1955, as to which I will refer later.

It is for you to determine whether, in publishing the article, the defendant Time, Incorporated altered or changed the true facts concerning plaintiffs' relationship to The Desperate Hours, so that the article, as published, constituted substantially fiction or a fictionalized version for trade purposes; that is to amuse, thrill, astonish or move the reading public so as to increase the circulation of the magazine or for some other material benefit.

[fol. 327] If you feel that the defendant Time, Incorporated did publish the article, not to disseminate news, but was using plaintiffs' names, in connection with a fictionalized episode as to plaintiffs' relationship to The Desperate Hours, your verdict must be in favor of the plaintiffs.

Of course, an incidental mistake in the statement of a fact or facts does not render the defendant liable. The privacy law is not violated merely because of some incidental mistake of fact, or some incidental incorrect statement.

Before the plaintiffs can be entitled to a verdict against the defendant Time, Incorporated, you must find that the statements concerning the plaintiffs in the article constituted fiction, as compared with news, or matters which were newsworthy, and that they were published for purposes of trade; that is to increase circulation or enhance the standing of the magazine with its readers, or you must find that the defendant Time, Incorporated in the preparation and publication of the article did so to advertise The Desperate Hours for the purpose of increasing the play's patronage.

Unless you find that the defendant Time, Incorporated published a fictionalized article for its own purposes or that it published the article in question as an advertising medium to increase patronage for the play, your verdict must be in favor of the defendant Time, Incorporated.

If, on the other hand, you are satisfied from the evidence that the defendant Time, Incorporated was not, so far as the plaintiffs are concerned, reporting fairly past or current events, but was publishing a fictionalized account mentioning the names of the plaintiffs for the purposes of trade; that is for the publisher's profits through increased circulation, induced by exploitation of the plaintiffs, or that [fol. 328] the defendant Time, Incorporated published the article for the purpose of advertising the play, your verdict should be in favor of the plaintiffs against the defendant Time, Incorporated.

Now, as to the theatrical defendants, unless you find a verdict against the defendant Time, Inc., you cannot find a verdict against these defendants. If you find that the defendant Time, Inc. referred to the plaintiffs in the article for the purposes of trade, as I have defined that phrase for you, you need not by that fact alone find a verdict against the defendants, the so-called theatrical defendants.

If you find a verdict against the defendant Time, Inc. on the ground that it referred to the plaintiffs in the article for the purposes of advertising, namely, to increase the patronage of the play, you will then consider whether the evidence proves that these so-called theatrical defendants collaborated with the employees of Time, Inc. in the publication of the article.

If you are satisfied that these defendants did collaborate with the employees of Time, Inc. in the preparation and publication of the article as a part of a campaign to advertise the play and increase its patronage, then your verdict should be in favor of the plaintiffs against the so-called theatrical defendants.

If, on the other hand, you are not satisfied these defendants collaborated with the employees of Time, Inc. in the preparation and publication of the article in question, then your verdict should be in favor of these so-called theatrical defendants.

If, after a careful consideration of all the evidence, you find a verdict in favor of the plaintiffs you will award to each plaintiff as compensatory damages such a sum as you [fol. 329] believe will fairly and reasonably compensate such plaintiffs for the actual damages you find he or she sustained as a direct result of the wrong committed against him or her by the defendants or any of them.

* * * * * *

The Court passes only on questions of law. While you are the sole judges of the facts you must take the law from the Court.

* * * * * * *

EXCEPTIONS

Mr. Garment: I have no exceptions to the charge, your Honor. . . .

The Court: Mr. Medina, do you have any exceptions to the charge?

Mr. Medina: I respectfully except to your Honor's failure to charge in connection with numbers 1, 3, 5, 6, 7, 8, 13, and 14, and to your Honor's charge insofar as it is inconsistent therewith.

I would also like to call your Honor's attention to the first two sentences of charge number 4 and ask that your Honor reconsider those first two sentences.

The Court: Charge number 4?

Mr. Medina: The first two sentences, yes, sir.

The Court: Well, I think I have covered it, but I will read the first sentence.

Plaintiffs have conceded that they were the family held hostage—and, as I say, I believe I covered it—at Whitemarsh in 1952 as reported in the Life article, and that their experience was a headline story of interest to readers across the country. I have covered that.

Mr. Medina: The second sentence, your Honor, to which I refer.

Mr. Garment: I would object to that.

[fol. 330] The Court: No; I am not going to say any more than I have already said.

Mr. Medina: I respectfully except.

* * * * * * *

Mr. Medina: May I call to your attention our request number 14 and ask you to reconsider with respect to that charge.

The Court: No; that request is denied.

Mr. Medina: I respectfully except.

* * * * * * *

(At 10:50 a.m. the jury retired.)

(At 11:55 a.m., the jury returned.)

The Court: I have received a note from this jury, which will be marked as a Court's exhibit. It asks for the Judge's charges. I can't give you that, but I will read to you any portion of the charge you feel you want.

* * * * * * *

CHARGE OF THE COURT TO JURY

Can you tell me specifically what portion of my charge you want read?

Juror No. 7: The definition of trade, as stated in the Law of Civil Rights.

The Court: I don't think I have defined it specifically, because you are a jury of normal intelligence.

As a matter of fact, as I have had occasion to observe, I think this is a highly intelligent jury, but I will read you that, what the statute says about it and, if that doesn't answer your question, I will read a little further.

Section 51 of the New York Civil Rights Law, sometimes referred to as the Privacy Law, provides that any person [fol. 331] whose name, portrait or picture is used within this state for advertising purposes or for the purpose of trade, without written consent first obtained, may sue and recover damages for any injuries sustained by reason of such use, and if the defendant shall have knowingly used such person's name in such manner as is forbidden, the jury in its discretion may award exemplary damages.

I went on to tell you that it is for you to determine as to the defendant Time, Inc., whether plaintiffs' names were used in the article for purposes of trade or advertising and, generally, as I applied it in my charge—and if I am wrong I will permit you lawyers to correct me or call my attention to anything else I may have said—this means with regard to Time, it was done in this particular fashion, either for the purposes of enhancing the circulation of the magazine or for the purposes of making it more interesting to its readers and thus enhance its circulation, or for the purpose of creating patronage for the play, the additional purchase of tickets.

And, in so far as the other defendants, the theatrical defendants are concerned, they must have collaborated with

the defendant Time for that purpose—that is the purpose of selling more tickets to the play—because that would be all that they are interested in.

Do you think that covers it?

Mr. Medina: Your Honor should also point out to the jury if the defendant Time was reporting upon a newsworthy event in the entertainment field, that is not a trade or advertising use.

The Court: I think I have mentioned that in my charge, that the trade use is only what the statute talks about. When it mentions the word "trade" it means what you might call a commercial use; in other words, it was to the [fol. 332] material advantage of the defendant Time to write this article in such a way as to enhance or increase the circulation of the magazine.

Mr. Medina: Your Honor, I do think that that gives somewhat a misleading impression in that if any matter appears in a magazine which is a matter of news or general interest it, obviously, in one way enhances the circulation of the magazine.

The Court: That's true.

Mr. Medina: But obviously is not a trade or advertising use.

The Court: That's right, but I told this jury if they found this was a report of a news article and reported in a newsy fashion and was not fictionalized in any way, it can't find for the plaintiff.

Mr. Garment: In all fairness, in requests 5, 6 and 7 we endeavored, in fairness to the defendants and ourselves, to define this complicated word "trade" that appears in the statute.

May I simply draw that to your attention?

The Court: I have taken as much as I think should be used in this charge. Let me go a little further.

It is for you to determine as to the defendant Time, Inc. whether plaintiffs' names were used in the articles for purposes of trade or advertising. Then, as I have indicated earlier, with regard to the theatrical defendants, if you find against the defendant Time, Inc., you must determine whether these defendants collaborated in the publication of the article in question for the purpose of increasing the patronage of the play.

It is for you to determine whether, in publishing the article, the defendant Time, Inc. altered or changed the true [fol. 333] facts concerning plaintiffs' relationship to The Desperate Hours, so that the article, as published, constituted substantially a fictionalized version for trade purposes; that is to amuse, thrill, astonish or move the reading public, so as to increase the circulation of the magazine, or for some other material benefit.

Does that cover what you had in mind?

Mr. Garment: Your Honor, I respectfully request you instruct the jury that the question of trade, as claimed by the plaintiffs here, relates, we claim, to the false connection between two news events, namely, the play and the Hill incident, inasmuch as it said that The Desperate Hours was the story of the Hill incident, and that our claim is that the total article must be read, and the jury must determine whether it conveyed the basically false impression as to the relationship of the Hill family to The Desperate Hours.

The Court: I have covered that in my charge. In fact, I see it here—but I don't believe that answers the question the question was, what is meant by the word "trade" as used in the statute, and I think I have covered that.

Mr. Medina: As long as it is clear a news use in a normal mewspaper, or news magazine, does not come within the statute, I think—one moment, please, Mr. Garment—I want to make sure the jury understands that, because I think that is what is troubling the jury.

Mr. Garment: Your Honor, if they are telling news, if they are telling news, purporting to tell news, but have as the basis for the use of the individual's name something that is spurious or essentially false that, we contend—and I think the law is clear—it is for trade purposes.

The Court: I think it is covered. I am going to reread this portion I just read for you. It is for you to determine [fol. 334] whether in publishing the article the defendant Time, Incorporated altered or changed the true facts concerning plaintiffs' relationship to The Desperate Hours, so that the article, as published, constituted substantially a fictionalized version for trade purposes; that is to amuse, thrill, astonish or move the reading public so as to increase the circulation of the magazine, or for some other material benefit.

You made a suggestion, Mr. Medina. I am going to read further on that point.

Before the plaintiffs can be entitled to a verdict against the defendant Time, Incorporated you must find that the statements concerning the plaintiffs in the article constituted fiction, as compared with news or matters which were newsworthy, and that they were published for purposes of trade; that is, to increase the circulation or enhance the standing of the magazine with its readers—then I go on with regard to the theatrical defendants—or you must find that the defendant Time, Incorporated, in the preparation and publication of the article, did so to advertise The Desperate Hours for the purpose of increasing the play's patronage.

I think that covers the point you people had in mind.

(At 12:20 p.m., the jury retired.)

AFTERNOON SESSION

(At 5:25 p.m., the jury entered the courtroom.)

Court Clerk Sragow: Mrs. Wetzler, would you rise, please? Ladies and gentlemen of the jury, have you reached a verdict?

Mrs. Wetzler: We have reached a verdict. Court Clerk Sragow: How do you find? [fol. 335]

VERDICT

Mrs. Wetzler: In the case of Hill and Hill vs. Hayes, Erskine and The Desperate Hours Company, we find for the defendant. In the case of Hill and Hill vs. Time, Incorporated, we find for the plaintiff Mrs. Elizabeth Selfridge Hill, in the sum of \$75,000 for compensatory damages, and for the plaintiff, James Hill, \$50,000 for compensatory damages.

In regard to the question of punitive damages against Time, Incorporated, we find for the plaintiff in the sum of \$50,000.

Court Clerk Sragow: Which plaintiff?

Mrs. Wetzler: Hill and Hill.

The Court: There were two plaintiffs, there were two plaintiffs, as you know. You indicated that in your verdict for compensatory damages.

As to the punitive damages, which plaintiff is it, or is that for the two plaintiffs. What's your verdict?

Mrs. Wetzler: Do you mean for Mr. and Mrs. Hill? The Court: Yes.

Mrs. Wetzler: The two plaintiffs, yes, half and half. Court Clerk Sragow: \$25,000 for each?

Mrs. Wetzler: Yes.

Court Clerk Sragow: Is that a unanimous verdict?

Mrs. Wetzler: No, sir.

Court Clerk Sragow: Ten to two?

Mrs. Wetzler: Ten to two.

Court Clerk Sragow: May I get the first part? As against the defendants Hayes, Erskine, and The Desperate Hours Company, you found for the defendant?

Mrs. Wetzler: Unanimous.

Court Clerk Sragow: That was unanimous?

Mrs. Wetzler: Yes.

Court Clerk Sragow: Ladies and gentlemen of the jury, harken unto your verdict as it stands recorded, you say you [fol. 336] find in favor of the defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company unanimously and so say you all.

You say you find in favor of the plaintiff Elizabeth Selfridge Hill against the defendant Time, Incorporated in the sum of \$75,000 as compensatory damages and \$25,000 as exemplary damages, and so say you by your vote of ten to two.

In the case of James J. Hill against the defendant Time, Incorporated you say you find in favor of the plaintiff for the sum of \$50,000 as compensatory damages and \$25,000 as punitive damages, and so say you by a vote of ten to two.

* * * *

MOTION TO SET ASIDE VERDICT AND FOR NEW TRIAL

Mr. Medina: May it please the Court, the defendant Time, Inc. moves to set aside the verdict and for a new trial on the ground it is contrary to law, contrary to the evidence, contrary to the weight of the evidence, excessive, on the exception taken at the trial and on all grounds specified in Section 549 of the Civil Practice Act, except inadequacy of damages.

The Court: I am going to deny your motions except, if you will break up your motions, and make a separate motion with regard to the verdict being excessive, I will permit you to submit a brief on that point.

I will reserve decision on all the other grounds you mentioned here.

Mr. Medina: I will move separately on the ground of excessiveness.

The Court: On that motion I will reserve decision....

(At 5:35 p. m., the case was closed.)

[fol. 337]

REQUESTS OF DEFENDANT TIME, INC. TO CHARGE

Defendant Time, Inc. requests the Court to instruct the jury, in substance, as follows:

1. Plaintiffs claim that Time, Inc. used their names illegally for advertising purposes and for purposes of trade when it ran the Life story entitled "True Crime Inspires Tense Play". In order for you to return a verdict for either plaintiff on this claim you must first find that the story was wholly fictitious in connecting the crime at Whitemarsh with Joseph Hayes play and was not reporting either news or anything of general public interest. Stated conversely, if you find that the Life story did report either news or a matter of general interest to the reading public, you must return a verdict in favor of Time, Inc. Lahiri v. Daily Mirror, 162 Misc. 776, 295 N. Y. Supp. 382 (N. Y. County, 1937) and cases cited in Time, Inc.'s trial memo at pp. 27-29.

3. Thus, if you find that the similarities between the crime at Whitemarsh (as reported in the news) and the play entitled "The Desperate Hours" would be of general interest to the reading public, you must find that the mention of plaintiffs' name in Life magazine was perfectly proper (Dallesandro v. Henry Holt and Company, supra, and cases cited in Time, Inc.'s trial memorandum at pp. 33-34) regardless of any error or inaccuracy in the Life story (Gavrilov v. Duell, Sloane & Pearce, Inc., supra, and cases cited in Time, Inc.'s trial memorandum at pp. 30-33). Under those circumstances, your verdict must be in favor of defendant Time, Inc.

4. Plaintiffs have conceded that they were the family held hostage at Whitemarsh in 1952 as reported in the Life article and that their experience was a headline story [fol. 338] of interest to readers across the country. Thus, plaintiffs through no fault of any of the defendants had become "public figures" about $2\frac{1}{2}$ years before the Life article was published and, in the context of the crime at Whitemarsh, continue to remain "public figures" to this very day. Sidis v. F-R Pub. Corporation, 113 F. R. D. 806 (2 Civ. 19).

* * * * * * *

5. If you find that in mentioning plaintiffs by name the Life article reported either news or a matter of general interest to the public, you must return a verdict for Time, Inc. regardless of what reason you may believe Time, Inc., had for publishing the story. In other words, unless you should first find that the Life article was wholly fictitious in what it said about the plaintiffs, the motives of Time, Inc., in publishing the article can be of absolutely no concern to you in arriving at a verdict. Humiston v. Universal Film Mfg. Co., 189 App. Div. 467, 178 N. Y. S. 752 (1st Dep't 1919); Booth v. Curtis, 15 App. Div. 2d 343, 223 N. Y. S. 2d 737 (1st Dep't 1962), and cases cited in Time, Inc.'s trial memorandum at pp. 36-7.

6. And even if you do find that the statements in the Life article concerning plaintiffs were wholly fictitious, you must nevertheless return a verdict for defendant Time, Inc., if you also find that Time, Inc. published those statements in the belief that they were true. Stated conversely, you may not return a verdict in favor of either plaintiff against Time, Inc., for having used their names *either* for trade purposes or for advertising purposes unless you are satisfied by a preponderance of the evidence that the Life article was pure fiction regarding plaintiffs and that Time, Inc.'s [fol. 339] employees knew it was fiction at the time the article was published.

7. If from the evidence before you, you find that there is some factual basis for concluding that Joseph Hayes in writing his play entitled "The Desperate Hours" was inspired (whether in whole or in part) by the newspaper accounts of the crime at Whitemarsh *and* that the Life article could reasonably be said to convey that impression to the average reader, you must return a verdict for defendant, Time, Inc., and the same is true even if you find that the language of the Life article is ambiguous in that regard.

8. Before you may return any verdict for either plaintiff against Time, Inc., on the ground that Time, Inc. il-

legally used their name or names, you must not only find that the statements concerning plaintiffs in the Life article were fiction, and known by Time, Inc., at the time to be fiction, but you must also find either (1) that Time, Inc. published that article to "thrill, astonish and move" its readers by a deliberate deception on the reading public and by that means obtain additional profit from extra sales of Life magazine or (2) that Time, Inc. collaborated with the other defendants in the preparation and publication of the Life article as part of an over-all advertising and promotional campaign conducted jointly by all defendants specifically to obtain patronage for "The Desperate Hours". Unless you find Time, Inc. published a deliberate deception for its own selfish purposes or that it acted specifically to obtain patronage for the play, you must return a verdict for defendant Time, Inc.

[fol. 340] 13. There is no evidence in this case which would justify an award of punitive damages.

Respectfully submitted,

March 29, 1962

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

Harold R. Medina, Jr., Oliver C. Biddle, Of Counsel.

[fol. 341]

Supplemental Request of Defendant Time, Inc. to Charge

Defendant Time, Inc., also requests the Court to instruct the jury, in substance, as follows:

14. A person, firm or corporation that uses for advertising purposes, or for purposes of trade, the name of any living person in violation of the statute upon which plaintiffs' claim in this case is based would also be guilty of a crime. New York Civil Rights Law #50.

Respectfully submitted,

Dated April 13, 1962

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

Harold R. Medina, Jr., Oliver C. Biddle, Of Counsel.

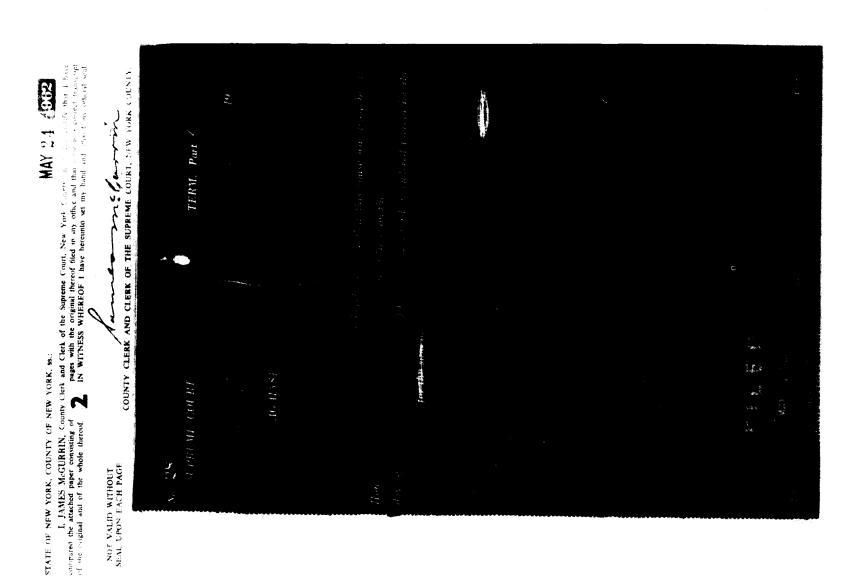
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[fol. 342]

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EXTRACT FROM CLERK'S MINUTES

(See opposite) 🖙



[fol. 342] EXTRACT FROM CLERK'S MINUTES

[fol. 343]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division-First Judicial Department

STIPULATION AND ORDER RELATING TO EXHIBITS-September 30, 1962

It Is Hereby Stipulated that, subject to the Court's approval, the printing of the following exhibits introduced and admitted into evidence at the trial of this action and constituting a part of the Case on Appeal herein be dispensed with and that the originals and five copies thereof be submitted to this Court prior to the argument, viz:

PLAINTIFFS' EXHIBITS

- 3 Clippings from the September 22, 1952, issue of the Philadelphia Daily News.
- 4A Clippings from the September 22, 1952, issue of the Conshohocken Recorder.
- 10 Article appearing at pages 75, 76 and 78 of the February 28, 1955, issue of LIFE magazine entitled "True Crime Inspires Tense Play".
- 13 Advertisement for motion picture "The Desperate Hours" appearing at pages 30-31 of the October 24, 1955, issue of LIFE magazine.
- 15 Samuel French edition of "The Desperate Hours, A Play".
- 25 Envelope marked "Laura Ecker" with newspaper clippings, as follows:
 - [fol. 344] (1) Theater review entitled "Fiction Out Of Fact" by Joseph Hayes, stamped Jan. 30, 1955.

- (2) Theater review entitled "Desperate Hours' Proves To Be Bang-Bang Hit" by Robert Coleman, stamped Feb. 1, 1955.
- (3) Theater review entitled "Theater: The Guests From Jail" by Brooks Atkinson, stamped Feb. 11, 1955.
- (4) Theater review entitled "Arrival Of An Excellent Thriller" by Richard Watts, Jr., stamped Feb. 11, 1955.
- (5) Theater review entitled "'The Desperate Hours': Drama Real Gun-Happy" by John McClain, stamped Feb. 11, 1955.
- (6) Theater review entitled "'The Desperate Hours' A Sizzling Melodrama By A Red-Hot Cast" by John Chapman, stamped Feb. 11, 1955.
- (7) Theater review entitled "Desperate Hours' Set Delivers A Tingle" by William Hawkins, stamped Feb. 11, 1955.
- (8) Theater review entitled "'The Desperate Hours'" by Walter F. Kerr, stamped Feb. 11, 1955.
- (9) Theater review entitled "Exciting Melodrama" by Richard Cooke, stamped Feb. 14, 1955.

Article appearing at pages 31-35 of the February 14, 1955, issue of LIFE magazine entitled "Is This Princess Alive?".

- [fol. 345] 27 Article appearing at pages 97, 98 and 100 of the November 24, 1947, issue of LIFE magazine entitled "The Case Of The Winslow Boy".
 - 28 Article appearing at pages 61 and 62 of the December 31, 1945, issue of LIFE magazine entitled "They Were Expendable".

30 Article appearing at pages 60, 62 and 64 of the April 13, 1959, issue of LIFE magazine entitled "A Famous Case Retried".

Defendants' Exhibits

- C Photostatic copy of pages 1 and 2 of the September 13, 1952, issue of The New York Herald Tribune, Late City Edition.
- D Photostatic copies of pages from six newspaper issues, as follows:
 - (1) Pages 1 and 2 of the September 12, 1952, issue of the Philadelphia Evening Bulletin, Sports Four-Star Final Edition.
 - (2) Pages 1 and 3 of the September 13, 1952, issue of the Philadelphia Inquirer. Final City Edition.
 - (3) Pages 1 and 3 of the September 13, 1952, issue of the Philadelphia Evening Bulletin, Night Extra Edition.
 - (4) Pages 1 and 3 of the September 14, 1952, issue of the Philadelphia Sun Bulletin, Three Star Edition.
 - (5) Pages 1 and 4 of the September 15, 1952, issue of the Conshohocken Recorder.
 - [fol. 346] (6) Pages 1 and 20 of the September 22, 1952 edition of The New York Times, Late City Edition.
- E Photographic copy of pages 1 and 8 of the November 20, 1952, issue of the Conshohocken Recorder.
- F Photographic copy of page 1 of the November 25, 1952, issue of the Conshohocken Recorder.

It Is Further Stipulated that the above documentary evidence may be referred to by the parties in the briefs and upon the argument in this Court, with the same force and effect as if the same had been printed in full in said Case on Appeal.

- Mudge, Stern, Baldwin & Todd, Attorneys for Plaintiffs-Respondents.
- Cravath, Swaine & Moore, Attorneys for Defendants-Appellants.

These exhibits are to be filed on or before the Wednesday preceding the first day of the term for which the appeal is noticed for argument.

So Ordered B. B.

[fol. 347]

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

It Is Hereby Stipulated that, subject to the Court's approval, the printing of the following exhibit introduced and admitted into evidence at the trial of this action and constituting a part of the case on appeal herein be dispensed with and that the original thereof be submitted to this Court prior to the argument, viz:

> Plaintiffs' Exhibit 12-The Permabook edition of the novel "The Desperate Hours."

It Is Further Stipulated that the above exhibit may be referred to by the parties in the briefs and upon the argument in this Court, with the same force and effect as if the same had been printed in full in said Case on Appeal.

This stipulation is supplementary to the Stipulation Relating to Exhibits herein dated September 30, 1962, and so ordered by Mr. Justice Botein.

- Mudge, Stern, Baldwin & Todd, Attorneys for Plaintiffs-Respondents.
- Cravath, Swaine & Moore, Attorneys for Defendants-Appellants.

This Exhibit is to be filed on or before the Wednesday preceding the first day of the term for which appeal is noticed for argument.

So Ordered B. B.



K

Seven Whitemarsh Persons Terrorized 19 Hours By Trio

Escaped Federal Convicts Flee In Family Car After Holding James J. Hill Family Captive From 8 A. M. Thursday To 3:30 This Morning

n, iden sitively as the escaped con-ntiary at Lewisburg, held a ptive at gunpoint for more ng until nily car,

> Convicts Polite To Captive Family

> > ve Children

Desperadoes Cooperative And Offer to Aid Couple

MEETING TONIGHT FOR FIBRE WORKERS

Whitemarsh Residence Used As Haven by Convicts

New Lutheran Church Planned BURNS FATAL For King of Prussia District

Conference Awaits Endorsement From Missions Board ; Sumneytown Pastor Heads County Group

Lutheran church is planned for the expanference

Protest Settlement Offers

Made for Swedesburg Homes

In



31,809 REGISTERED IN VOTER CAMPAIGN

Today's Times Herald

Court Frees State Officer Indicted for Embezzlement EISENHOWER

Judge States Troubled Conscience More Punishment Than Imprisonment as He Imposes Suspended Sentence on William A. Mackin

Living with a troubled conscience for m in years was far more punishment than in the could have been, Judge Dannehower decia

Truck, Station Wagon Crash

TAFT PLEDGES FULL SUPPORT

Plaintiffs' Finibit

enator and Nominee Have Breakfast Confab Latter's Home

By JAMES DEVLIN

NEW YORK Sept.

afte

RED CROSS TO HOLD MEETING ON SEPT. 15

321



Early Today on Ridge Pike

DIES SUDDENLY Kenneth S. Rogers, Sr., 70, of 10 E. Main St., Norristown, well-known, locker room, action

he pulled all the way side of the highway

FLOWER, HOBBY SHOW PLANNED FOR PUPILS

FORMER EMPLOYES ROB MAN OF \$1,000

Firestone Asks Injunction

To Halt 'Illegal Picketing'



Downward Way Resumed In Stock Market Today ses Are Fairly General With Volume Over Million

4 CURB Nat Gas A une Bond & Sh

CHICAGO GRAIN

EGG AUCTION

Lange Medi an

POULTRY AUCTION



TWO BURGLARIES IN AMBLER AREA

TRUCK

of the stat

KEN M'GREGOR IS OUT OF PACIFIC NET PLAY

Dotte

\$50,000 GEM THEFT TRUCKS SWITCHED SPIGNGFIELD Mass Sept. 12

PASS FOR TRUMAN

SUSPEND LICENSE

31,809 REGISTERED IN VOTER CAMPAIGN

in line at closing time collect. Haliman said LANCASTER LIVESTOCK



YMCA ALD

STOWN

Whitemarsh Police Examine Clothes **NEW LUTHERAN** 12 2 8 BOLL

DAY, SEPTEMBER

State Police Questioning James J. Hill

12, 1952

JUSTICE DEPT. TAX TO CALL 47,000 MEN HEAD IS REPLACED TO ARMY IN NOVEMBER WASHINGTON, See 12, CAP) WASHINGTON, Sept. 12

of 1107

ngs to a total imber of men imber, 1950,

Throngs Register to Vote at Court House

в "clea ice Depar

OFFICIAL QUITS



Family of 7 Held Captive For 19 Hours by Fugitives

FINE SAYS M'CARTHY WORK BRINGS RESULTS

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WINS SUIT TO PAINT LEMONS ON AUTO WASHINGTON, Sept. 12 (199) Manual Coll Prinks has

FALLS TO DEATH OCK HAVEN, Pa, Sept. Daniel Kemerer, 57

CONVICTS

Whiteman

CB 603

Х.

FIRESTONE SEES NEED OF UNIVERSAL UNITY

MAN ELECTROCUTED BY HOME-MADE MOWER

Fugitives

ad been mo a home-ed into a 226

Pa Post

[fol. 349]

[fol. 350]

Plaintiffs' Exhibit 2

From "Time" Magazine, September 22, 1952

HOUSE PARTY

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

"You probably know who we are," said 26-year-old Joseph Nolen of Woodbine, Ky. "We're not going to hurt you—we just want your house for a day. If you do what we tell you, nobody will be hurt." As Nolen pushed open the back door, his brother Ballard, 22, and Elmer Schuer, 21, of Chicago appeared from behind a trellis, pointing shotguns at Mrs. Hill. When the men had searched the house from cellar to attic, Mrs. Hill asked them if they would like some breakfast. "Yes, we'd appreciate it," replied Joseph politely. She fixed them some scrambled eggs, bacon and coffee.

Tonic & Lotion. Breakfast done, the three fugitives took baths and shaved, helping themselves to Hill's hair tonic and shaving lotion. Then they helped themselves to Hill's [fol. 351] suits. When Joseph discovered that six-footer Hill's suits didn't fit, he sat down at an old treadle sewing machine and carefully altered the trousers and sleeves. The thread broke repeatedly, and Mrs. Hill kept rethreading the needle.

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

Two hours later Hill came home from work, and Ballard ushered the whole family into the kitchen for dinner. They were all seated at a meal of canned soup, spaghetti, chili con carne, milk and coffee when Joseph and Schuer returned. "May I come in?" asked Joseph politely, standing in the kitchen doorway. Later the men played poker. They asked Betsy to join them, but she said that she played only canasta. The robbers told her they didn't know that game. Most of the time they kept the radio tuned to dance music, and they used no profanity.

Bedtime. "I guess you folks would like to go to bed," suggested Joseph at last. "If you do, just go ahead. I wish you would all go up to the third floor if you do go to bed." Hill observed that there was only one bed up there. So Joseph and the other two men carried up several loads of [fol. 352] cribs and mattresses. Hill sat up all night in a chair while his family tried to sleep. At 3:30 a.m., 19 hours after the fugitives entered the house, he heard his car start up. The three men then drove away into the early morning blackness, where the FBI and most of the police in Pennsylvania hunted for them.

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

Captive Family Moving to Conn.

Hills, Hold by Convicts, Loeving Whitemarsh

The Same Will are leaving Parality Whitemarch the rit the where they were hold Tamp captive for 18 hours jast September by the Nolen brothers and Einer Schuer, three escaped bank rola

5 Te Tollograph is sicility day for the hostery firm encoutive, his wife, Elimboth, and their five children.

They are moving to their now home in Old Greenwich, Conn., two blocks from Long Island Sound where the estire family will be close to their favorite rearestion-calt water bathing.

The terrifying experience of last September 11-13 is not forgotten but seldom discussed, and never with the children. It has had nothing to do with their moving.

Office to Move

Hill is general sales manager of the Deminie Hostery Co., Lanedale, which is transferring its main sales offices to New York City. He will make his headquarters there; Old Greenwich is do minutes away.

The family now travels in a new 1952 Pontiac sedan. The three des-peradoes drove away from the Hill home on the morning of September 12 in the family's yellow-green Pontiac, now impounded by New York police.

They were using the car when cornered by police early on the morning of September 21 in a Harlem apartment. In a florce fiveminute gun battle the Noien broth-ers-Ballard and Joseph -- and a New York detective, Philip La Monica, were shot to death.

Schuer, who was captured uninjured, pleaded guilty last week to robbery and kidnapping charges in a Bronx Court. He also faces a charge of homicide.

Not Harmed

The Hills were not harmed by the three desperadoes who chose

22



Mrs. James J. Hill

the family's home because of its luded location atop a knoll some i yards from Joshua road.

Mrs. Hill was having breakfast with James, 11, and the couple's four-year-old twins, Clyde and Robert, when the Nolens and Scheur, armed with rifles, arrived.

The couple's two daughters, Susan, 17, and Betsy, 15, joined the captive family when they returned in the afternoon from Norristowr; High School. When Hill arrived home from the office later in the day, he too was held captive.

The three convicts, who had escaped the previous day from Lewisburg Penitentiary, allowed the family to have their meal throughout the day. In the eve ning the Hills grouped upstairs. Took Clothing

Meanwhile the Nolens and Schuer ate well of the Hills' food, Juxuriated in hot baths and fresh shaves and helped themselves to some of Hill's expensive wardrobe.

They drove off early on the 12th after taking \$14.98 from Hill and warning the family not to notify police until 8 A. M., several hours Jater,

Tirs. Hill said yesterday that the family has suffered no ill e fects from the experience.

Moving is nothing new to the family. They have moved almost yearly in the last ten years as Hi was transferred from place to place by Dexdale.

"Moving a family our size from 20-room house is some job," Mr Hill said as she supervised the packaging of the chinaware.

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

PLAINTIFFS' EXHIBIT

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[fol. 354]

Plaintiffs' Exhibit 6

From "The Philadelphia Inquirer" of February 21, 1954:

CONVICTS HIDE IN HOME, HOLD FAMILY AS HOSTAGES

THE DESPERATE HOUR. By Joseph Hayes. (Random House. 302 pp. \$3.50)

By Frederic G. Hyde

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

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

"The Desperate Hours" has terrific emotional impact, playing as it does on the fears and divided loyalties of the trapped father, Dan Hilliard; the disillusionment of his small son Ralph and the latter's ultimate recovery of faith [fol. 355] in his dad's knowledge and strength, and the courage-close-to-tears of Hilliard's wife and daughter.

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

This is the first full-length novel by a short-story writer who already has made a name for himself in the magazine and television fields. Many a veteran novelist could envy him his skill.

[fol. **3**56]

PLAINTIFFS' EXHIBIT 7

New York (Sunday) Times February 28, 1954

NIGHTMARE AT THE HILLIARDS'

THE DESPERATE HOURS. By Joseph Hayes. 302 pp. New York: Random House, \$3.50

By C. V. TERRY

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

As we have said, the story hits its stride on the first page, when the three escaped hoodlums ghost out of a woodlot (like lonesome jackals on the prowl), capture a farmer's car and go roaring south to Indianapolis, to make rendezvous with a lady who'll bring funds to complete their getaway. The pace never slackens as the trio enters the suburban home of the Hilliards (a house selected at random, thanks to its comparative isolation). Eleanor Hilliard is pinned down to her living room, just as she is finishing her afternoon's housekeeping. So is 11-year-old Ralphie, as he comes rollicking in after school. So are 19year-old Cindy and Dan Hilliard, as they return from their [fol. 357] respective jobs—and the nightmare is smoothly in gear.

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

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

Mr. Terry comments frequently on modern fiction.

[fol. 358]

New York Herald Tribune February 28, 1954

FANTASTIC BUT TIMELY TERROR

THE DESPERATE HOURS.

By Joseph Hayes. 302 pp. New York:

Random House. \$3.50.

MR. HAYES' novel of suspense is a story which could appear in any daily newspaper, but the sort of thing one never believes can happen to oneself. He has dramatized it by setting it in the midst of a typical middle-class American family, to bring it more closely home to the reader.

When Glenn Griffin, his brother Hank, and a lifer by the name of Robish, escaped from the Federal prison at Terre Haute they followed a carefully worked out plan of Glenn's. They were to hide out in a home selected at random, with the family to be held as hostages, until Glenn's girl friend had a chance to join them with the stolen money he had cached. Their destination was Glenn's home town, Indianapolis, partly because he was familiar with it, and partly because he wanted revenge on Jesse Webb, the sheriff's deputy who had captured him and broken his jaw.

The family Griffin selected was the Hilliard family father, mother, nineteen-year-old daughter, and ten-yearold son. The convicts moved in on them and held them in a siege of terror—so complete that the father and daughter went out to do errands for them, powerless to appeal to [fol. 359] the police for fear there would be reprisals on the mother or son. Moreover, Griffin let them know that some of the family would go with him when he left—to insure that the police could not lay a trap for them on the way out. The family was helpless.

Meanwhile, Jesse Webb, the police and the F. B. I. were narrowing the circle down to the hideout. But they, too, had become aware of the hostages' dilemma, and it hampered them in their efforts to move in on the desperate convicts.

Mr. Hayes has possibly over-extended his story a bit, and its suspense wears a little thin in patches. But it is a well-contrived yarn, and has the vividness of timeliness.

[fol. 360]

New York Times March 3, 1954

BOOKS OF THE TIMES

By ORVILLE PRESCOTT

Suspense once meant a condition of anxious uncertainty. As a descriptive label on book jackets during the last few years the word has lost much of its original meaning. It is used indiscriminately to describe any novel that has a melodramatic central situation and thus covers spy stories, gangster stories, stories about smuggling, mad scientists and stolen jewels, and even detective stories. Nowadays when a prospective reader considers a suspense story he is anxious lest he waste his time and money and is uncertain what sub-classification of suspense awaits him. Will it be hide and seek around the Iron Curtain or vengeance among the syndicate chieftains? In view of this confusion the publishers have probably injured rather than helped Joseph Hayes' "The Desperate Hours" * by calling it "a novel of suspense."

"The Desperate Hours" is too good a novel for such labeling. It happens that its central situation is as cruelly melodramatic as any in modern fiction and the suspense it generates, the anxious uncertainty, is tremendous. But this is not just a tale of violence and terror. It is an expert study

^{*} THE DESPERATE HOURS. By Joseph Hayes. 302 pages. Random House. \$3.50.

of the agonizing dilemma of a group of sharply delineated and deeply understood characters. The people involved in Mr. Hayes' frightful predicament matter. They aren't just [fol. 361] good guys and bad guys. They have tired bodies and shocked minds and genuine emotions. And they are capable of suffering because of their love for others.

A TIME FOR CAUTION

Eleanor Hilliard was alone when the three escaped convicts forced their way in. Two were young and handsome, obviously brothers. One was older, massive, ugly and sullen. All three were jittery with excitement and an almost hysterical nervousness, which was even more frightening than their revolver or their threats. All they wanted was a safe place to hide until their money came, the elder brother explained. Just do what you're told and no one need be hurt. Ten-year-old Ralphie was the first to come home, then Cindy from her secretary's job, and then Dan.

Dan Hilliard was an intelligent and a brave man. But what could he do? He could see that Glenn Griffin, the elder brother and leader of the three, was a killer. Clever, cruel, swaggering arrogantly to cover his inner insecurity, Glenn left no doubt that he meant it when he said that if trouble came he woud shoot Dan's wife or children first. The older man—Robish, they called him—seemed even more dangerous, much less intelligent, much quicker to kill. Hank Griffin, the younger brother, might have had a stray decent instinct, but he was obviously dominated by Glenn.

Two Days of Mounting Tension

Every hour of the next two nights and days seemed worse than the one before. Mr. Hayes tells what happened [fol. 362] from moment to moment with a narrative pace that leaves one almost breathless, with great ingenuity in elaborating complications and unexpected developments and with deft skill in switching his attention from the Hilliard family, to the police in a frenzy of frustration trying to locate the missing convicts, to the convicts themselves. "If the police came, it might be tragic," thought Dan; that's when the shooting would start. "If they did not come it might be worse." Cindy was beautiful, with a redhead's unpredictable temper, and she might do something reckless. Ralphie couldn't be made to understand the situation. It was all cops and robbers to him and he expected his father to do something heroic at once, never grasping that a false move might mean his own death, or his sister's or his mother's.

Dan Hilliard lost his temper once and nearly brought on the disaster he feared. After that he felt horribly helpless because of his fear for those he loved. He must do something, but what could he do? "Afterward, after the tragedy, if tragedy came, a man could be haunted forever, if still unmercifully alive, with the cutting realization that he might have, by some sly or bold cleverness at just the right moment, prevented it all." But Dan didn't dare call the police when he had the opportunity. Supposing that cynical, sadistic, semi-hysterical young killer suspected what he had done? It wasn't his own life he was gambling with.

No hint will be given here about the ultimate fate of the four Hilliards and their three menacing visitors in the [fol. 363] pleasant house just outside Indianapolis. Mr. Hayes has written his story with remorseless logic, heightening his suspense to an amazing tension, always keeping within the boundaries of reasonable probabilities considering the nature of the people involved. His central situation is an old one and has been used many times before in novels, plays and movies. But Mr. Hayes has developed it with fresh and original ideas of his own. His primary concern, of course, is excitement. But the reason "The Desperate Hours" is many times more exciting than most suspense stories is that it is psychologically convincing and gruesomely frightening. What happened to the Hilliards might by an unlucky chance happen to any of us.

Joseph Hayes has written many short stories and television plays, but "The Desperate Hours" is his first novel. It is a dandy.

[fol. 364]

New York Herald Tribune March 4, 1954

BOOK REVIEW By LEWIS GANNETT

THE DESPERATE HOURS. By Joseph Hayes. Random House. 302 pages. \$3.50.

FROM his hilltop in Bridgewater, Conn., Joseph Hayes can see at night the circle of lights that marks Danbury Federal prison. And when he has just read in the newspapers of a convict who escaped from prison, broke into some lonely homestead and forced the family to do his bidding as hostages, he looks at those bright lights, and at his red-haired wife and red-haired sons, and wonders, "What if there were a prison break, and one or more of those desperate men escaped in this direction?"

What Would You Do If ...

His wondering led him to spin the high-tension story that is the Literary Guild's March selection. If you start reading "The Desperate Hours," it's a fair bet that you will gallop on, sleepless, to the end. And wonder, as you read, what you would have done if it had happened to you.

"We'll find us a cozy spot," the leader of the three convicts had said. "A nice quiet house on a nice quiet street on the edge of town, with no other houses close by. Comfortable, scared people—a sucker who goes to work every [fol. 365] day, maybe a kid in the family." The Hilliard house on Kessler Boulevard looked right to him, and it proved right. Glenn Griffin stepped inside when Eleanor Hilliard opened the front door at 2:30 p.m. Old Robish had come in the back door without Eleanor knowing it, young Hank Griffin with him. And Hank soundlessly cased the upstairs rooms while Glenn was saying to Eleanor, "Take it easy, lady. You open your mouth, the little kid who owns the bike out front'll come home from school and find your body.... We're playing for keeps."

"What do you want me to do?" Eleanor asked. There wasn't much else she could do, then, or when ten-year-old Ralphie came home, or later when nineteen-year-old Cindy, redheaded and spitfire, burst into the house.

Glenn Griffin was in charge. "Sit down, redhead," he said to Cindy, "and let me explain the facts of life. With that hair, you might feel like getting brave. You might even get away with it, not get hurt at all. That's not saying what will happen to the old lady, or the kid brother, or the father." Cindy sat down.

When Dan Hilliard came home, and faced Glenn Griffin's gun, he, too, said, "What do you want?" He had heard the broadcast about the three escaped convicts; he knew who they were; he knew the police were hunting for them; he was trying to figure it out.

Meanwhile Deputy Sheriff Jesse Webb was trying to figure it out, too. He knew the men; he knew the name, but not the address, of Glenn Griffin's girl friend; he knew that [fol. 366] Glenn had a particular grudge against him, Jesse Webb. He knew that Glenn wouldn't hesitate at a few more killings along the way. "I don't know what makes people go bad," he said. "I grew up in a neighborhood that was worse than the Griffin boys' if it comes to that. But..."

Perhaps that is as much as it is fair to tell of Mr. Hayes' scenario. We might also introduce Chuck Wright, Cindy's boy friend, who smells a rat when Cindy, ordered to go out with him as usual, doesn't behave as usual. But Chuck Wright, though he plays a major part in the denouement, isn't really essential to Mr. Hayes' story. Chuck is just another man, mad clear through and tempted to be overbrave, who faces a question of moral responsibility under circumstances for which he isn't prepared.

Spotlight of Suspense

Mr. Hayes' spotlight swings backward and forward, focusing now on the convicts, now on one or another member of the Hilliard family—even on little Ralphie, who wanted to be brave, too, and now on the police, slowly but surely closing in on their quarry but not so sure how to face three desperate men holding four innocent hostages. Mr. Hayes makes the most of the uncertainties in all his characters' minds, and the reader is not sure what the outcome will be until he is within ten pages of the end.

"The Desperate Hours" is, I suppose, what the publishers like to call a "novel of suspense." It isn't a "mystery" because the reader is never in doubt who are the guilty [fol. 367] ones and who the innocent—merely how any of them will react to the constantly shifting pressures of their desperate hours. I am ordinarily one who reacts with apathy to suspense-packed crime stories. But I found this one convincing and spellbinding. I began it, intending to read myself to sleep with a few pages. I sat up in bed, reading fiercely, until I came to the end.

[fol. 368]

PLAINTIFFS' EXHIBIT 8

Hickory 6-2844

Frank Rasky 37-09 75th Street Jackson Heights 72, Long Island

April 28, 1954

James J. Hill, Lansdale, Pa.

Dear Mr. Hill:

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

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

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

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

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

Cordially,

FRANK RASKY

[fol. 369]

COPY

May 1, 1954

Dear Mr. Rasky-

Your letter of April 28th received.

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

Following this policy we have refused all radio, television, magazine, newspaper, etc. offers connected with that experience.

Trusting that you will understand and abide by our feelings on this matter I am

Sincerely yours,

JAMES J. HILL

Page 75 class Trudey Randson X-14 X (eq 5 in 1952 a young indianapolis author, Joseph Hayes, read a hair-raising subout (aberte) a suburban Philadelphia gamily, held prisoner in their ows home by three escaped convicts. This sparked off Hayes to write a novel, The Desperate Hours, which he New later as a screen play Seunceth-While it was being filmed, a New York producer persuaded Hayes to surn his notel also into a Burndy play. The movie producers in order agreed not to release the film for a year aftermin to give the play a chance to pay off. Now that The Desperate Hours in custing into proa Broadway-smitch hit, and two more companies are duction funfinguishing managementary, Hayes stands to make a half million dollars on inthe Philadelphia horror story. Directed for Breakery by Robert Montgomery, and experily acted. Hayes' play is a somewhat fictionalized but heart-stopping account of me m famligrose to heroism in a crisis. LiFE photohow ay of U.S. Philadelphia try-out, and transported some graphed t of the actors to the actual house where the family, who no longer live there, were beseiged. On the next page and there scenes from the play and reenacted making minimum on the original site of the crime.

[fol. 370]

PLAINTIFFS' EXHIBIT 20

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

 $2 \times S \ge 4$ BRAVE FATHER ejects convicts from the house, but has to toss out gun and let them in **means** because they hold his **Basis** son as a hostage.

LTTO SRESCUE comes in the form of a grash-collector, who chats with wife and suspects something is wrong. He gets milled, but gives clue to police.

878 Pouleany - Eine CONTINUED 4 y 5 2-2 MOST BRUTISH of me three convicts is Robish (George Matthews) who roughs up the son, Ralphie (Malcolm Brothat minute the boss 1s drick), tells his to remember minim

another convict, Glenn, who keeps gun plinted at family.

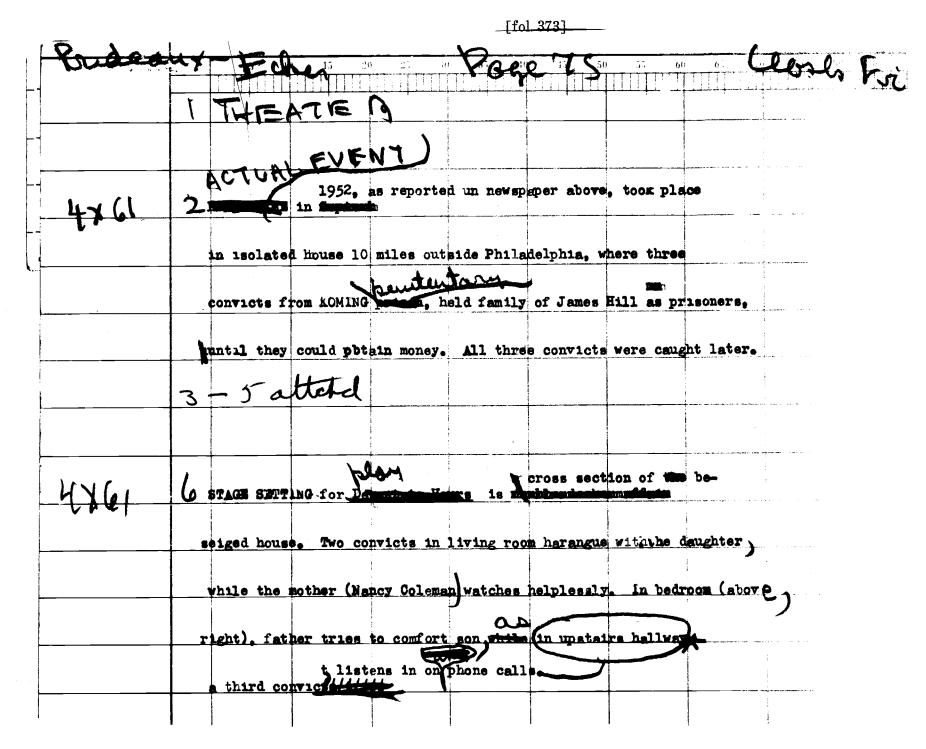
(Patricia Pearden) bites hand of young est 2×52 3 DARING DAUGHTER

convict (George Grizzard), forces hill to drop gune

2×52 4 MANTIC FATHER (Karl Maulden, right) folgts off uny

loaded gun on leader (Paul Newman) saves son and family.

loses Fireday



p. 75 [fol. 374] 25% TENSE DLAY 90 Case of Multadefiling family trapped by convicts moves author to write novel, mpvie and now a Broadway thriller. 5 text allach 0 - N - P V C. + -----

Patering - ----

1952 a young Indt

14x60

Lo-exthery weiner antigene boile. familier antiger oner in their own home by three escaped convicts. This true story sparked off Hayes to write a novel, The Desperate Hours, which he did later as a screen play. While it was being filmed, a New York producer persuaded Hayes to turn his novel also into a Broadway play. The movie producers agreed not to release the film for a year in order to give the play a chance to pay off. Now that Des-

perate Hours is a Broadway hit, and two more companies are rush-

ing into production, Hayes stands to make a half million dolars

on his Philadelphia horror story. The flows (Firected by Robert Montgomery, and expertly acted, Hayes Lar is a 📩 Sistionalizations heart-stopping account of anaverage / how end family rose to heroism in a crisis. LIFE photographed the mond play at its Philadelphia try-out, and transported some of the ac-Hills tors to the actual house where the Samsty, who no longer lives there,

were beseiged. On the next page scenes from the play are reenac-

ted on the original site of the crime.

[fol. 375]

Prideaux-Ecker

p. 76

1 KONTIG CONTINUED

2 THREE CRISES AT BACK DOOR 26

Yostren

2x70 3 AT REAL HOUSE where family was trapped, actors do scenes from play. Here

daughter Cindy stalls off beau from entering her beleaguered home.

daughter clindy state and A TTEHATT A TTEHAT A TTEHATT A TTEHAT 2x52 as hostage.

FIRST Hope for when 5 Wester comes in the seen age trach collector, the chats with wife and

suspects something is wrong. Is gets killed, but gives also to palice. death juit; minut;

6 CONTINUED ON NEXT PAGE

Prideauz-Ecker P. 78 cr

1

4x52 2 Set BRUTISH of the convicts is Routh (George Mat-

thews) who roughs up the son, Ralphia (Malcolm Brodrick), Wells him to remember that the big base-is (mother con-

CONTINUED

2x52 3 DARING DAUGHTER (Patricia Pearden) bites hand of youngest

vict, lignmente keeps guilpeinted at family.

convict (George Griszard), forces him to drop gun.

2x52 A FEVERISE FATHER (ALL Linking, Fight) foists off unload-

ed gun on leader (Paul Heuman), saves son and family.

[fol. 377]

4x61

2 ACTUAL EVENT in 1952, as reported in newspaper, sheet, took place in isolated house 10 miles outside Philadelphia T victs from Energy soners, until they could obtain money. All three convicts were caught later.

253 3 TRUE CRIDE INSPIRES TERSE PLAY

90

4 Cas of family trapped by cenvictant

text attached 5

6 STACE SETTING for play is cross section of beseiged house. Two 4x61 convicts in livingroom harange with the daughter, while the mother (Nancy Coleman) watches helplessly. In bedroom (above, right), father tries to comfort son, as a third convict listens in on phone calls in upstairs hallway.

7 CONTINUED ON MEET PAGE

345

[fol. 378]

James Hill family Three years ago Americans all over the country read about the mahambann outside Philadelphia... The Desperate Hours convicts. Later they read about it In a book. mannanguragen Joseph Heyes, Mow they see it reenacted in Hayes' Broadway play, and next year in his movie, which has already been filmed but is being held up mannangunghum until the play has a chance to pay off. Trom his Dalls

delphia herror story, hayes stands to make all in aling a hear million dellars.

p. 75 Prideaux-14x64 5 In 1952 a young Indianapolis author, Joseph Hayes, read a hairraising report (above) of a suburban Philadelphia family, held prisoner in their own home by three escaped convicts. This true story sparked off Hayes to write a novel, The Desperate Hours, which he did later as a screen play. While it was being filmed, a New York producer persuaded Hayes to turn his novel also into a Broadway play. The movie producers agreed not to release the film for a year in order to give the play a chance to pay off. Now that Desperate Hours is a Broadway hit, and two more companies are rush-* NAS ing into production, Hayes stands to make a half million dolars on his Philadelphia horror story.

> Directed by Robert Montgomery, and expertly acted, Hayes's play is a somewhat fictionalized but heart-stopping account of how one family rose to heroism in a crisis. LIFE photographed the

play at its Philadelphia try-out, and transported some of the actors to the actual house where the family, who no longer lives there, were beseiged. On the next page scenes from the play are reenac-

ted on the original site of the crime.

Plaintiffs' Exhibit

Prideaux-Ecker P. 78 cr

Salen.

CONTINUED

4152

1

2 MOST BHOFFISH of three convicts is Bobish (George Matthews) who roughs up the son, Balphie (Malcoln Brodrick), tells him to remember that the big boss is another convict, Glamm, who keeps gun pointed at family.

2x52 3 DARING DAUGHTER (Patricia Pearden) bites hand of youngest convict (George Griszard), forces him to drop gun.

2x52 4 FEVERISE FATERR (Karl Malden, right) feists off unload-

ed gun en leeder (Paul Novman), saves son and family.

Prideaux-Ecker

p. 76

1 KOMING CONTINUED

2 THREE CRISES AT/BACK DOOR

26

3 AT MEAL HOUSE where family was trapped, actors do scenes from play. Here 2x70

daughter Cindy stalls off beau from entering her beleaguered home.

2. 4 HEAVE PATHER ejects convicts from house, but has to 2x52

toss out gun and let them in because they hold his son

as hostage.

Wyrley Bires

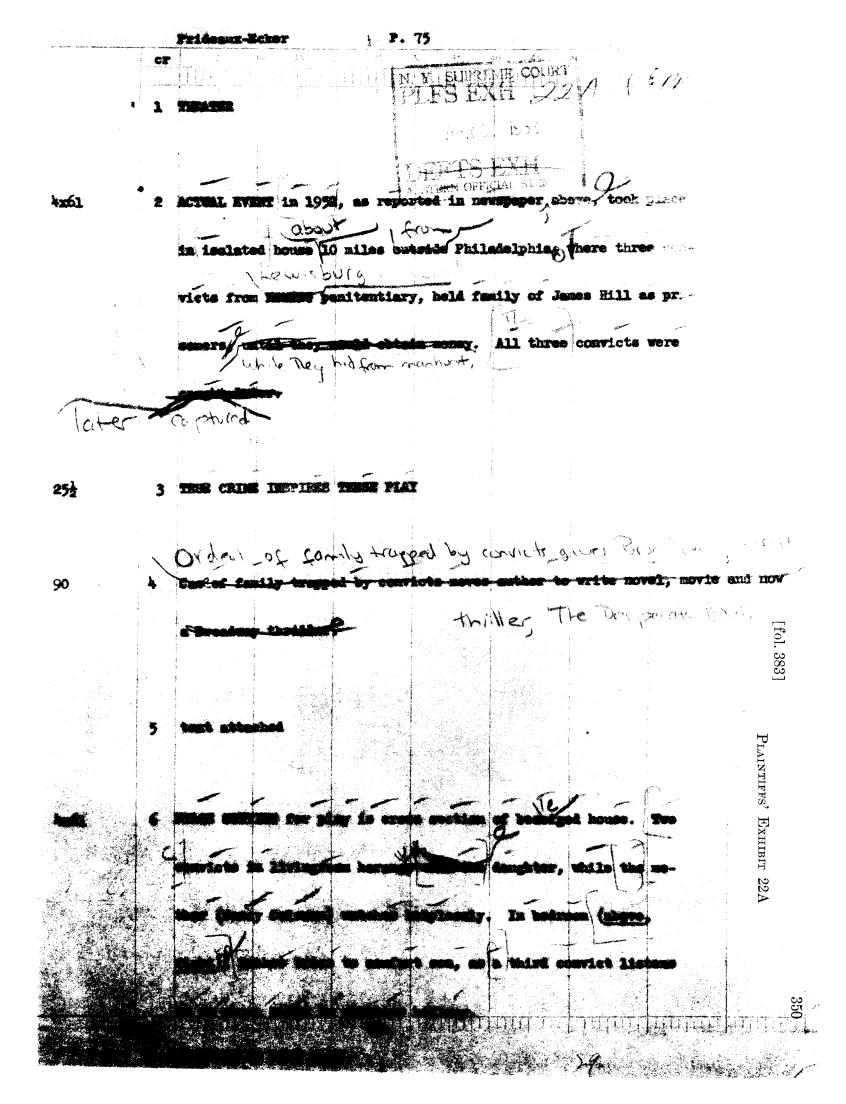
c.X-

5 BESCUE comes in the form of a trash collector, who chats with wife and 2x70

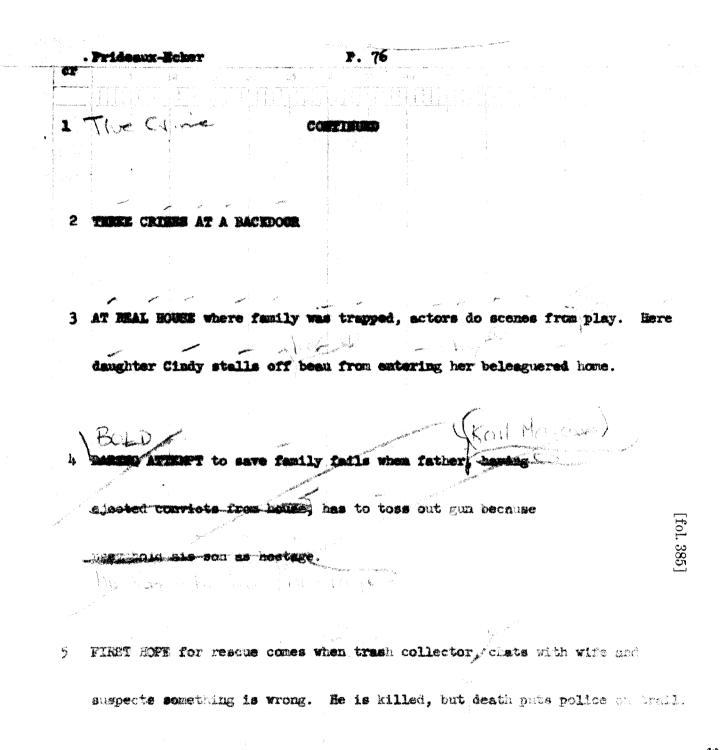
> suspects something is wrong. He gets killed, but gives clue to police. Pacts

6 CONTINUED ON MELT PAGE

[fol. 382]



25 30 .25 40 60 65 70 75 20 . 43 10 15 Litte Sept 1952 14:69 untry read about 1 the c 1.50 who were held prisoners in their 11.11 e alle they read about manal corvicts. Later 27 Hours inspired by the family's t's series, the Desperiet es the story respected in Reyes" <u>Bury</u> they can i , and next year will see it in his m basi being held up until the play e fu 1.0.0 to pay off. directed by Bol bologeners and expertly a ert I account of Me werege family rose to hereis [fol. 384] LIFE photographed the play during its Philadelphia try-out, and treas She Milite actors to the actual house when of the the part pase Longer Live there, vere bess 8000 original. site of i_{f}



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p. 76

4 BOLD ATTEMPT to save family fails when father (Karl Mal-

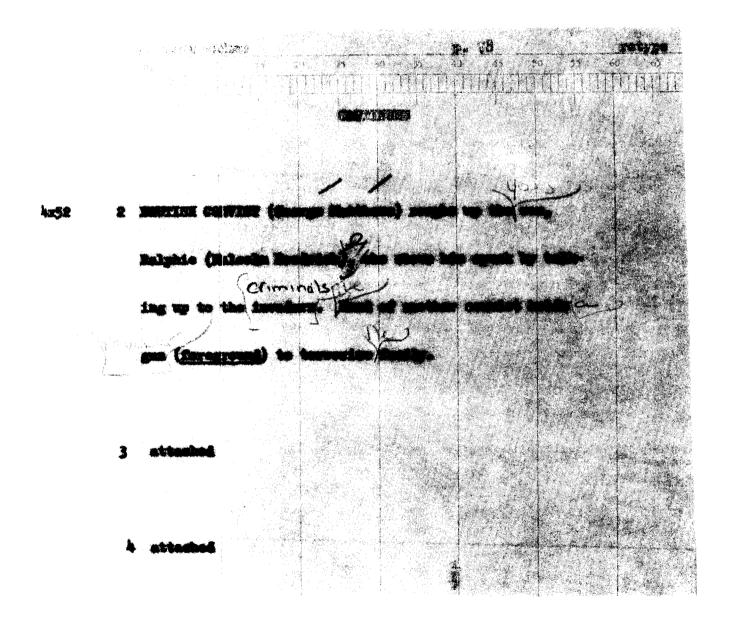
2x52

den) has to toss out gun because his son is held as hostage.

[fol. 386]

1.5 **P.** 78 GT 1 CONTINUES HUTISE CONVICT (George Metthews) roughs u 4x52 who shares Malphie (Malcola Brodrick) to lamorias there ?? (Serve of abother convict holds gun destinite Real SOUTH (miles him [fol. 387] clevely the use gree

[fol. 388]



Prideaux-Schut

Prideaux Three years ago Americans all over the country read about the desperate 1480) to: 19 hours ordeal of the James Hill family who were held prisoners in their own home outside Philadelphia by three escaped convicts. Later they read about it in Joseph Hayes's novel The Deoperate Hours inspired by the family's experience. Now they can see the story respected in Sayes's Broadway pasy based on the book, and next year will see it in his mowie, which 10 has already been filmed but is being beld up until the play has a chance The play, directed by Bosert Montgemery and expertly acted, is A heart-stopping account of how average family rose to beroism in a crisis. LIVE photographed the play during its Miladelphia try-out, and transported some of the actors to the actual house where the dille, who no longer live there desciged. In the next page scenes from the play are reemacted on the original site of the crime. 356 23

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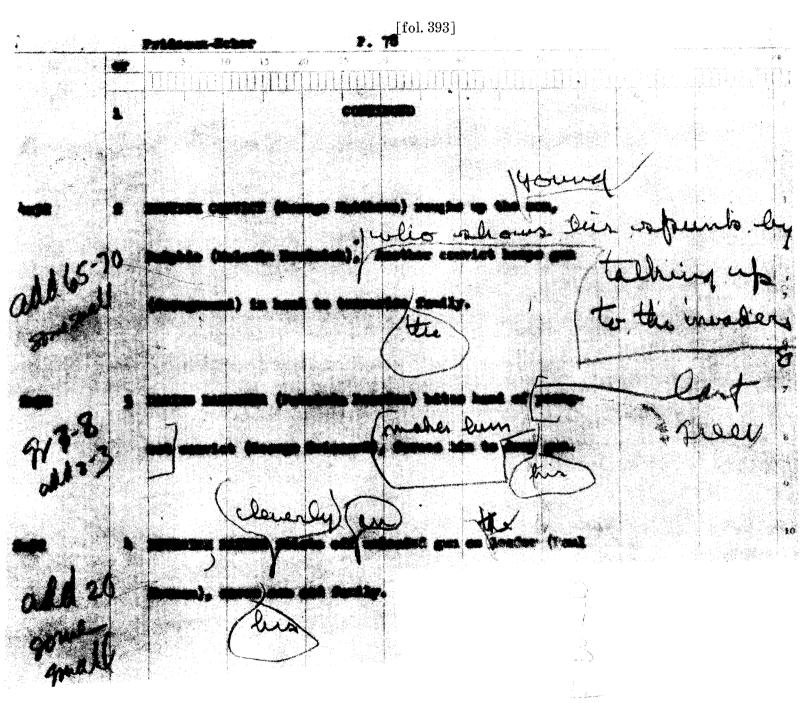
Prideeux-Echer P. 75 Provinue 1 THEASER 2 ACTUAL EVENT in 1952, as reported in newspaper above, took place 4261 is isolated house 10 miles dutaide Philadelphia, there three con-victs from mount penitentiary, hold family of James Hill as pri-comera, until the four obtain wany. All three convicts were while they and from manhund, captured V 3 TRUE CRIDE DESPIRES TERES PLAY 253 Cas of funity trapped by convicte moves muthor to write novel, movie and fol. 390] 90 text sttached 5 STACK SETTING for play is cross section of bessignd house. 4261 convicte in livingroom berande widentie daughter, while the mother (Mancy Coleman) watches helplacely. In bedroom (above, right), father tries to comfort son, as a third convict listens 357 in on phone calls in upstairs ballway. 7 CONTINUED ON MAXT PAGE

2. 76 JX. loom ... te er 1 CONTINUED 2 THERE CRIERE AT A BACKDOOR 26 the 2170 3 AT MEAL HOURS where funily was trapped, actors do scenes from desighter Clady stalls off been from entering her belonguered has and (Man save family fails when fathers, havin 2252 S ATTEMPT to at ١ tose out gun because ionian, has to 5737-38 bosta [fol. 391] inisison is held FIRST HOPE for rescue cames when trash collector, chats with wife and 2170 5 3 Dis semething is wrong. He is killed, but douth puts police on trail. 6 server.

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[fol. 392]

p. 76 BRAVE TRY BOLD ATTEMPT to save family fails when father (Karl Mal-2x52 4 den) has to toss out gun because his son is held as hostage. 1 th and an and



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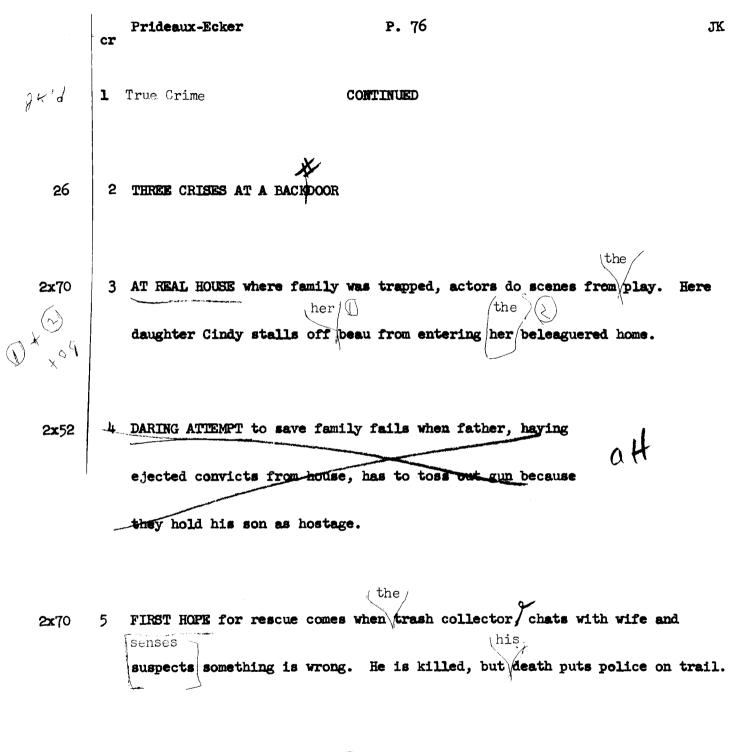
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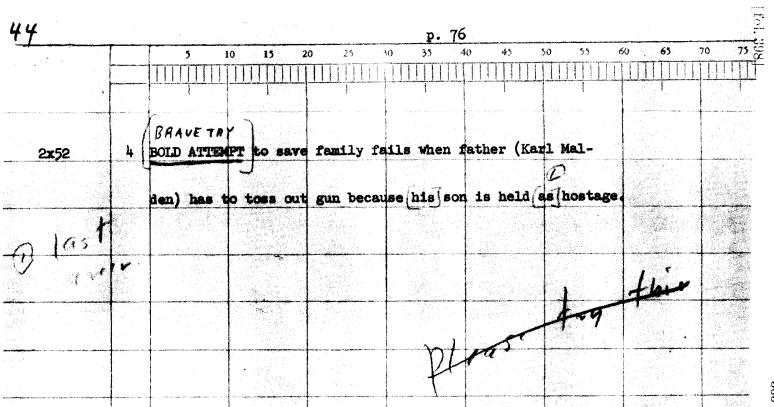
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P. 75 Prideaux-Ecker cr 10 75 20 15 30 35 40 50 THEATER 1 PLAINTIFFS' ACTUAL EVENT in 1952, as reported in newspaper above, took place 4x61 2 (0)about 10 miles from EXHIBIT in isolated house la miles cutaide Philadelphia, where three con-Lewisbur 2 m d 07 victs from KENERG penitentiary, held family of James Hill as pri-22 Wwhile they Hid from manhunt. All three convicts were soners HODOY. auld - 11-12 captured llater seveist EG 253 TRUE CRIME INSPIRES TENSE PLAY 3 rdeal of family trapped by convicts gives Broadway a new thriller, 'The fol. 395] 90 write novel, movie author and espirate Hours' text attached 5 1.4 4473 the STAGE SETTING for play is cross section of beseiged house. 4x61 6 Two 16 d The convicts in livingroom harange tish the daughter, while the mo-17 362 ther (Nancy Coleman) watches helplessly. In bedroom (above father trics to comfort son, as a third convict listons right 10 upstairs hallway

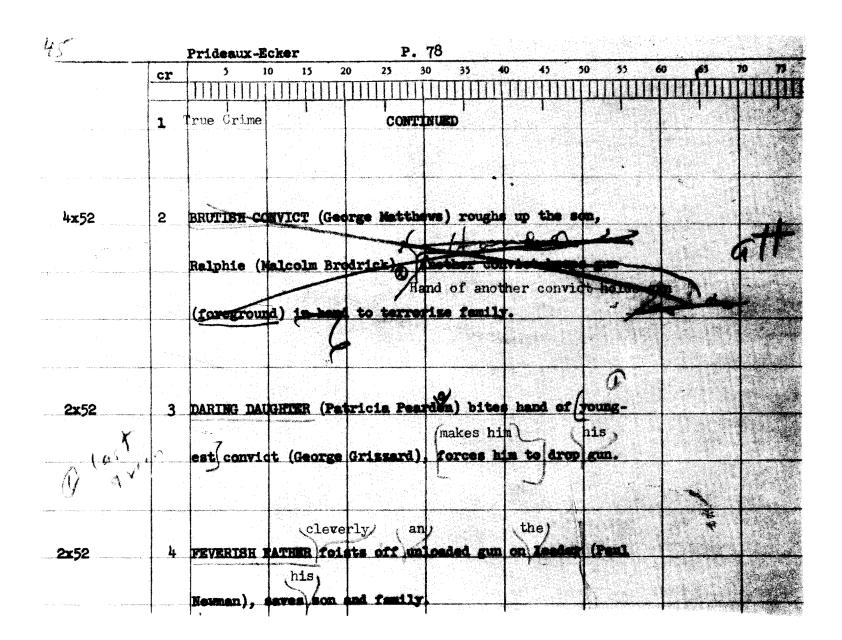
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cross cap	5	outside Philadelphia by three	escaped convicts. Later th	ey read about
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		experience. Now they can see	the story repnacted in Haye	s's Broadway
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Beneficial		longer live there, were beset	ged. Un the next page scene	s from the play
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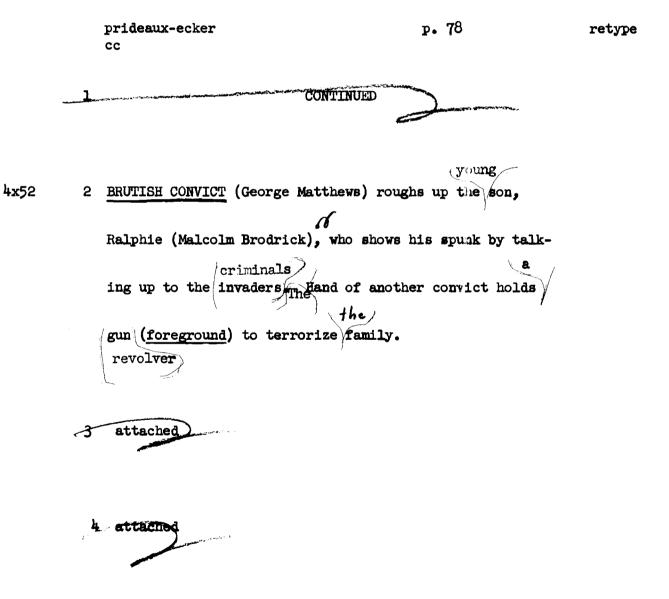
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[fol. 399]







Rict M

Ordeal of family trapped by convicts gives Broadway a new thriller, "The Desperate Hours"

[fol. 402]

PLAINTIFFS' EXHIBIT 29

Articles Published in Life Magazine From February 1945 Through February 1955 Covering Plays and Motion Pictures Which Referred to Real Persons or Events

February 5, 1945, page 71:

"A Song To Remember", motion picture. (Frederic Chopin, George Sand)

April 16, 1945, page 105:

"The Barretts Of Wimpole Street", play. (Robert Browning, Elizabeth Barrett and her family)

July 9, 1945, page 61:

"Ernie Pyle's 'Story of G. I. Joe'", motion picture. (Ernie Pyle and actual soldiers of World War II)

August 6, 1945, page 79:

"The Pride Of The Marines", motion picture. (Sgt. Al Schmid, U. S. Marine hero of World War II)

September 3, 1945, page 74:

"The First Gentleman", play. (George IV, King of England)

December 31, 1945, page 61:

"They Were Expendable", motion picture. (Navy Lts. John Bulkeley and Bolling Kelly, P-T boat commanders in World War II)

[fol. 403] February 11, 1946, page 56:

"The Magnificent Yankee", play. (Chief Justice Oliver Wendell Holmes, Jr., of the U. S. Supreme Court) June 3, 1946, page 89:

"Annie Get Your Gun", play with music. (Annie Oakley and Frank Butler, circus performers)

June 24, 1946, page 81:

"Anna and the King of Siam", motion picture.

(Anna Leonowens, British writer and lecturer of Victorian times, and King Mongkut of Siam)

September 16, 1946, page 76:

"Sister Kenny", motion picture.

(Sister Elizabeth Kenny, Australian nurse and polio therapist.)

March 24, 1947, page 87:

"Boomerang!", motion picture.

(Connecticut murder trial with Homer S. Cummings, later U. S. Attorney General, as defense attorney)

November 24, 1947, page 116:

"Unconquered", motion picture. (French and Indian War period of American colonies)

November 24, 1947, page 97:

"The Winslow Boy", play.

(The case of George Archer-Shee, British naval cadet accused of theft during reign of Edward VII)

[fol. 404] November 20, 1950, page 73:

"Cyrano de Bergerac", motion picture.

(Cyrano de Bergerac, 17th Century French poetcavalier)

October 8, 1951, page 76:

"The Desert Fox", motion picture.

(Field Marshal Erwin Rommel of the German Army, and his desert campaigns in World War II)

April 7, 1952, page 139:

"Five Fingers", motion picture.

(Eliaza Banza, Albanian spy of World War II, known also as "Cicero")

January 19, 1953, page 64:

"Moulin Rouge", motion picture.

(Henri Toulouse-Lautrec, 19th Century French Artist)

January 19, 1953, page 51:

"The Children's Hour", play.

(Two unidentified Scotch schoolteachers of the early 19th Century)

June 22, 1953, page 119:

"The Great Houdini", motion picture.

(The late magician and escape artist known as "Houdini")

June 22, 1953, page 69:

"My Name Is Legion", play.

(Clifford Beers, onetime mental patient and later a prominent advocate of mental hospital reforms)

[fol. 405] October 25, 1954, page 134: "Suddenly", motion picture.

(Assassination of United States Presidents)

January 24, 1955, page 55:

"Prince of Players", motion picture.

(Edwin Booth, American tragedian of the 19th Century) February 14, 1955, page 31:

"Anastasia", play.

(Princess Anastasia, daughter of the last Czar of Russia, and a woman now living who claims to be the said Princess)

how



gets the

story

behind the scenes in photo-journalism

written and edited by Stanley Rayfield

Doubleday & Company, Inc. Garden City, New York, 1955 PLAINTIFFS' EXHIBIT 31

FOREWORD

The purpose of this book is to add a plus or a bonus to the pluses and bonuses which members of the editorial staff—photographers, reporters and editors strive to put into each issue of LIFE.

In each issue we try to give the reader what he will get nowhere else, an added knowledge and appreciation of the topics of the day and his wonderful world. Along with this, we try to give through pictures and words a sense of participation in this world. But over the years we have become aware that there is something else about which the public at large and professional journalists are curious.

"By what magie," asks one reader in more flowery words than we would dream of using, "does LIFE draw to it so many millions of Americans . . . heighten our awareness of the world . . . and give us the sense of living more abundantly?"

Probably few will agree that magic is the basic element—certainly the editorial staff doesn't. So what we hope will be a bonus about the bonuses of LIFE is not the recipe for a witch's potion. It is a glimpse at some of the

extraordinary qualities and techniques which produce LIFE's week-to-week surprises and underlie its character.

For "magic" we might substitute a combination of the following:

Intuitive sympathy and identification with the subjects of a story.

Willingness to risk danger and physical discomfort.

Ability to use camera equipment, reportorial skills and every imaginable production device to convey exact meanings.

Ability to plan for the expected and the unexpected.

Luck (which means being like a good ball team that forces its own breaks). Knowing when to be bold and when to tread softly (being psychologically hep). Ability to share with the reader a sense of participation, whether in mountain climbing or deep sea photography or in the more familiar adventures of everyday life.

An insatiable curiosity.

An appreciation of the American right to know and enjoy what is going on. This book is mostly about photographers and reporters, the front-line troops. We think this is the most interesting phase of our activities because it is the purpose of LIFE to transport its readers to places where things are and where things happen. There are-to revert to military terminology-many others who provide logistical support and man the all-important lines of communication to the public. They are the editors, art directors, administrators, technicians and production workers who sweat anonymously at all kinds of hours.

One man, whose name is not on the editorial masthead, must emerge from anonymity at this point. He is Stanley Rayfield, the author and editor of this book. A LIFE promotion man, he lives almost entirely in an editorial world, both at the front line and at GHQ in the Time & Life Building. Stan was an international journalist with *The Times* of London and an advertising man with the Kudner Agency in New York. He is a photographer and artist in his own right. I think that he conveys a remarkably accurate sense of what makes LIFE tick. I'm sure you will agree as you now start to inspect his examples of how LIFE brings home the story.

> EDWARD K. THOMPSON Managing Editor, LIFE

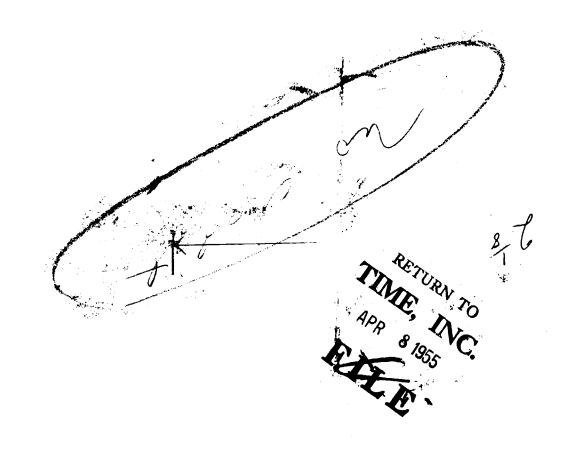
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[fol. 410]

PLAINTIFFS' EXHIBIT 32

Story on Page 2

Press- New spapers- WS- thild. Daily Newson



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[fol. 412]

DEFENDANTS' EXHIBIT A



NAPI-4-9/12/MONTGOMERY COUNTY, Penna::James Hill and four of his five childern, (L-R) Betsy, 15, Clyde and Bobby, 4, and James, 11, as they broadcast their story of how three apparent convicts from Lewisburg Prison held the family captive for 14 hours in their Montgomery County home. (UNITED PREAM TIME)

"All the News That's Fit to Print"

VOL. CL. No. 34 566

FEDERATED EUROPE

IS WIDELY FAVORED

IN POOL ASSEMBLY

First Day of Debate on Plan

Shows Majority of Members

Support Political Unity

ONLY 3 SPEAKERS OPPOSED

Coal - Steel Group Declines

a Joint Secretarial Service

With European Council

By ROBERT C. DOTY

by ROBERT C. DOI'T Sordii O'n Nor Yas. Thu. STRASBOURG, France, Sept. 12 The first inul dreas debate in urope's first sovereign supras-ngi assembly demonstrated to-y's clear intention on the part a majority of the seventy-sight legates from six nations to move pidly toward the goal of a po-ical federation.

heir nations. ul-Henri Spaak of Belgium, ardently federalist president te Assembly, opened the de-by proposing that the Assem-accept a recommendation of ouisteel community mini-

mmendation of

The New York Times.

WHO HIS RIVAL IS:

Declares General Begs 'Kind

Word' From Ohioan and

G.O.P. Is Two Parties

HE CLOSES WESTERN TOUR

Scores Opponent for Backing

Jenner and McCarthy

Texts of the Stevenson speeches are printed on Page 8.

By JAMES RESTON

the West today by asking he was running agsinst--wight D. Eisenhower or Sen-obert A. Taft of Ohio. rring to today's nieeting in ork between the General and ork between the General and in he defaated for the Re-n Presidential nomination,

LATE CITY EDITION

Times Square New York 16 N

TWO AGREE ON BASIC ISSUES



DEFENDANTS'

Exhibit

b

NEW YORK, SATURDAY, SEPTEMBER 13, 1952. U. S. BOMBERS SMASH

YALU POWER PLANT SOUTH KOREANS GAIN

BERLIN Sept 12-Oethart BERLIN Sept 12-Oethart Elsert East German chief of in-formation, heid a press confer-ence today to issue an East German Government White Book altacking the Boan peace con-tract with the Western Allies, but he ran into a hitle unex-pected trouble. After having delivered a vit-rolic speech charging that the text of the peace contract das Closed the designs of the Boan Government leaders to place the country in the handa or the B-29's Loose a 300-Ton Bloy on Supung in a 2d Attack Near Manchurian Border

NAVY RAIDS IN NORTHEAST Government leaders to place the country in the hands of the United States, he made himself available for questions. Two East German newspaper-

R.O.K. Units Seize Ridge, Fight Off Reds on 'Capitol Hill'--Sabre Jets Down MIG

Two East German newspaper-men asked questions, obviously designed to give Herr Eisler an opportunity to continue the at-tacks, which he did. Then a member of the audience who de-scribed himself as a "worket," stood up and demanded. "Why is it that in this White By LINDESAY PARROTT

Socialist Reich Secretary Says

Members' Lives Are in Peril-

Sutered as Second Class Matter, Post Office, New York, N. Y.

Eisler Is Silenced

By German's Query

Special to THE NEW York Tines. TOKYO, Saturday, Sept. 13-nited Nations warplanes carrie TotkYO, Saturday, Sept. 13-United Nations warpines carried add. that be had worked as a lattice of the saturation of Continued on Page 4, Column 3 NEO-NAZIS DISBAND PARTY IN GERMANY

9 Officials of Group Held. By DREW MIDDLETON Social is THE NEW Year THEE. BONN. Germany. Sept. 12--The Socialist Reich party, largest and best organized of the post-war

nu been the Beaviest attack of the war. United States Navy planes from carriers off the Northeast Korean coast biasted Hoeryong, also called Kainei, a major Com-munist zupply center at a rail netry point from Manchura into Korea, and a United Press dis-patch. Hoeryong is forty miles from the Sibersan line and the Navy airmen, flying at dawn Saturday off the carriers Prince-lon and Bon Homme Richard, were strictly briefed against go-ing over non-Korean territory. Three Waves Strike at Supung

Toreign Secretary. Continued on Page 4. Column 5 Continued on Page 2. Column d Eden plan as a concept of association between the association is at other non-ber national continental sommu-ther astional is attill in the proc-or elaboration long lines attilt plan as time function. The there are a sociation of the proc-to the processing of the proc-plan as time function. The the processing of the proc-plan as the processing of the proc-plan as time processing of the processing of the proc-plan as time processing of the procesing of the processi Asylum in Venezuelan Embassy

Abordion along lines sature is the provided proprovided provided provided provided provided provided provid

Seized in Thefts STEVENSON ASKS TAFT TO HELP EISENHOWER: 6 Seized in Thefts By ALFRED E. CLARK A Durglary gang of an mon. Induding a "makter planner" TAFT OR EISENHOWER

who engineered more than 100 hold-ups and burgiaries in New York, New Jersey and Connecti-cut Where loot valued at upward of \$1,000,000 was obtained, has been taken into custody. District Attorney Frank S. Hogan an-nounced yesterday. The lead that brought about the arrest of four members of the ring came from a 'cat bur-glar' auspect arrested by New York detectives in Great Neck, L. I. on Aug. 24 after they had been trailing him for more than a month.

Stresses Peril of Communism,

been trailing him for more than a month. Mr. Hogan said the prisoner, Robert Russell, refused to dia-cuse his burglary activities until Karl Grebow, one of the proze-cutor's aides, want to the Mineola jail to talk with hum. Russell in-formed Mr. Grebow, Mr. Hogan ald, that he had worked as a combined chauffeur and thief for a man he knew only as "Jack" from White Plain. On the basis of Russell's de-scription of "Jack" and a men-tion that he was an inveterate cligar amoker and house race devotes. Mr. Grebow searched through palice files with Police

By JAMED BAREAU Spikito Tare Net Yosh Tana ALBOQUERQUE, N. M., Sept. 12-The Democratic Presidential candidate, Gov. Adlai E. Steven-son of Illinois, ended his 6.700-mile time of the West today by asking

sewer resonableness for the Gen-rest of the source more the series of t

s that The most sensational of the tagtives escapades came today leged At about 5 A. M. two man with had d rrying shorguns waiked into the Donald takes of Heckman diner on Route 22 in orting this quite borough thirty-free mides g, Pa-inorth of Harrisburg, They Inted Art 1 and the target the town entrong 1 and 1 they are the target the target the target the target the target target the target the target target the target target the target targ

Maxima uner on route 22 in Mina quiet borgut hirty-tive miles giant atom-bomb carrier north of Harrisburg. They lined Air Force har ever befor put wo enployees and four pattorns, admitted it possessed. accoped \$135 from the cash drawer, men revealed last year it and about \$105 more from the cus-force official had admit Somera' wallets and quietly walked

floor. third man was walting in the sway car, which raced north-t toward Allentown on the Naw York route.

not unlikely that the manning a roadblock near Alter-ided to hole up again. Journ saw a two-lons Pontaci y capturing another sedan pass by, and the search taking refuge in its swung north to that area. Hours abar, two brokes near-by Consoliings of an investigating tea posited by Gen. Hoyt S. V. berg. Air Force Chief of St did not specify the degree of ion plant. The Se Arbelass highest ranking Colombian Army home. Current Strom Harlan County, Ky.-Joseph Continued on Page 3, Column 8 from Harlan County, Ky.-Joseph Continued on Page 3, Column 8 from Harlan County, Ky.-Joseph Continued on Page 3, Column 8 from Harlan County, Ky.-Joseph Continued on Page 3, Column 8 from Harlan County, Ky.-Joseph Continued on Page 3, Column 8 from Harlan County, Ky.-Joseph Continued on Page 4, Column 8

OHIOAN WILL SPEAK

Promises to Deal With Personalities in Stump Tour for General

ACCORD IS REVISED HERE

It Stresses Limits on Taxing and Spending and Adheres to Labor Law Principles

Text of the Tall statement and question period, Page 6.

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THE NEW YORK TIMES, SATURDAY, SEPTEMBER 13, 1952.

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[fol. 415] DEFENDANTS' EXHIBIT G

From New York Sunday Times, January 30, 1955

FICTION OUT OF FACT

By JOSEPH HAYES

Author of "The Desperate Hours," due at the Barrymore Feb. 10.

PHILADELPHIA.

At the moment I am writing this, the newspapers are headlining a story about five guards held hostage in the Massachusetts State Prison. The news accounts concentrate on the action. But what of the more personal stories involved? What are the thoughts and emotions of the guards' waiting relatives? And what of the inner struggles of the convicts themselves? No matter how evil or violent in action, aren't these men human beings with their own needs, loves, hungers, fears?

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

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

But what of the persons themselves? Accumulatively, these cold, black-on-white accounts stirred the question "What if?" In time, I found myself left with a curious and very strong emotion—a sense of personal identification with [fol. 416] the victims. And also—to my amazement—a baffling question: Why? Why had these events occurred and what possible meaning did they hold? Thinking about these "cases," I became more and more amazed, finally awed, by the sense of immense accidentality framing these, and perhaps all, human situations.

Instead of researching any of the specific "cases," however, I found it best to let my imagination play with the idea. Meanwhile I reached into my own background and found a setting, the city of Indianapolis, where I was born, a typical city. After that, it was necessary to probe into my own convictions about people, ordinary, down-to-earth representative people—what did I really feel about them? What did I believe about them and how did they react under stress? Once I could answer that question honestly, I could begin "research."

Technically, I needed to make my police activity reasonably authentic—because, from the first, for many reasons, I had no doubt that I must use some unusual story-frame to intensify and to counterpoint the action taking place in the invaded and terrorized home. Out of this so-called "research" emerged an important character in the story, a deputy sheriff who, caught in a conflict between his own personal desires and his civilized concern for others, could represent to some extent my own feelings of disgust, understanding, anguish and admiration.

EVOLUTION

Having decided on the frame and the essential conflict, I had then only one small job—to write the novel (and, later, the play and screen play). It was a day-and-night [fol. 417] job, done at white heat, the time limited by necessities imposed by illness in the family. Curiously enough, I discovered as I wrote that the principal theme came into focus: the life-and-death struggle between a typical, lawabiding man, with no knowledge of his own inner resources or of the precious quality of his way of life, and the twisted, jungle-like mind of a young criminal, himself a human being and a victim. It became more and more interesting to explore a mind that has almost totally escaped the civilizing influence of our society. (And why are there so many like him today?) This mind became, as I worked, so complex and cunning that, almost automatically, the necessary plot-twists and surprises of story erupted, often to my own astonishment, so that in the end even the plot itself became something quite distinct from all the other hostage stories I had ever encountered.

In the news stories there was little to suggest what happens in the invaded and ravaged home: the terror of the family, the desperation and paradoxes in the criminals, the interaction of these characters caught in a situation that, in time, creates its own momentum, sets its own course. This course, and its ultimate resolution, seemed for a while to be determined by the warped mind of the young invader himself. It was he who devised the manner of holding an entire family not only captive, as in the actual incidents, but in this case mentally and emotionally hostage—so that even the civilized man, the father of the family, found within himself the jungle urges of revenge and a passion to murder.

[fol. 418] How could the young convict manage to do this? This boy—he is hardly more than that—could do it because, despite all of his own insecurities and banked-down rages and hatreds and fears, he instinctively understood what "family" could mean. He could create an atmosphere, as have governments, in which a man *appears* to move freely, to think for himself, to carry on a "normal" life while in actuality that man has become a slave. And why? Because of the deepest and most human concern of all—his love for his family. Out of this love, stirred so that he recognizes it himself in all its intensity and depth, comes submission to evil. I am willing to leave the question there. It is only one of many that I hope to leave echoing in the minds, and especially the hearts, of an audience.

The human emotions, only hinted at in the description of exterior events in a newspaper, and the complexities they suggest and the personal and social questions they pose, remain, a year and a half later, vital and interesting to me. Fortunately, I have been able to communicate my own deep

and aching concern—not only for the characters but for the human plight in general—to hundreds of thousands of novel readers, both here and abroad.

It is to the eternal credit of mankind that—at least up to now—some inherent personal force within civilized man has thwarted slavery, even if by a clearly defined violence that separates (roughly, at least) the civilized from the aggressive man—and even if by a hairbreadth. If this be melodrama, so be it. It is also history.

[fol. 419] DEFENDANTS' EXHIBIT H

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Plaintiffs designate New York County as the place of trial.

Plaintiffs reside in Fairfield County, Connecticut.

JAMES J. HILL, ELIZABETH SELFRIDGE HILL, BARBARA HILL, an infant, ELIZABETH HILL, an infant, JAMES J. HILL, JR., an infant, CLYDE HILL, an infant, and ROBERT HILL, an infant, each by his guardian ad litem, JAMES J. HILL, Plaintiffs,

-against---

JOSEPH HAYES, MARRIJANE HAYES, HOWARD ERSKINE, THE DESPERATE HOURS COMPANY, TIME, INC., PARAMOUNT PIC-TURES CORPORATION, RANDOM HOUSE, INC., THE LITERARY GUILD OF AMERICA, INC., CROWELL-COLLIER PUBLISHING CO., INC., POCKET BOOKS, INC., and READER'S DIGEST ASSOCIATION, INC., Defendants.

Summons

To the above named Defendants:

You are HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the

complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' Attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, [fol. 420] judgment will be taken against you by default, for the relief demanded in the complaint.

Dated, June 27, 1955.

MUDGE, STERN, BALDWIN & TODD Attorneys for Plaintiffs Office and Post Office Address 40 Wall Street New York 5, New York

[fol. 421]

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

JAMES J. HILL, ELIZABETH SELFRIDGE HILL, BARBARA HILL, an infant, ELIZABETH HILL, an infant, JAMES J. HILL, JR., an infant, CLYDE HILL, an infant, and ROBERT HILL, an infant, each by his guardian ad litem, JAMES J. HILL, Plaintiffs,

-against-

JOSEPH HAYES, MARRIJANE HAYES, HOWARD ERSKINE, THE DESPERATE HOURS COMPANY, TIME, INC., PARAMOUNT PIC-TURES CORPORATION, RANDOM HOUSE, INC., THE LITERARY GUILD OF AMERICA, INC., CROWELL-COLLIER PUBLISHING Co., INC., POCKET BOOKS, INC., and READER'S DIGEST ASSOCIATION, INC., Defendants.

Complaint

Plaintiffs, by their attorneys, MUDGE, STERN, BALDWIN & TODD, allege, upon information and belief, except as to Paragraphs 1, 2, 3, 14, 15, 16, 17, 31, 42 and 43, which are alleged on knowledge, as follows:

[fol. 422] FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS HAYES, ERSKINE, THE DESPERATE HOURS COMPANY, TIME, INC., PARAMOUNT PICTURES CORPORATION, RANDOM HOUSE, INC., LITERARY GUILD OF AMERICA, CROWELL-COLLIER PUB-LISHING CO., INC., POCKET BOOKS, INC. AND READER'S DIGEST ASSOCIATION, INC.:

1. Plaintiff, James J. Hill, his wife, plaintiff, Elizabeth Selfridge Hill, and their children, plaintiffs, Barbara Hill, an infant, Elizabeth Hill, an infant, James J. Hill, Jr., an infant, Robert Hill, an infant, and Clyde Hill, an infant, are residents of Fairfield County, Connecticut.

2. (a) Plaintiff James J. Hill is Vice President and Director of Sales of Alba Hosiery Corporation and since on or about January 1, 1953 said plaintiff's office and place of business has been in New York County.

(b) Plaintiff James J. Hill is required, in the course of the performance of his employment, periodically to travel to every State of the United States and there to consult with customers, business associates and company personnel, and otherwise to transact business in such States.

(c) At all times since February, 1955, plaintiffs Barbara and Elizabeth Hill have been enrolled as students at Pennsylvania State University in University Park, Pennsylvania.

[fol. 423] 3. Plaintiff, James J. Hill, was appointed Guardian ad Litem for plaintiffs Barbara Hill, Elizabeth Hill, James J. Hill, Jr., Clyde Hill and Robert Hill, by order of Mr. Justice Samuel M. Gold, made at Special Term, Part II of the Supreme Court, New York County, on June 27, 1955.

4. Defendants Joseph Hayes and Marrijane Hayes are residents of Brookfield Centre, Connecticut.

5. Defendant Howard Erskine resides at 39 East 72nd Street, New York City, New York.

6. Defendant The Desperate Hours Company, is a New York partnership, having its office and principal place of business at 12 East 63rd Street, New York City, New York.

7. Defendant Time, Inc., is a New York corporation having its office and principal place of business at 9 Rockefeller Plaza, New York, New York, and is, and at all times hereinafter mentioned was, the publisher of "LIFE" magazine.

8. Defendant Paramount Pictures Corporation is a New York corporation having an office and place of business at 1501 Broadway, New York, New York.

9. Defendant Random House, Inc., is a New York corporation having its office and principal place of business [fol. 424] at 20 East 57th Street, New York, New York.

10. Defendant Literary Guild of America, Inc. is a New York corporation having its office and principal place of business at 501 Franklin Avenue, Garden City, Long Island, New York, and, as part of its business, conducts, manages and controls the "Book of the Month" Club.

11. Defendant Crowell-Collier Publishing Co., Inc., is a Delaware corporation having an office and place of business at 640 Fifth Avenue, New York, New York, and is, and at all times hereinafter was, the publisher of "ColLIER'S, THE NATIONAL WEEKLY".

12. Defendant Pocket Books, Inc., is a New York corporation having its office and principal place of business at 45 Rockefeller Plaza, New York, New York.

13. Defendant Readers Digest Association, Inc., is a New York corporation having an office and place of business at 230 Park Avenue, New York, New York.

14. In or about the month of September, 1952, plaintiffs Hill were held as hostages in their then home in Whitemarsh Township, Pennsylvania by three convicts who had escaped from the nearby federal penitentiary at Lewisburg, [fol. 425] Pennsylvania, all of said plaintiffs being released unharmed after a harrowing period of confinement and all of said convicts being captured or killed after an extensive manhunt.

15. During the month of September, 1952 and at all times thereafter, plaintiff James Hill, acting for the members of his family as well as for himself, refused all offers of financial compensation for permission to interview him and his family and to publish feature articles and to conduct television or radio broadcasts concerning said events of September, 1952.

16. Said refusals were prompted by the desire of plaintiffs James and Elizabeth Selfridge Hill to avoid any course of conduct that might remind them or their children of the aforesaid events of September, 1952, to curtail further speculation, inquiry and comment by friends, business associates and others with respect to said occurrence, and to protect plaintiffs in their right of privacy.

17. In November, 1952, and prompted, in part, by their desire to avoid further reminders of the events of September, 1952, to avoid further publicity in connection therewith, and to protect their right of privacy, plaintiffs Hill moved from their home in Whitemarsh Township, Pennsylvania to their present home in Old Greenwich, Connecticut.

[fol. 426] 18. In or about the year 1953, defendant Hayes wrote, and defendant Random House, Inc. published a novel entitled "The Desperate Hours", and said novel was copyrighted by defendants Joseph and Marrijane Hayes.

19. Said novel "The Desperate Hours" was also published and/or distributed by defendant Literary Guild of America, Inc. as a "Book of the Month", by defendant Crowell-Collier Publishing Co. in serialized form, by defendant Pocket Books, Inc. in several paper-bound editions and by defendant Readers Digest Association, Inc. in digest form.

20. Said novel was distributed and sold in every State of the United States, including the State of New York, in Canada, and in the British Isles, and was translated, distributed and sold in many other foreign countries.

21. Said novel purported to describe, in fictional form, a jailbreak near Indianapolis, Indiana, by three convicts, the invasion by said convicts of the home of a family named "Hilliard", the holding of said family as hostages, and the eventual killing or recapture of all of said escaped convicts.

22. In truth and in fact, said novel was based upon the actual occurrences of September, 1952 in which plaintiffs Hill were involved, as above set forth, with certain modifica-[fol. 427] tions of the actual facts, including the partial modification of the name of the family involved from "Hill" to "Hilliard", the reduction of the size of the besieged family, the creation of numerous melodramatic and violent incidents which did not in fact occur, the insinuation of sexual approaches by one of the convicts to the hostage daughter, and with numerous other fictional embellishments in the characterization of the personalities, relationships, attitudes and acts of the members of the besieged family.

23. In or about the Fall of 1954, defendants Hayes and Erskine entered into a partnership or joint venture agreement for the purposes, among others, of selling the motion picture rights to the novel "The Desperate Hours" and producing a play based upon said novel, and, in connection with the foregoing, for the purpose of promoting said literary, motion picture and theatrical properties so as to develop and enhance their commercial value.

24. In or about the Fall of 1954, defendant Paramount Pictures Corporation purchased the motion picture rights to said novel "The Desperate Hours" for the sum of \$100,-000 cash, plus a percentage of the profits, said defendant Paramount agreeing not to release the motion picture prior to the year 1956.

[fol. 428] 25. Said motion picture was adapted by defendant Hayes from the novel "The Desperate Hours," was filmed during the year 1955, has been distributed for public

exhibition and is now being, or in the future will be, exhibited in theatres in every State of the United States, including the State of New York, in Canada, the British Isles and in various other parts of the world.

26. In or about the Fall of 1954, a New York partnership doing business under the firm name and style of "The Desperate Hours Company", was organized in the State of New York, County of New York for the purpose, among other things, of producing the play "The Desperate Hours", said partnership consisting of defendants Hayes and Erskine as general partners and sixty-three additional persons as limited partners.

27. The play, "The Desperate Hours", was adapted by defendant Hayes from the novel, "The Desperate Hours," and, after a pre-Broadway tryout in Philadelphia, Pennsylvania, opened in New York on or about February 10, 1955, at the Barrymore Theatre.

28. Prior to said Broadway premiere of the play, "The Desperate Hours", defendants embarked upon a promotional and advertising campaign designed to stimulate public interest in the play, the novel and the forthcoming motion picture.

[fol. 429] 29. One of the principal aims of said advertising campaign was to identify the characters portrayed in the novel, play and motion picture, "The Desperate Hours" as real persons involved in a true-life occurrence which might have happened to any reader, or any member of the audience, thereby increasing the dramatic impact of the novel, play and motion picture and greatly increasing the commercial value thereof.

30. On or about February 1, 1955, and as part of said promotional and advertising campaign, defendants Hayes, Erskine and The Desperate Hours Company made arrangements with defendant Time Inc. to publish a special photographic layout in "LIFE" magazine which would disclose the true identity of the purportedly fictional "Hilliard" family portrayed in "The Desperate Hours", thereby enhancing the dramatic interest of the play, novel and motion picture, "The Desperate Hours" and advertising its truelife origin to the millions of persons who read "LIFE" magazine, while simultaneously creating a sufficiently unique and imaginative "human interest" story to justify the allocation thereto of substantial space by a magazine with the vast national and international circulation of "LIFE" magzine.

31. In the February 28, 1955 issue of "LIFE" magazine, there appeared a 3-page article, with photographs, entitled [fol. 430] "TRUE CRIME INSPIRES TENSE PLAY", the body of said article stating, as follows:

"The Ordeal of a Family Trapped by Convicts Gives Broadway a New Thriller, 'THE DESPERATE HOURS'"

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

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

The balance of said article consisted of photographs of a newspaper report of the true-life incident, the actual house [fol. 431] in which the plaintiffs Hill were held hostage, and the cast of "The Desperate Hours" portraying scenes

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

32. Said article and photographis layout in "LIFE" magazine was employed by defendants to promote and advertise the novel, play and motion picture, "The Desperate Hours", and defendant Time Inc. allowed "LIFE" magazine to be used for said promotional scheme in order to promote, for purposes of trade, its unique "human interest" story involving the plaintiffs as above set forth.

33. Said "LIFE" magazine article of February 28, 1955 was a promotional and advertising scheme, pure and simple, and no legitimate occasion was there presented, as a matter of news dissemination or otherwise, to identify the plaintiffs Hill with the "Hilliard" family of "The Desperate Hours", to reprint newspaper headlines of September, 1952 or to photograph the members of the cast of "The Desperate Hours" in the former home, and identified as such, of the plaintiffs Hill.

34. Said February 28, 1955 issue of "LIFE" magazine was published and distributed by defendant "Time Inc." in every state of the United States, including the State of [fol. 432] New York, in Canada, and in the British Isles, and was translated and distributed and sold in many other foreign countries.

35. In truth and in fact, said "LIFE" magazine article was planned, prepared and executed by defendants Hayes, Erskine and The Desperate Hours Company with the cooperation and assistance of defendant Time Inc.

36. Defendants Hayes, Erskine and The Desperate Hours Company paid a sum of money to one Stahlheber for the use, in connection with said "LIFE" magazine article, of the house in Whitemarsh Township, Pennsylvania in which plaintiffs Hill had formerly resided and in which they were actually besieged in September, 1952. 37. Defendants Hayes, Erskine and The Desperate Hours Company arranged and paid for the transportation of the cast of "The Desperate Hours" to said house and there participated and assisted in the taking of the photographs which appeared in the "LIFE" magazine article of February 28, 1955.

38. Defendants Hayes, Erskine and The Desperate Hours Company participated and assisted in the preparation of the descriptive matter and photograph captions appearing in said "LIFE" magazine article of February 28, 1955 and said descriptive matter and photograph captions [fol. 433] were published with the knowledge and approval of said defendants.

39. Defendants Paramount Pictures Corporation, Random House Inc., Literary Guild of America, Inc., Crowell-Collier Publishing Co., Inc., Pocket Books, Inc. and Reader's Digest Association, Inc. had knowledge of the publication of said "LIFE" magazine article of February 28, 1955 at or about the time of its publication and thereafter continued to publish and distribute their respective written and filmed versions of "The Desperate Hours".

40. In the October 10, 1955 issue of "LIFE" magazine extensive written and photographic coverage was given by defendant Time Inc. to the motion picture, "The Desperate Hours", and specific reference was therein made to the February 28, 1955 issue of "LIFE" magazine in which the names of plaintiffs were used and in which plaintiffs were expressly identified as the "Hilliard" family of "The Desperate Hours", and in the advertising for said motion picture, numerous and highly dramatic references have been made to its "real-life" aspects, the emphasis and innuendo of said advertising being that what happened to the family portrayed in "The Desperate Hours" was drawn from real events and might actually happen to any American family.

[fol. 434] 41. The writing, publication, distribution and sale of the novel, "The Desperate Hours", the writing, production and exhibition of the play and motion picture "The

Desperate Hours" and the preparation and publication of the "LIFE" magazine article of February 28, 1955, were not, and were not intended as, a fair and accurate report of news whether past or current, but were solely for the purposes of entertainment, advertisement and trade.

42. By reason of the specific identification by defendants Haves, Erskine and The Desperate Hours Company in said "LIFE" magazine article of the plaintiffs Hill as the "Hilliard" family of "The Desperate Hours," the publication and distribution in the State of New York of said "LIFE" magazine article by defendants Time Inc. and defendants Haves. Erskine and The Desperate Hours Company, the publication and distribution in the State of New York of the novel "The Desperate Hours" by defendants Hayes, Random House, Inc., Literary Guild of America, Inc., Crowell-Collier Publishing Co., Inc. and Pocket Books Inc., the production and exhibition in the State of New York of the play "The Desperate Hours" by defendants Hayes, Erskine and The Desperate Hours Company, and the production, distribution and exhibition in the State of New York of the motion picture, "The Desperate Hours" by defendant Paramount Pictures Corporation, constitute a por-[fol. 435] trayal of plaintiffs Hill and a use of their portraits and names by said defendants for purposes of trade and advertising, and the use by said defendants of plaintiffs' portraits and names as aforesaid was without the written consent first obtained of any of the plaintiffs and was entirely without any consent or authorization at any time from any of the plaintiffs and said defendants used, and have continued to use, such portraits and names unlawfully with knowledge that such use was, and is, unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

43. By reason of the unauthorized use by defendants of plaintiffs' portraits and names, plaintiffs have been subjected to considerable emotional distress and embarrassment, have been subjected to extensive and undesirable publicity and comment, have sustained serious impairments