

of their ordinary business, social and educational relationships, have been compelled to deny the accuracy of the characterizations and incidents in "The Desperate Hours", and have otherwise been embarrassed, distressed and injured by said defendants' unlawful use of their names and portraits and by the distorted, fictional characterization in the several versions of "The Desperate Hours" of the personalities, relationships and emotional attitudes of plaintiffs as well as of the actual events which befell plaintiffs in September, 1952, and, by virtue of all of the foregoing, [fol. 436] plaintiffs are entitled to compensatory and exemplary damages from said defendants in the amount of \$350,000.

44. Unless restrained from doing so, said defendants intend to continue the unlawful use of plaintiffs' names and portraits in the State of New York in connection with the novel and the motion picture, "The Desperate Hours", and plaintiffs will be thereby irreparably damaged in a manner and to an extent not compensable in money damages and plaintiffs have no adequate remedy at law therefor.

\* \* \* \* \*

WHEREFORE, plaintiffs demand judgment herein against defendants (1) awarding to plaintiffs damages in the sum of Three Hundred and Fifty Thousand (\$350,000) Dollars, (2) permanently restraining and enjoining any further distribution and sale of the novel "The Desperate Hours", (3) permanently restraining and enjoining any further exhibition of the play "The Desperate Hours", (4) permanently restraining and enjoining any further exhibition of the [fol. 437] motion picture "The Desperate Hours", and (5) awarding to plaintiffs the costs and disbursements of this action.

Dated: October 13, 1955.

MUDGE, STERN, BALDWIN & TODD,  
Attorneys for Plaintiffs  
Office and P. O. Address  
No. 40 Wall Street  
New York 5, N. Y.

[fol. 438]

STATE OF NEW YORK }  
 COUNTY OF NEW YORK } ss.:

JAMES J. HILL, being duly sworn, deposes and says: That he is one of the plaintiffs described in the foregoing instrument; that he has read the foregoing complaint and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

JAMES J. HILL

Sworn to before me this  
 13th day of October, 1955.

CAROLYN TERWILLIGER  
 CAROLYN TERWILLIGER  
 NOTARY PUBLIC, State of New York  
 Qual. in Richmond Co. No. 43-3955550  
 Cert. Filed in N. Y. Co. Clk's.  
 Term Expires March 30, 1957

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[fol. 439]

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

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JAMES J. HILL and ELIZABETH SELFRIDGE HILL, Plaintiffs,  
 —against—

JOSEPH HAYES, HOWARD ERSKINE, THE DESPERATE HOURS  
 COMPANY, TIME, INC., PARAMOUNT PICTURES CORPORATION,  
 RANDOM HOUSE, INC. and POCKET BOOKS, INC.,  
 Defendants.

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## AMENDED COMPLAINT

Plaintiffs by their attorneys, MUDGE, STERN, BALDWIN &  
 TODD, for their amended complaint herein, allege:

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND RANDOM HOUSE, INC., PLAINTIFF JAMES J. HILL ALLEGES :

1. In or about the month of September, 1952, plaintiff James J. Hill and his wife, plaintiff Elizabeth Selfridge Hill and their children were held hostage in their then home in Whitmarsh Township, Pennsylvania by three convicts who had escaped from the nearby federal penitentiary at Lewisburg, Pennsylvania, all of said convicts being sub-[fol. 440] sequently captured or killed after an extensive manhunt.

2. During the month of September, 1952 and at all times thereafter, Plaintiff James J. Hill, acting for the members of his family as well as for himself, refused to grant 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.

3. Said refusal was prompted by the desire of plaintiffs 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 and their family in their right of privacy.

4. In or about the year 1954, defendant Joseph Hayes wrote, and defendant Random House, Inc., a New York corporation, published, and from time to time thereafter, republished, a novel entitled "The Desperate Hours".

5. 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.

[fol. 441] 6. 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 capture of all said escaped convicts.

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

8. Upon information and belief, at all times subsequent to the publication of said novel, defendant Hayes was authorized by defendant Random House, Inc. to undertake such promotional and advertising activities as might advance the sales of said novel to the mutual advantage of defendant Hayes as author and defendant Random House, Inc., as publisher.

[fol. 442] 9. In or about the year 1954, defendant Hayes adapted the novel "The Desperate Hours" into a play for production by a New York co-partnership consisting of himself and defendant Howard Erskine as general partners, and sixty-three additional persons as limited partners, said co-partnership doing business under the firm name and style of "The Desperate Hours Company".

10. On or about February 1, 1955, and as part of an advertising and promotional campaign defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company made arrangements with, and caused, defendant Time, Inc., a New York corporation, to publish a special

photographic layout in "LIFE" magazine which disclosed the true identity of the purportedly fictional "Hilliard" family portrayed in "The Desperate Hours", thereby enhancing its dramatic interest and advertising its true-life origin to the millions of readers of "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" magazine.

11. In the February 28, 1955 issue of "LIFE" magazine, which was distributed in every state of the United States and in many foreign countries, there appeared a 3-page article, with photographs, entitled "TRUE CRIME INSPIRES [fol. 443] 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

in which the plaintiffs Hill and their children were held hostage, and the cast of "The Desperate Hours" portraying [fol. 444] plaintiffs Hill and members of their family in scenes from said play in said plaintiffs' former home. 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.

12. In connection with the "LIFE" magazine article of February 28, 1955, defendants Hayes, Erskine and The Desperate Hours Company arranged and paid for the transportation of the cast of "The Desperate Hours" to plaintiffs' former home and there participated and assisted in the taking of photographs which appeared in said "LIFE" magazine article of February 28, 1955, and further in connection therewith, a sum of money was paid for the use of said house to the then occupant thereof.

13. Upon information and belief, defendants Hayes, Erskine and The Desperate Hours Company further 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 were published with the knowledge and approval of said defendants.

14. Upon information and belief, defendant Random House, Inc. had knowledge of the specific identification of [fol. 445] plaintiffs and their family as the "Hilliards" of the novel "The Desperate Hours" in said "LIFE" magazine article of February 28, 1955 at or about the time of the publication thereof, and thereafter, with such knowledge, continued to publish and distribute the novel, "The Desperate Hours."

15. By reason of the foregoing, the original publication of the novel "The Desperate Hours" and the continuance of such publication after February 28, 1955 constituted a portrayal of plaintiff James J. Hill and a use of his name and portrait by defendants Joseph Hayes and Random

House, Inc. for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait 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.

16. By reason of such unauthorized and unlawful use by defendants of plaintiff's name and portrait, plaintiff has been subjected to considerable emotional distress and embarrassment, has been subjected to extensive and undesirable publicity and comment, has sustained serious impairment of his ordinary business and social relationships, [fol. 446] has been compelled to deny the accuracy of the characterizations and incidents in defendants' publications of "The Desperate Hours", and has otherwise been embarrassed, distressed and injured by said defendants' unlawful use of plaintiff's name and portrait and by the distorted, fictional characterization of the personalities, relationships and emotional attitudes of plaintiff and his family as well as of the actual events which befell plaintiff and his family in September, 1952.

17. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Random House, Inc. in the amount of \$50,000.

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND POCKET BOOKS, INC., PLAINTIFF JAMES J. HILL ALLEGES:

18. Plaintiff repeats and realleges paragraphs 1-7, 9-13 and 16 hereof as though herein set forth at length.

19. In or about the year 1954, defendant Pocket Books, Inc., a New York corporation, published, and from time to time thereafter, republished, a paper-back edition of the novel "The Desperate Hours", and said paper-back editions

were distributed and sold in every State of the United States, including the State of New York, and in various foreign countries.

[fol. 447] 20. Upon information and belief, at all times subsequent to the publication of said novel, defendant Hayes was authorized by defendant Pocket Books, Inc. to undertake such promotional and advertising activities as might advance the sales of said novel to the mutual advantage of defendant Hayes as author and defendant Pocket Books, Inc. as publisher.

21. Upon information and belief, defendant Pocket Books, Inc. had knowledge of the specific identification of plaintiffs and their family as the "Hilliards" of the novel "The Desperate Hours" in said "LIFE" magazine article of February 28, 1955 at or about the time of the publication thereof, and thereafter, with such knowledge, continued to publish and distribute the paper-back edition of the novel, "The Desperate Hours".

22. By reason of the foregoing, the original publication of the paper-back edition of the novel "The Desperate Hours" and the continuance of such publication after February 28, 1955 constituted a portrayal of plaintiff Hill and a use of his name and portrait by defendants Joseph Hayes and Pocket Books, Inc. for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait unlawfully with knowledge that such use was, and is, unlawful and in violation of [fol. 448] Section 50 of the Civil Rights Law of the State of New York.

23. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Pocket Books, Inc. in the amount of \$50,000.



FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES, HOWARD ERSKINE AND THE DESPERATE HOURS COMPANY, PLAINTIFF JAMES J. HILL ALLEGES:

24. Plaintiff repeats and realleges paragraphs 1-7, 9-13 and 16 hereof as though herein set forth at length.

25. The play "The Desperate Hours" opened in New York on or about February 10, 1955, at the Barrymore Theatre and continued its run until the Fall of 1955; and said play was also produced and exhibited by defendants Hayes, Erskine and The Desperate Hours Company in London, England among other places.

26. By reason of the foregoing, the production and exhibition in the State of New York of the play, "The Desperate Hours" constituted a portrayal of plaintiff Hill and a use of his name and portrait by defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used [fol. 449] plaintiff's name and portrait unlawfully with knowledge that such use was unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

27. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company in the amount of \$50,000.

FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND PARAMOUNT PICTURES CORPORATION, PLAINTIFF JAMES J. HILL ALLEGES:

28. Plaintiff repeats and realleges paragraphs 1-7, 9-13 and 18 hereof as though herein set forth at length.

29. Upon information and belief, in or about the Fall of 1954, defendant Paramount Pictures Corporation, a New York corporation, purchased the motion picture rights

to the novel "The Desperate Hours" from defendants Hayes, Erskine and The Desperate Hours Company 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.

30. Said motion picture was adapted by defendant Hayes from the novel "The Desperate Hours", was filmed in or [fol. 450] about the year 1955, has been distributed for public exhibition and has been 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.

31. Upon information and belief, at all times subsequent to the sale to defendant Paramount Pictures Corporation of the motion picture rights to "The Desperate Hours", defendant Hayes was authorized by defendant Paramount Pictures Corporation to undertake such promotional and advertising activities as might advance the commercial value of the motion picture "The Desperate Hours" to the mutual advantage of defendants Hayes and Paramount.

32. Upon information and belief, defendant Paramount Pictures Corporation had knowledge of the specific identification of plaintiffs and their family as the "Hilliards" of the novel "The Desperate Hours" in said "LIFE" magazine article of February 28, 1955 at or about the time of the publication thereof, and thereafter, with such knowledge, released said motion picture for distribution and exhibition.

33. At or about the date of the release of said motion picture, the October 10, 1955 issue of "LIFE" magazine gave extensive written and photographic coverage to the motion [fol. 451] picture, "The Desperate Hours", and specific reference was therein made to the February 28, 1955 issue of "LIFE" magazine in which the name of plaintiffs was used and in which plaintiffs were expressly identified as members of the "Hilliard" family of "The Desperate

Hours”, and in the advertising for said motion picture, numerous and highly dramatic references were 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.

34. By reason of the foregoing, the motion picture “The Desperate Hours” constituted a portrayal of plaintiff Hill and a use of his name and portrait by defendants Joseph Hayes and Paramount Pictures Corporation for purposes of trade, and the use by said defendants of plaintiff’s name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff’s name and portrait 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.

35. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Paramount Pictures Corporation in the amount of \$50,000.

[fol. 452] FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES, HOWARD ERSKINE, AND TIME, INC., PLAINTIFF JAMES J. HILL ALLEGES:

36. Plaintiff repeats and realleges paragraphs 1-7, 9-13 and 16 and 30 hereof as though herein set forth at length.

37. The article and photographic layout in the February 28, 1955 issue of “LIFE” magazine was employed by defendants Hayes and Erskine 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.

38. Said "LIFE" magazine article of February 28, 1955 was a promotional and advertising scheme calculated to advance the commercial value of novel, play and motion picture "The Desperate Hours", and no legitimate occasion was there presented, as a matter of new dissemination or otherwise, to identify the plaintiffs Hill with the "Hilliards" 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.

[fol. 453] 39. By reason of the foregoing, the article in the February 28, 1955 issue of "LIFE" magazine constituted a use of plaintiff's name by defendants Hayes, Erskine and Time, Inc. for purposes of trade and advertising, and the use by said defendants of plaintiff's name as aforesaid was without the written or other consent of plaintiff and said defendants used plaintiff's name unlawfully with knowledge that such use was unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

40. By virtue of all of the foregoing plaintiff is entitled to compensatory and exemplary damages from defendants Hayes, Erskine and Time, Inc. in the amount of \$50,000.

FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND RANDOM HOUSE, INC., PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

41. Plaintiff repeats and realleges paragraphs 1-14 hereof as though herein set forth at length.

42. By reason of the foregoing, the original publication of the novel "The Desperate Hours" and the continuance of such publication after February 28, 1955 constituted a portrayal of plaintiff Hill and a use of her name and portrait by defendants Joseph Hayes and Random House, Inc.

for purposes of trade, and the use by said defendants of [fol. 454] plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait 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 such unauthorized and unlawful use by defendants of plaintiff's name and portrait, plaintiff has been subjected to considerable emotional distress and embarrassment, has been subjected to extensive and undesirable publicity and comment, has sustained serious impairment of her social relationships, has been compelled to deny the accuracy of the characterizations and incidents in defendants' publications of "The Desperate Hours", and has otherwise been embarrassed, distressed and injured by said defendants' unlawful use of plaintiff's name and portrait and by the distorted, fictional characterization of the personalities, relationships and emotional attitudes of plaintiff and her family as well as of the actual events which befell plaintiff and her family in September, 1952.

44. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Random House, Inc. in the amount of \$50,000.

[fol. 455] FOR A SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND POCKET BOOKS, INC., PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

45. Plaintiff repeats and realleges paragraphs 1-14, 19-21 and 42 hereof as though herein set forth at length.

46. By reason of the foregoing, the original publication of the paper-back edition of the novel "The Desperate Hours" and the continuance of such publication after February 28, 1955 constituted a portrayal of plaintiff Hill and

a use of her name and portrait by defendants Joseph Hayes and Pocket Books, Inc. for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait 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.

47. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Pocket Books, Inc. in the amount of \$50,000.

FOR AN EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES, HOWARD ERSKINE AND THE DESPERATE HOURS [fol. 456] COMPANY, PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

48. Plaintiff repeats and realleges paragraphs 1-14, 25 and 42 hereof as though herein set forth at length.

49. By reason of the foregoing, the production and exhibition in the State of New York of the play, "The Desperate Hours" constituted a portrayal of plaintiff Hill and a use of her name and portrait by defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used plaintiff's name and portrait unlawfully with knowledge that such use was unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

50. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company in the amount of \$50,000.

FOR A NINTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND PARAMOUNT PICTURES CORPORATION, PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

[fol. 457] 51. Plaintiff repeats and realleges paragraphs 1-14, 29-33 and 42 hereof as though herein set forth at length.

52. By reason of the foregoing, the motion picture "The Desperate Hours" constituted a portrayal of plaintiff Hill and a use of her name and portrait by defendants Joseph Hayes and Paramount Pictures Corporation for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait 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.

53. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Paramount Pictures Corporation in the amount of \$50,000.

FOR A TENTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES, HOWARD ERSKINE, AND TIME, INC., PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

54. Plaintiff repeats and realleges paragraphs 1-14, 37, 38 and 42 hereof as though herein set forth at length.

[fol. 458] 55. By reason of the foregoing, the article in the February 28, 1955 issue of "LIFE" magazine constituted a use of plaintiff's name by defendants Hayes, Erskine and Time, Inc. for purposes of trade and advertising, and the use by said defendants of plaintiff's name as aforesaid was without the written or other consent of plaintiff and said defendants used plaintiff's name unlawfully with

knowledge that such use was unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

56. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Hayes, Erskine and Time, Inc. in the amount of \$50,000.

WHEREFORE, each of said plaintiffs demands judgment against defendants Joseph Hayes and Random House, Inc. in the amount of Fifty Thousand (\$50,000) Dollars, against defendants Joseph Hayes and Pocket Books, Inc. in the amount of Fifty Thousand (\$50,000) Dollars, against defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company in the amount of Fifty Thousand (\$50,000) Dollars, against defendants Joseph Hayes and Paramount Pictures Corporation in the amount of Fifty Thousand (\$50,000) Dollars and against defendants Joseph Hayes, Howard Erskine and Time, Inc. in the amount of [fol. 459] Fifty Thousand (\$50,000) Dollars.

MUDGE, STERN, BALDWIN & TODD,  
Attorneys for Plaintiffs  
Office and P. O. Address  
No. 40 Wall Street  
New York, N. Y.

[fol. 460]

STATE OF NEW YORK        }  
COUNTY OF WESTCHESTER } ss.:

ELIZABETH SELFRIDGE HILL, being duly sworn deposes and says: That she is one of the plaintiffs described in the foregoing amended complaint; that she has read the same and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein



stated to be alleged upon information and belief, and that as to those matters she believes it to be true.

(sgd.) ELIZABETH SELFRIDGE HILL

Sworn to before me this  
7th day of March, 1956.

CAROLYN TERWILLIGER  
NOTARY PUBLIC, State of New York  
Qual. in Richmond Co. No. 43-3955550  
Cert. Filed in N. Y. Co. Clk's.  
Term Expires March 30, 1957

[fol. 461]

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

JAMES J. HILL and ELIZABETH SELFRIDGE HILL,  
Plaintiffs,

—against—

JOSEPH HAYES, HOWARD ERSKINE, THE DESPERATE HOURS  
COMPANY, TIME, INC., PARAMOUNT PICTURES CORPORATION,  
RANDOM HOUSE, INC. and POCKET BOOKS, INC.,  
Defendants.

SECOND AMENDED COMPLAINT

Plaintiffs by their attorneys, MUDGE, STERN, BALDWIN &  
TODD, for their second amended complaint herein, allege:

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH  
HAYES AND RANDOM HOUSE, INC., PLAINTIFF JAMES J. HILL  
ALLEGES:

1. In or about the month of September, 1952, plaintiff  
James J. Hill and his wife, plaintiff Elizabeth Selfridge  
Hill and their children were held hostage in their then

home in Whitemarsh Township, Pennsylvania by three convicts who had escaped from the nearby federal penitentiary at Lewisburg, Pennsylvania, all of said convicts being subsequently captured or killed after an extensive manhunt.

[fol. 462] 2. During the month of September, 1952 and at all times thereafter, Plaintiff James J. Hill, acting for the members of his family as well as for himself, refused to grant 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.

3. Said refusal was prompted by the desire of plaintiffs 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 and their family in their right of privacy.

4. In or about the year 1954, defendant Joseph Hayes wrote, and defendant Random House, Inc., a New York corporation, published, and from time to time thereafter, republished, a novel entitled "The Desperate Hours."

5. 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.

6. 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 [fol. 463] "Hilliard", the holding of said family as hostages, and the eventual killing or capture of all said escaped convicts.

7. In truth and in fact, said novel purported to depict plaintiffs and members of their family, and was based upon the actual occurrences of September, 1952 in which plaintiffs Hill and their family were involved, as above set forth,

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

8. Upon information and belief, at all times subsequent to the publication of said novel, and the filming of the motion picture based thereon, defendant Hayes was authorized by the publisher-defendants Random House, Inc., Pocket Books, Inc. and defendant Paramount Pictures Corporation to undertake such promotional and advertising activities as might enhance the commercial value of said novel and motion picture to the mutual advantage of defendants [fol. 464] Hayes, Random House, Inc., Pocket Books, Inc. and Paramount Pictures Corporation.

9. In or about the year 1954, defendant Hayes adapted the novel "The Desperate Hours" into a play for production by a New York co-partnership consisting of himself and defendant Howard Erskine as general partners, and sixty-three additional persons as limited partners, said co-partnership doing business under the firm name and style of "The Desperate Hours Company".

10. On or about February 1, 1955, as part of an advertising and promotional campaign designed to promote the novel, motion picture and play, "The Desperate Hours," and pursuant to the authority granted to him by defendants Random House, Inc., Pocket Books, Inc. and Paramount Pictures Corporation as set forth in paragraph 8 hereof, defendant Joseph Hayes, together with defendants Howard Erskine and The Desperate Hours Company made arrangements with, and caused, defendant Time, Inc., a New

York corporation, to publish a special photographic layout in "LIFE" magazine which disclosed the true identity of the purportedly fictional "Hilliard" family portrayed in "The Desperate Hours", thereby enhancing its dramatic interest and advertising its true-life origin to the millions of readers of "LIFE" magazine, while simultaneously creating a sufficiently unique and imaginative "human interest" story to [fol. 465] justify the allocation thereto of substantial space by a magazine with the vast national and international circulation of "LIFE" magazine.

11. In the February 28, 1955 issue of "LIFE" magazine, which was distributed in every state of the United States and in many foreign countries, there appeared a 3-page article, with photographs, entitled "TRUE CRIME INSPIRES TENSE PLAY", the body of said article stating, as follows:

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

"Three years ago Americans all over the country read about the desperate ordeal of the James Hill family, who were held prisoners in their home outside Philadelphia by three escaped convicts. Later they read about it in Joseph Hayes'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 [fol. 466] 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 in which the plaintiffs Hill and their children were held hostage, and the cast of "The Desperate Hours" portraying plaintiffs Hill and members of their family in scenes from said play in said plaintiffs' former home. 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.

12. In connection with the "LIFE" magazine article of February 28, 1955, defendants Hayes, Erskine and The Desperate Hours Company arranged and paid for the transportation of the cast of "The Desperate Hours" to plaintiffs' former home and there participated and assisted in the taking of the photographs which appeared in said "LIFE" magazine article of February 28, 1955, and further in connection therewith, a sum of money was paid for the use of said house to the then occupant thereof.

13. Upon information and belief, defendants Hayes, Erskine and The Desperate Hours Company further 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 were published with the knowledge and approval of said defendants.

14. Upon information and belief, defendant Random House, Inc. had knowledge of the specific identification of plaintiffs and their family as the "Hilliards" of the novel "The Desperate Hours" in said "LIFE" magazine article of February 28, 1955 at or about the time of the publication thereof, and thereafter, with such knowledge, continued to publish and distribute further editions of the novel, "The Desperate Hours."

15. By reason of the foregoing, the original publication of the novel "The Desperate Hours" and the continuance of such publication after February 28, 1955 constituted a

portrayal of plaintiff James J. Hill and a use of his name and portrait by defendants Joseph Hayes and Random House, Inc. for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait 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.

[fol. 468] 16. By reason of such unauthorized and unlawful use by defendants of plaintiff's name and portrait, plaintiff has been subjected to considerable emotional distress and embarrassment, has been subjected to extensive and undesirable publicity and comment, has sustained serious impairment of his ordinary business and social relationships, has been compelled to deny the accuracy of the characterizations and incidents in defendants' publications of "The Desperate Hours", and has otherwise been embarrassed, distressed and injured by said defendants' unlawful use of plaintiff's name and portrait and by the distorted, fictional characterization of the personalities, relationships and emotional attitudes of plaintiff and his family as well as of the actual events which befell plaintiff and his family in September, 1952.

17. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Random House, Inc. in the amount of \$50,000.

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND POCKET BOOKS, INC., PLAINTIFF JAMES J. HILL ALLEGES:

18. Plaintiff repeats and realleges paragraphs 1-13 and 16 hereof as though herein set forth at length.

[fol. 469] 19. In or about the year 1954, defendant Pocket Books, Inc., a New York corporation, published, and from

time to time thereafter, republished, a paper-back edition of the novel "The Desperate Hours", and said paper-back editions were distributed and sold in every State of the United States, including the State of New York, and in various foreign countries.

20. Upon information and belief, defendant Pocket Books, Inc. had knowledge of the specific identification of plaintiffs and their family as the "Hilliards" of the novel "The Desperate Hours" in said "LIFE" magazine article of February 28, 1955 at or about the time of the publication thereof, and thereafter, with such knowledge, continued to publish and distribute further editions of the paper-back edition of the novel, "The Desperate Hours."

21. By reason of the foregoing, the original publication of the paper-back edition of the novel "The Desperate Hours" and the continuance of such publication after February 28, 1955 constituted a portrayal of plaintiff Hill and a use of his name and portrait by defendants Joseph Hayes and Pocket Books, Inc. for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use [fol. 470] plaintiff's name and portrait 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.

22. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Pocket Books, Inc. in the amount of \$50,000.

FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES, HOWARD ERSKINE AND THE DESPERATE HOURS COMPANY, PLAINTIFF JAMES J. HILL ALLEGES:

23. Plaintiff repeats and realleges paragraphs 1-13 and 16 hereof as though herein set forth at length.

24. The play "The Desperate Hours" opened in New York on or about February 10, 1955, at the Barrymore Theatre and continued its run until the Fall of 1955; and said play was also produced and exhibited by defendants Hayes, Erskine and The Desperate Hours Company in London, England among other places.

25. By reason of the foregoing, the production and exhibition in the State of New York of the play, "The Desperate Hours" constituted a portrayal of plaintiff Hill and [fol. 471] a use of his name and portrait by defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used plaintiff's name and portrait unlawfully with knowledge that such use was unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

26. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company in the amount of \$50,000.

FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND PARAMOUNT PICTURES CORPORATION, PLAINTIFF JAMES J. HILL ALLEGES:

27. Plaintiff repeats and realleges paragraphs 1-13 and 16 hereof as though herein set forth at length.

28. Upon information and belief, in or about the Fall of 1954, defendant Paramount Pictures Corporation, a New York corporation, purchased the motion picture rights to the novel "The Desperate Hours" from defendants Hayes, Erskine and The Desperate Hours Company for the sum of [fol. 472] \$100,000 cash plus a percentage of the profits, said defendant Paramount agreeing not to release the motion picture prior to the year 1956.



29. Said motion picture was adapted by defendant Hayes from the novel "The Desperate Hours," was filmed in or about the year 1955, has been distributed for public exhibition and has been 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.

30. Upon information and belief, defendant Paramount Pictures Corporation had knowledge of the specific identification of plaintiffs and their family as the "Hilliards" of the novel "The Desperate Hours" in said "LIFE" magazine article of February 28, 1955 at or about the time of the publication thereof, and thereafter, with such knowledge, released said motion picture for distribution and exhibition.

31. At or about the date of the release of said motion picture, the October 10, 1955 issue of "LIFE" magazine gave extensive written and photographic coverage 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 name of plaintiffs was used and in which [fol. 473] plaintiffs were expressly identified as members of the "Hilliard" family of "The Desperate Hours", and in the advertising for said motion picture, numerous and highly dramatic references were 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.

32. By reason of the foregoing, the motion picture "The Desperate Hours" constituted a portrayal of plaintiff Hill and a use of his name and portrait by defendants Joseph Hayes and Paramount Pictures Corporation for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have

continued to use plaintiff's name and portrait 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.

33. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Paramount Pictures Corporation in the amount of \$50,000.

[fol. 474] FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES, HOWARD ERSKINE, THE DESPERATE HOURS COMPANY, RANDOM HOUSE, INC., POCKET BOOKS, INC., PARAMOUNT PICTURES CORPORATION, AND TIME, INC., PLAINTIFF JAMES J. HILL ALLEGES:

34. Plaintiff repeats and realleges paragraphs 1-13, 16 and 29 hereof as though herein set forth at length.

35. The article and photographic layout in the February 28, 1955 issue of "LIFE" magazine was employed by defendants Hayes, Erskine, The Desperate Hours Company, Random House, Inc., Pocket Books, Inc., and Paramount Pictures Corporation 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.

36. Said "LIFE" magazine article of February 28, 1955 was a promotional and advertising scheme calculated to advance the commercial value of novel, play and motion picture "The Desperate Hours", and no legitimate occasion was there presented, as a matter of new dissemination or otherwise, to identify the plaintiffs Hill with the "Hilliards" [fol. 475] of "The Desperate Hours", to reprint newspaper headlines of September, 1952 or to photograph the members of the case of the "The Desperate Hours" in the former home, and identified as such, of the plaintiffs Hill.

37. By reason of the foregoing, the article in the February 28, 1955 issue of "LIFE" magazine constituted a use of plaintiff's name by defendants for purposes of trade and advertising, and the use by said defendants of plaintiff's name as aforesaid was without the written or other consent of plaintiff and said defendants used plaintiff's name unlawfully with knowledge that such use was unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

38. By virtue of all of the foregoing plaintiff is entitled to compensatory and exemplary damages from defendants Hayes, Erskine, The Desperate Hours Company, Random House, Inc., Pocket Books, Inc., Paramount Pictures Corporation and Time, Inc. in the amount of \$50,000.

FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND RANDOM HOUSE, INC., PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

39. Plaintiff repeats and realleges paragraphs 1-14 hereof as though herein set forth at length.

[fol. 476] 40. By reason of the foregoing, the original publication of the novel "The Desperate Hours" and the continuance of such publication after February 28, 1955 constituted a portrayal of plaintiff Hill and a use of her name and portrait by defendants Joseph Hayes and Random House, Inc. for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait 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.

41. By reason of such unauthorized and unlawful use by defendants of plaintiff's name and portrait, plaintiff has been subjected to considerable emotional distress and embarrassment, has been subjected to extensive and undesir-

able publicity and comment, has sustained serious impairment of her social relationships, has been compelled to deny the accuracy of the characterizations and incidents in defendants' publications of "The Desperate Hours", and has otherwise been embarrassed, distressed and injured by said defendants' unlawful use of plaintiff's name and portrait and by the distorted, fictional characterization of the personalities, relationships and emotional attitudes of plaintiff and her family as well as of the actual events which befell plaintiff and her family in September, 1952.

[fol. 477] 42. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Random House, Inc. in the amount of \$50,000.

FOR A SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND POCKET BOOKS, INC., PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

43. Plaintiff repeats and realleges paragraphs 1-13, 19-20 and 41 hereof as though herein set forth at length.

44. By reason of the foregoing, the original publication of the paper-back edition of the novel "The Desperate Hours" and the continuance of such publication after February 28, 1955 constituted a portrayal of plaintiff Hill and a use of her name and portrait by defendants Joseph Hayes and Pocket Books, Inc. for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait 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.

45. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from de-[fol. 478] fendants Joseph Hayes and Pocket Books, Inc. in the amount of \$50,000.

FOR AN EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES, HOWARD ERSKINE AND THE DESPERATE HOURS COMPANY, PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

46. Plaintiff repeats and realleges paragraphs 1-14, 24 and 41 hereof as though herein set forth at length.

47. By reason of the foregoing, the production and exhibition in the State of New York of the play, "The Desperate Hours" constituted a portrayal of plaintiff Hill and a use of her name and portrait by defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used plaintiff's name and portrait unlawfully with knowledge that such use was unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

48. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company in the amount of \$50,000.

[fol. 479] FOR A NINTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES AND PARAMOUNT PICTURES CORPORATION, PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

49. Plaintiff repeats and realleges paragraphs 1-14, 28-31 and 41 hereof as though herein set forth at length.

50. By reason of the foregoing, the motion picture "The Desperate Hours" constituted a portrayal of plaintiff Hill and a use of her name and portrait by defendants Joseph Hayes and Paramount Pictures Corporation for purposes of trade, and the use by said defendants of plaintiff's name and portrait as aforesaid was without the written or other consent of plaintiff, and said defendants used, and have continued to use plaintiff's name and portrait 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.

51. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Joseph Hayes and Paramount Pictures Corporation in the amount of \$50,000.

[fol. 480] FOR A TENTH CAUSE OF ACTION AGAINST DEFENDANTS JOSEPH HAYES, HOWARD ERSKINE, THE DESPERATE HOURS COMPANY, RANDOM HOUSE, INC., POCKET BOOKS, INC., PARAMOUNT PICTURES CORPORATION AND TIME, INC., PLAINTIFF ELIZABETH SELFRIDGE HILL ALLEGES:

52. Plaintiff repeats and realleges paragraphs 1-14, 35-36 and 41 hereof as though herein set forth at length.

53. By reason of the foregoing, the article in the February 28, 1955 issue of "LIFE" magazine constituted a use of plaintiff's name by defendants for purposes of trade and advertising, and the use by said defendants of plaintiff's name as aforesaid was without the written or other consent of plaintiff and said defendants used plaintiff's name unlawfully with knowledge that such use was unlawful and in violation of Section 50 of the Civil Rights Law of the State of New York.

54. By virtue of all of the foregoing, plaintiff is entitled to compensatory and exemplary damages from defendants Hayes, Erskine, The Desperate Hours Company, Random House, Inc., Pocket Books, Inc., Paramount Pictures Corporation and Time, Inc. in the amount of \$50,000.

WHEREFORE, each of said plaintiffs demands judgment against defendants Joseph Hayes and Random House, Inc. [fol. 481] in the amount of Fifty Thousand (\$50,000) Dollars, against defendants Joseph Hayes and Pocket Books, Inc. in the amount of Fifty Thousand (\$50,000) Dollars, against defendants Joseph Hayes, Howard Erskine and The Desperate Hours Company in the amount of Fifty Thou-

sand (\$50,000) Dollars, against defendants Joseph Hayes and Paramount Pictures Corporation in the amount of Fifty Thousand (\$50,000) Dollars and against defendants Joseph Hayes, Howard Erskine, The Desperate Hours Company, Random House, Inc., Pocket Books, Inc., Paramount Pictures Corporation and Time, Inc. in the amount of Fifty Thousand (\$50,000) Dollars.

MUDGE, STERN, BALDWIN & TODD,  
Attorneys for Plaintiffs  
Office and P. O. Address  
40 Wall Street,  
New York 5, N. Y.

[fol. 482]

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

JAMES J. HILL, being duly sworn, deposes and says: That he is one of the plaintiffs described in the foregoing second amended complaint; that he has read the same and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

JAMES J. HILL

Sworn to before me this  
3rd day of July, 1956.

BERNARD A. COHN  
NOTARY PUBLIC, State of New York  
Qual. in Bronx Co. No. 03-1604300  
Cert. filed with Bronx & N. Y. Co.  
Clerk's & Register's offices  
Term Expires March 30, 1957

[fol. 483]

## DEFENDANTS' EXHIBIT J

Excerpt from the March 1954 issue of  
The Literary Guild Review WINGS

## ABOUT THE DESPERATE HOURS

By JOSEPH HAYES

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

Then, over a year ago, the newspapers carried accounts of two incidents, both front-page stories. These had no relationship to me, to my life with my lovely red-haired wife and my two lively red-headed sons. One described an occurrence in New York State, not far away. An escaped convict had forced his way into a home, held a woman and her small daughter at knife-point until the police closed in; in the subsequent and inevitable violence, while attempting to escape, the man had stabbed the child to death. Shortly after this, or perhaps a month or two before, three men escaped from a prison even further away from my [fol. 484] secure and comfortable home. Holding a family hostage, they hid there, eating and sleeping, and then left, without violence, without the inevitable bloodshed. Newspaper readers all over the country breathed relief, felt the chill leave them. But an astonishment lingered. These were vicious and frightened men. How fortunate that family



had been! Then, like myself, how many readers asked themselves, quietly: What if——?

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

Out of this conjecture grew the incidents and suspense of my story—and the characters: the surprisingly strong Dan Hilliard; his frightened wife, Eleanor; their nineteen-year-old daughter, the quick-witted and defiant Cynthia; their son Ralphie, too young to realize the consequences of his childish bravery; and Jesse Webb, the young deputy sheriff, a stranger to the Hilliards, yet linked to them by the invisible bond of his own deep human

*The phone could be an instrument of  
rescue . . . or of their destruction.*

[fol. 485]

DEFENDANTS' EXHIBIT K

Excerpt from the January 13, 1955 issue of  
The Philadelphia Inquirer, page 11, Columns 1 and 2.

LOCUST OFFERS THRILLER  
IN 'DESPERATE HOURS'

By HENRY T. MURDOCK

For suspense which never lags for a moment, for thrills which follow each other like waves, we give you “The Desperate Hours.” Joseph Hayes’ crisp, efficient dramatization of his novel of the same title.

Within five minutes after the curtain rises at the Locust, the peaceful, comfortable Hilliard in suburban Indianapolis is held in the thrall of evil, and for the rest of the three acts,

struggles and fights—and triumphs—as the audience grows more tense with every twist of the plot.

PLAY IS EFFECTIVE

It is tremendously effective “theater,” marked by complete cooperation among its elements—

“THE DESPERATE HOURS” a drama by Joseph Hayes, based on his novel of the same title. Presented by Howard Erskine and Joseph Hayes, directed by Robert Montgomery, setting and lighting by Howard Bay, costumes by Robert Randolph. Presented, prior to Broadway, at the Locust last night with the following cast:

|                           |                  |
|---------------------------|------------------|
| Tom Winston .....         | Judson Pratt     |
| Jesse Bard .....          | James Gregory    |
| Harry Carson .....        | Kendall Clark    |
| Eleanor Hilliard .....    | Nancy Coleman    |
| Ralphie Hilliard .....    | Malcolm Brodrick |
| Dan Hilliard .....        | Karl Malden      |
| Cindy Hilliard .....      | Patricia Peardon |
| Glenn Griffin .....       | Paul Newman      |
| Hank Griffin .....        | George Grizzard  |
| Robish .....              | George Mathews   |
| Chuck Wright .....        | Fred Elsley      |
| Mr. Patterson .....       | Wyrley Birch     |
| Miss Swift .....          | Mary Orr         |
| Lt. Carl Fredericks ..... | Rusty Lane       |

[fol. 486] writer, director, actors and set designer. In fact, the play had to be on the stalwart side to draw attention from Howard Bay’s remarkable “breakfront” set showing two stories of the Hilliard home, plus occasional rambles to Indianapolis police headquarters.

This is the story, based on an actual incident, of the three-day terrorization of a family by three escaped convicts, who invade the home to wait for funds first, to accomplish a vengeful scheme on the part of the gang leader, and second, to assure their getaway.

Father, mother, 20-year-old daughter, 9-year-old son take their turn at being hostages, take their turn at rebellion, take their turn in defeat and yet, while police hold off to avoid a slaughter of the innocents, work their way to an exciting solution.

#### SHOW EVERY TWIST

Those who have read Hayes' book will be doubly appreciative of the manner in which he has wrought it into a play. Every bit of action impossible to show on the stage has been described most graphically; every twist of plot, which can be shown, including the "empty-gun" gambit is presented forcefully.

Several years ago, Robert Montgomery interrupted his screen parade of debonair youths to play in a film that still stands out as a screen terror classic—"Night Must Fall". Montgomery hasn't forgotten how to tighten up an audience's nerves. As director of "The Desperate Hours", he builds up to the final explosion with the sure touch of the thrill expert.

[fol. 487] And while this is all pretty much straight line melodrama, moving swiftly to its climax, there is time for some psychological below-surface characterization, all realized by the excellent cast.

#### TAKES LONG CHANCE

As the father who faces a situation almost beyond his power to assimilate but who takes the long, courageous chance, Karl Malden gives another of his sure, concise performances. As the young complex-ridden leader of the convicts, Paul Newman creates a mood of insane ruthlessness. While his role is necessarily more limited than in the book, James Gregory plays the deputy sheriff with conviction.

George Grizzard, as the leader's young brother with an abbreviated sense of decency; George Mathews, as the brutish third in the trio; Nancy Coleman, as the wife;

Patricia Peardon, as the firebrand, daughter and Malcolm Brodrick as the boy, all take turns at contributing to the excitement.

[fol. 488]

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STIPULATION SETTLING CASE

It Is Hereby Stipulated that the foregoing case contains all of the evidence given upon the trial of the above entitled action and that the said case may be settled and ordered to be filed and attached to the judgment roll.

Dated: New York, N. Y., October 3, 1962.

Mudge, Stern, Baldwin & Todd, Attorneys for Plaintiffs-Respondents.

Cravath, Swaine & Moore, Attorneys for Defendant-Appellant.

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ORDER SETTLING CASE

Upon the above stipulation, the foregoing case containing all the evidence is hereby settled and ordered filed.

Dated: New York, N. Y., October 4, 1962.

Arthur G. Klein, J.S.C.

[fol. 489]

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STIPULATION WAIVING CERTIFICATION

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the foregoing constitute true and correct copies of the notice of appeal, the judgment roll in this action, the judgment appealed from, the case and exceptions as settled, now on file in the Office of the Clerk of the County of New York.

Certification thereof in pursuance of Section 616 of the Civil Practice Act is hereby waived.

Dated: New York, N. Y., October 3, 1962.

Mudge, Stern, Baldwin & Todd, Attorneys for Plaintiffs-Respondents.

Cravath, Swaine & Moore, Attorneys for Defendant-Appellant.

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ORDER FILING RECORD IN APPELLATE DIVISION

Pursuant to Section 616 of the Civil Practice Act, it is

ORDERED that the foregoing printed record be filed in the Office of the Clerk of the Appellate Division of the Supreme Court in the First Judicial Department.

Dated: New York, N. Y., October 4, 1962.

Arthur G. Klein, J.S.C.

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[fol. 491]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 8139/55

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JAMES J. HILL, Plaintiff,

—against—

TIME, INC., Defendant.

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NOTICE OF APPEAL TO COURT OF APPEALS

Sirs:

Please Take Notice that defendant hereby appeals to the Court of Appeals of the State of New York (a) from the judgment herein in favor of plaintiff entered in the office of the Clerk of the County of New York on the 23rd day of October, 1963, pursuant to the order of modification of

the Appellate Division, First Judicial Department, dated and filed May 14, 1963, and (b) from said order of modification insofar as it affirmed the judgment of the trial court on the issue of liability and failed to dismiss the complaint.

October 29, 1963.

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

To:

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

Clerk of the County of New York.

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[fol. 492]

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

JUDGMENT APPEALED FROM

The above-entitled action having regularly come on before Hon. Arthur G. Klein at Special and Trial Term, Part XVI of this Court, a jury having been waived, on the 18th day of October, 1963, for the assessment of damages of plaintiff James J. Hill, pursuant to the order of the Appellate Division, First Department, dated May 14, 1963, and the parties having appeared by their respective attorneys, and said plaintiff having stipulated to rest upon the evidence adduced by him upon the first trial herein as his proof of damages, and after due deliberation, the Court having filed a decision in writing awarding to plaintiff James J. Hill as and for compensatory damages the sum of \$30,000.00, without costs, and directing the entry of judgment accordingly, and the action having been severed as to Time, Inc., it is

Adjudged that plaintiff James J. Hill (No. 409 Sound Beach Avenue, Old Greenwich, Connecticut) recover of defendant Time, Inc. (Time & Life Building, Rockefeller Center, New York, New York) the sum of \$30,000.00, and that plaintiff James J. Hill have execution therefor.

Judgment signed and entered this 23 day of October, 1963.

[SEAL]

James McGurrin, Clerk.

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[fol. 493]

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 14th day of May, 1963.

Present: Hon. Bernard Botein, Presiding Justice. Hon. Benjamin J. Rabin, Hon. Francis L. Valente, Hon. James B. M. McNally, Hon. Harold A. Stevens, Justices.

5753

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

vs.

JOSEPH HAYES, et al., Defendants,

and

TIME, INC., Defendant-Appellant.

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ORDER APPEALED FROM

An appeal having been taken to this Court by the defendant-appellant from the judgment of the Supreme Court, New York County, entered on the 21st day of May, 1962,

in favor of plaintiffs and against defendant-appellant in the sum of \$176,288.02, and said appeal having been argued [fol. 494] by Mr. Harold R. Medina, Jr., of counsel for the appellant, and by Mr. Leonard Garment, of counsel for the respondent; and due deliberation having been had thereon, and upon the Opinion of this Court filed herein,

It hereby is ordered and adjudged that the judgment so appealed from be and the same is hereby modified, on the law and in the exercise of discretion, and a new trial ordered on the sole issue of damages, and, as so modified, affirmed, without costs to either party. [One of the Justices dissents in part.]

Enter,

Vincent A. Massi, Clerk.

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[fol. 495]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

APPELLATE DIVISION—FIRST DEPARTMENT

March 1963

Bernard Botein, P. J., Benjamin J. Rabin, Francis L. Valente, James B. M. McNally, Harold A. Stevens, JJ.

Appeal from a judgment of the Supreme Court in favor of plaintiffs, entered May 21, 1962 in New York County, upon a verdict rendered at a Special and Trial Term (Arthur G. Klein, J.) in an action for alleged invasion of right of privacy under section 51 of the New York Civil Rights Law.

*Harold R. Medina, Jr.*, of counsel (*Oliver C. Biddle* and *Alan J. Hruska* with him on the brief; *Cravath, Swaine & Moore*, attorneys), for appellant.

*Leonard Garment* of counsel (*Donald J. Zoeller* with him on the brief; *Mudge, Stern, Baldwin & Todd*, attorneys), for respondents.



## OPINION OF APPELLATE DIVISION—May 14, 1963

STEVENS, J. This is an appeal from a judgment entered after a jury trial which resulted in a verdict for the plaintiffs. The action is one for damages based on a violation [fol. 496] of plaintiffs' right of privacy under section 51 of the Civil Rights Law. This section, in pertinent part, provides:

“Any person whose name, portrait or picture is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided may maintain an equitable action . . . to prevent and restrain the use . . . and may also sue and recover damages for any injuries sustained.”

On September 11, 1952, the plaintiffs and their children were held captive in their own home in Whitemarsh, Pennsylvania, for 19 hours by three escaped convicts. Sometime in the early morning of September 12, 1952, the convicts departed, leaving plaintiffs and their family unharmed. The incident received wide publicity at the time and was given extensive press coverage. Plaintiff James J. Hill, in a statement given to the press almost immediately after the occurrence, stated the family had not been molested or harmed and, save for the restraint, had been treated courteously.

Plaintiffs sought to forget their ordeal, and a few months later plaintiffs and their family moved to Old Greenwich, Connecticut. The move, a result of job promotion, was accelerated because of the September, 1952 incident. Opportunities to capitalize on the occurrence were rejected. The record reveals plaintiffs' refusals in an attempt to avoid further publicity for the sake of their children.

In the Spring of 1953, a book, “The Desperate Hours”, was written by Joseph Hayes, which was later made into a play and also a picture bearing the same title. The story [fol. 497] dealt with three escaped convicts holding a family

as hostages in their suburban home. Some of the members of the family were assaulted, profanity was used and in other ways the story differed from the account given by Hill of what had occurred in their home.

In 1954, the play opened for a tryout in Philadelphia, Pennsylvania. Following conferences with the producer, *Life* magazine decided to do an article on the play. Thereafter *Life* arranged to have the Whitmarsh home made available for photo coverage, and chiefly at its own expense transported members of the cast to the house where it shot actual scenes from the play. It must be remembered this was the house where the real Hill incident occurred. In connection with and accompanying the article *Life* featured these scenes. The article, which appeared in *Life's* February 28, 1955, issue under a heading "True Crime Inspires Tense Play", read, in part, as follows: "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."

Thereafter plaintiffs instituted suit. It is from a judgment in their favor that this appeal is taken.

The right of privacy is purely statutory (*Gautier v. Pro-Football, Inc.*, 304 N. Y. 354, 358). The section is designed "to prevent the use of an individual's name for commercial purposes without his consent" (*Orsini v. Eastern Wine Corp.*, 190 Misc. 235, 236). It is immaterial whether the use by defendants of the name holds the party up to ridicule or contempt since the action is not one for libel (*Binns v. Vitagraph Co. of America*, 210 N. Y. 51, 54; *Callas v. Whisper, Inc.*, 198 Misc. 829, 831).

"The test for legally protected privacy may involve either the decency of the public interest in the events in-

volved or the fame or notoriety of the person asserting his privacy interest or both" (1 Harper and James, Torts, § 9.7, p. 687). So too "either or both of two factors may be involved in justifying a breach of the seal of privacy; the propriety of public information as newsworthy, in the light of the habits, customs and values of our society and the extent to which the plaintiff, either by his voluntary conduct or because it was thrust upon him, has achieved the position of a 'public figure' and thus become newsworthy" (*ibid.*, pp. 686-687). New York also requires that the use of the name, etc., be for advertising purposes or for the purposes of trade. For the right protected is the right to be protected against the commercial exploitation of one's personality without his written consent (Civil Rights Law, § 51).

In September, 1952, when the incident occurred, plaintiffs were projected unwillingly into the limelight and, under the test enunciated, had no legally protected privacy so far as legitimate, accurate reporting and fair comment were concerned. They were newsworthy. The passage of time tended to dim the public interest both because of other events, actually or apparently of greater public interest or significance, and because plaintiffs themselves avoided capitalizing on the occurrence. In other words, the occurrence had been relegated to the outer fringe of the public consciousness.

When the defendant, in its article of February 28, 1955, revived or intensified interest in the ordeal which plaintiffs had experienced, the use of plaintiffs' name was primary and not merely incidental to the article (cf. *Wallach v. Bacharach*, 192 Misc. 979, *affd* 274 App. Div. 919). Although the play was fictionalized, *Life's* article portrayed it as a re-enactment of the Hills' experience. It is an inescapable conclusion that this was done to advertise and attract further attention to the play, and to increase present and future magazine circulation as well. It is evident that the article cannot be characterized as a mere dis-

semination of news, nor even an effort to supply legitimate newsworthy information in which the public had, or might have a proper interest.

Hayes, the author of the play "The Desperate Hours", in an article which appeared January 30, 1955, in *The New York Times*, had stated the play was fictionalized. This article was available to, and, in fact apparently in the possession of the defendant when its publication of February 28, 1955, appeared. Defendant did not seek to ascertain from Hayes if his play was an account of what happened to the Hills. Defendant merely concluded that basically the play was a re-enactment and so stated. The contention of defendant that it found points of similarity in the book and the occurrence of September 11, 1952, justified neither the identification nor the commercial exploitation of plaintiffs' name and family with the play.

While there is sufficient evidence to support a jury verdict on the question of liability, prejudicial error was committed which undoubtedly influenced, improperly, the jury's determination as to the quantum of damages. Accordingly, a retrial is directed, limited solely to that question.

Since a retrial is being directed on the sole issue of damages, certain matters may be adverted to for the guidance [fol. 500] of the parties. The admission into evidence and viewing of the film by the jury constituted substantial prejudicial error. The film was released almost one year after the article appeared, and subsequent to the institution of the suit. The emotional impact of viewing a highly charged, tense, dramatic film portrayal of incidents of the nature here involved, with accompanying sound effects, was inflammatory and undoubtedly served to influence the jury improperly. Because of the remoteness in time it is doubtful that much, if any, of the public recalled the article or were significantly influenced by it. Elements and factors were introduced by the showing of the film for which defendant should not fairly be held responsible.

The plaintiff James J. Hill was permitted to testify in broad general terms about comments and questions directed to him by various persons, not otherwise identified, concern-

ing his connection with or relation to the characters portrayed in "The Desperate Hours", and their reaction to his responses. The incidents were not specifically related or, as pointed out, the persons identified. This was error. Defendant could neither disprove the assertions by calling such persons nor could it cross-examine the alleged speakers. "The better practice would be to call as witnesses for plaintiff, subject to cross-examination, the persons who were supposed to have spoken or acted adversely to plaintiff and to demonstrate, if such demonstration be possible, a connection to the libel" (*Macy v. New York World-Tel. Corp.*, 2 N Y 2d 416, 422). It is true the observation quoted was made in a libel case. However, it is equally applicable in a case of this nature because of the evil it is designed to prevent. It is the fact of wrongful intrusion on privacy and the state of mind and effect on the Hills which is important. For the right sought to be protected by statute is the right to be left alone.

Equally improper is it to place into evidence articles which appeared subsequently when no direct causal connection to the offending article is shown either by competent supporting testimony, or by some proof of identity of language sufficient to permit, if not compel, an inference of causal relationship. Defendant is thus charged with the transgressions of others, if such there were, without any proof of its responsibility therefor.

We find the verdicts grossly excessive. In passing it might be noted the briefs are inordinately and unjustifiably lengthy, and no costs are awarded.

The judgment appealed from should be modified on the law and in the exercise of discretion, and a new trial directed on the sole issue of damages. As so modified, the judgment appealed from should be otherwise affirmed, without costs to either party.

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RABIN, J. (concurring). The use of the "name, portrait or picture of a living person in truthfully recounting or portraying an actual current event" is not proscribed by

section 51 of the Civil Rights Law (*Binns v. Vitagraph Co. of America*, 210 N. Y. 51, 56). The same is true with reference to a past newsworthy event if it bears some relationship to the current event portrayed. The difficulty with the position of the defendant *Time* is that it portrayed the previous Hill incident in a highly sensational manner and represented that the play was a true version of that event. It was not. It was fictionalized and the jury so found. Consequently it violated section 51 of the Civil Rights Law (see *Gautier v. Pro-Football, Inc.*, 278 App. Div. 431, 435; *Molony v. Boy Comics Publishers*, 277 App. Div. 166, 169; *Lahiri v. Daily Mirror*, 162 Misc. 776).

[fol. 502] Properly presented, the Hill incident could have been referred to in the article reviewing the play without subjecting the defendant to liability despite the fact that to do so would constitute an invasion of the Hills' privacy and might cause them grief and distress. The right of privacy must give way to the public interest in having newsworthy material disseminated albeit the presentation of such newsworthy material increases the publisher's circulation and a trade benefit flows therefrom (see *Gautier v. Pro-Football, Inc.*, *supra*, p. 435; *Thompson v. Close-up, Inc.*, 277 App. Div. 848).

However, if it can be clearly demonstrated that the newsworthy item is presented, not for the purpose of disseminating news, but rather for the sole purpose of increasing circulation, then the rationale for exemption from section 51 no longer exists and the exemption should not apply. In such circumstance the privilege to use one's name should not be granted even though a true account of the event be given—let alone when the account is sensationalized and fictionalized. Such a rule would accomplish the purpose sought to be achieved by the section and furthers the attempt to curb the evils these sections seek to avoid (see Warren and Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 [1890]; *Roberson v. Rochester Folding Box Co.*, 171 N. Y. 538; *Lahiri v. Daily Mirror*, 162 Misc. 776, *supra*).

This concept is not unusual or foreign to our law. It is analogous to the theory upon which liability is imposed in defamation actions upon a defendant who asserts a qualified privilege. Such privilege is held to be no defense where it is demonstrated that the defamatory material was published with malice. Thus, in this case the defense that the article treats with a newsworthy event is to no avail if it [fol. 503] was published, not for the purpose of disseminating news but rather for the sole purpose of enhancing appellant's sales of its magazine. The record in this case permits of such a finding and such a finding would be well supported by the evidence. It is quite obvious that the reference to the Hill incident was not incidental to the review of the play. It would seem that the converse is true and it is quite apparent that its portrayal in such a sensational and fictional manner was not for its newsworthy content but for the purpose of trade.

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BOTEIN, P. J. (dissenting in part). The article complained of was a report upon a new play, traditionally a newsworthy subject, and one that may be reported by "pictorial reproductions of scenes therefrom" (see *Gautier v. Pro-Football, Inc.*, 278 App. Div. 431, 437, affd. 304 N. Y. 354). To point out, in an article of that nature, a relation between the play and the concededly newsworthy incident in which plaintiffs had been involved creates no cause of action in their favor under section 51 of the Civil Rights Law unless they can show that the incident "has so tenuous a connection with the news item or educational article that it can be said to have no legitimate relationship to it" (*Lahiri v. Daily Mirror, Inc.*, 162 Misc. 776, 782, SHIENTAG, J.; and see, also, *Dallesandro v. Holt & Co.*, 4 A D 2d 470, 471). This cannot be said here. As plaintiffs had been held prisoners in their home by escaped convicts, with consequent widespread publicity, and as such an occurrence formed the basic theme of the play, which was news in itself, obviously references to this common feature in the report of the play were of "some relevance to the reporting

of news" (*Gautier v. Pro-Football, Inc.*, 278 App. Div. 431, [fol. 504] 435, *supra*). Such relevance was confirmed by the admission of the playwright—a witness called by plaintiffs—that “the Hill incident—unconsciously—triggered the book [which he had written and from which he contrived the play] in a very direct way”.

Overstrained, in my view, is the court's conception of the article as a fictional recreation of the Whitemarsh incident. Had a review of the play in a daily newspaper summarized some of the scenes and then stated that the play was inspired by the Hills' misadventure, I question that section 51 would have been considered applicable. Yet that is the tenor of the instant article, except that the scenes were depicted by pictures instead of words, a permissible substitution as above stated. To be sure, a searching eye can detect elements of inaccuracy or exaggeration in the article. By taking the pictures in the Whitemarsh house, as well as by words, defendant indicated that the incident there inspired the play. Though the incident happened in September, 1952 and the novel on which the play was based was written the following Spring, perhaps it is an overdrawn inference from their common features above mentioned that the one inspired the other; and perhaps it is erroneous to say that an occurrence is the inspiration of a work when it is only the unconscious trigger. Perhaps the word “story” in the last sentence of the excerpt quoted in the majority opinion can be construed as a reference to the Whitemarsh incident rather than to the word “novel” in the preceding sentence. But, especially when it is recalled that “[t]ruth or falsity does not, of itself, determine whether the publication comes within the ban of sections 50 and 51” (*Koussevitzky v. Allen, Towne & Heath*, 188 Misc. 479, 484, SHIENTAG, J., *affd.* 272 App. Div. 759), can it be said that such flaws are of so extravagant a nature as to convert into fiction an informative presentation of [fol. 505] legitimate news? In my opinion not; we are in a domain where “the lines may not be drawn so tight as to imperil more than we protect” (*Oma v. Hillman Periodi-*



*cals*, 281 App. Div. 240, 245; cf. *D'Altomonte v. New York Herald Co.*, 154 App. Div. 453, mod. 208 N. Y. 596; *Goelet v. Confidential, Inc.*, 5 A D 2d 226).

To hold, as suggested in the concurring opinion, that a violation of section 51 may be established by a showing that a newsworthy item has been published solely to increase circulation injects an unrealistic ingredient in the complex of the right to privacy, and would abridge dangerously the people's right to know. In the final analysis, the reading public, not the publisher, determines what is newsworthy, and what is newsworthy will perforce tend to increase circulation.

I would dismiss the complaint.

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VALENTE and McNALLY, JJ., concur with STEVENS, J.; RABIN, J., concurs in opinion; BOTEIN, P. J., dissents in part in opinion.

Judgment modified on the law and in the exercise of discretion, and a new trial directed on the sole issue of damages. As so modified, the judgment appealed from is otherwise affirmed, without costs to either party.

[fol. 506]

IN THE SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK  
 SPECIAL & TRIAL TERM—PART XVI

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JAMES J. HILL, Plaintiff,

—against—

TIME, INC., Defendant.

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October 18, 1963

Before:

The Hon. Arthur G. Klein, Justice.

Appearance:

Mudge, Stern, Baldwin & Todd, Esqs., Attorneys for  
 Plaintiff, 20 Broad Street, New York, N. Y., By: Leon-  
 ard Garment, Esq., of Counsel.

Cravath, Swaine & Moore, Esqs., Attorneys for Defen-  
 dant, 1 Chase Manhattan Plaza, New York, N. Y., By:  
 Harold R. Medina, Jr., Esq., of Counsel.

Irving Levine, C. S. R., Official Court Reporter.

TRANSCRIPT OF PROCEEDINGS ON ASSESSMENT DAMAGES

[fol. 507] The Clerk: The jury waived and formal find-  
 ings and conclusions are waived?

Mr. Garment: Yes.

Mr. Medina: Yes.

Mr. Garment: I will state for the record, if your Honor  
 please, that we, representing the Plaintiff, James J. Hill,  
 have stipulated that the Court shall fix the amount of  
 damages without a jury and I further represent to the  
 Court that we are not able to produce in support of the  
 claim of compensatory damage any evidence in addition to

such evidence as was adduced by us at the first trial which was conducted before your Honor on the issue of damages, and I therefore rest upon the proof of damages at the first trial.

Mr. Medina: I also stipulate that the jury be waived and that the Court may fix the amount of damages.

The Court: The amount of damages is set at \$30,000.

Mr. Garment: That is compensatory damages, your Honor?

The Court: Only compensatory damages. Without costs.

Mr. Medina: I, of course, object to the award of any damages on the ground that there is no cause of action shown and also on the further ground if the statute be so construed as to permit the award of damages, the statute is unconstitutional under the free press provisions of the federal and state constitutions.

The Court: That is the same position that you took at the trial, the original trial.

Mr. Medina: Precisely, your Honor.

The Court: The Appellate Division has already ruled on that and I assume the Court of Appeals will rule.

Mr. Medina: I am just stating that for the record for any further appeal.

\* \* \* \* \*

[fol. 508]

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

DECISION ON ASSESSMENT OF DAMAGES

KLEIN, J.:

The assessment of damages of plaintiff James J. Hill, pursuant to the order of the Appellate Division, First Department, dated May 14, 1963, having come on before Hon. Arthur G. Klein at Special and Trial Term, Part XVI, of this Court on the 18th day of October, 1963, and the parties having stipulated that the Court shall fix the

amount of damages without a jury, and said plaintiff having represented to the Court that he is not able to produce in support of compensatory damages any evidence in addition to that adduced by him upon the first trial as proof of such damages and, therefore, rests upon such evidence as his proof of damages, and having so stipulated, and after hearing counsel, and after due consideration, the Court finds and concludes that said plaintiff James J. Hill should be awarded as and for compensatory damages the sum of \$30,000.00 and that judgment for that amount, without costs, is directed to be entered in his favor.

October 18, 1963.

A G K  
J. S. C.  
(Arthur G. Klein)

Filed Oct. 18, 1963, New York County Clerk's Office.

[fol. 509]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

JAMES J. HILL, Plaintiff-Respondent,

—against—

TIME, INC., Defendant-Appellant.

STIPULATION DISPENSING WITH PRINTING OF  
CERTAIN EXHIBITS

It Is Hereby Stipulated that the printing of the following exhibits introduced and admitted into evidence at the trial of this action and constituting a part of the Record on Appeal herein be dispensed with and that 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".
- 15 Samuel French edition of "The Desperate Hours, A Play".
- 25 Envelope marked "Laura Ecker" with newspaper clippings, as follows:
  - [fol. 510](1) Theatre 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.
- [fol. 511] 26 Article appearing at pages 31-35 of the February 14, 1955, issue of LIFE magazine entitled "Is This Princess Alive?"
- 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.

[fol. 512] (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.

(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 the Record on Appeal.

April 30, 1964.

Nixon, Mudge, Rose, Guthrie & Alexander, Attorneys for Plaintiff-Respondent.

Cravath, Swaine & Moore, Attorneys for Defendant-Appellant.

[fol. 513]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

---

JAMES J. HILL, Plaintiff-Respondent,

—against—

TIME, INC., Defendant-Appellant.

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STIPULATION WAIVING CERTIFICATION

It is Hereby Stipulated that the foregoing consists of a true and correct copy of the Record on Appeal to the Appellate Division, First Department, the Notice of Appeal to the Court of Appeals, the judgment appealed from, the order of modification appealed from and the transcript of proceedings and decision on the assessment of damages, all of which are on file in the office of the Clerk of the County of New York, as well as the opinion of the Appellate Division, First Department, the opinion of Rabin J., concurring, and the opinion of Botein P. J., dissenting in part, which are on file in the office of the Clerk of that Court.

Certification of all of the foregoing papers is hereby waived.

April 30, 1964.

Nixon, Mudge, Rose, Guthrie & Alexander, Attorneys for Plaintiff-Respondent.

Cravath, Swaine & Moore, Attorneys for Defendant-Appellant.



[fol. 514]

IN THE SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK  
Certificate No. 125

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JAMES J. HILL, Plaintiff,  
against  
TIME, INC., Defendant.

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CERTIFICATE OF COMPARISON OF TRANSCRIPT FOR FILING  
WITH SUPREME COURT OF THE UNITED STATES

New York County Clerk's Index No. 8139 Year 1955

State of New York,  
County of New York, ss.:

I, JAMES MCGURRIN, County Clerk and Clerk of the Supreme Court, New York County, Do Hereby Certify that I have compared the foregoing pages 1 to 513 with the original of the papers included therein on file in my office and that they contain true and correct transcripts of the originals and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 21st day of June 1965.

James McGurrin, County Clerk and Clerk of the Supreme Court, New York County.

[fol. 515]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

---

 JAMES J. HILL, Respondent,

v.

JOSEPH HAYES et al., Defendants,

and

TIME, INC., Appellant.
 

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**Memorandum Decision of Affirmance—April 15, 1965**

Judgment affirmed, with costs, on the majority and concurring opinions at the Appellate Division.

Concur: Chief Judge Desmond and Judges Dye, Van Voorhis, Burke and Scileppi. Judge Fuld dissents in the following opinion in which Judge Bergan concurs.

FULD, J. (dissenting). The article, published (in 1955) by the defendant in its magazine *Life*, on which the plaintiff's cause of action is predicated, read in this way:

"TRUE CRIME INSPIRES TENSE PLAY

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

'THE DESPERATE HOURS'

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

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

The article also contained photographs of an actual news headline relating to the plaintiff's experience (of three years previously), of the house in which the plaintiff and his family then live and in which they were held captive and of actual stage settings of the play.

[fol. 516] I do not believe that section 51 of the Civil Rights Law may be availed of to create a cause of action against those who published an article reporting a new play, unquestionably a subject worthy of press comment, and pointing out that there was a relationship between the play and an actual event, also concededly newsworthy, in which the plaintiff some years before had been involved. There can be no doubt that the play certainly bore a close and legitimate relationship to the real-life incident as, indeed, the columnar comparison made by the defendant in its brief strikingly reveals. Moreover, the author of the story (Joseph Hayes), called as a witness for the plaintiff, testified that the real-life Hill case “stimulated” and “inspired” his writing of the play, that it “triggered the book in a very direct way” and that the *Life* magazine heading, “True Crime Inspires Tense Play”, was “certainly correct, that true crime did inspire my play”.

Section 51 of the Civil Rights Law does not, of course, proscribe the use of an individual's name or picture in connection with a news article of general interest. (See, e.g., *Binns v. Vitagraph Co.*, 210 N. Y. 51, 56; *Gautier v. Pro-Football*, 304 N. Y. 354, affg. 278 App. Div. 431; *Booth v. Curtis Pub. Co.*, 11 N. Y. 2d 907, affg. 15 A. D. 2d 343.)<sup>1</sup>

<sup>1</sup> In the *Gautier* case, the Appellate Division, speaking through SHIENTAG, J., declared (278 App. Div., at p. 435): “Cognizant of

Accordingly, since the experience of the Hill family in 1952 was newsworthy and since there was a substantial relationship between that experience and the play, which was also a matter meriting news coverage, it would seem to follow that the defendant did not, by its article in *Life*, violate or offend against the provisions of the statute.

[fol. 517] Three years had elapsed between the Hill incident and the publication of the article. That, however, cannot be said to render the story about the Hill experience stale news, particularly when it was related to the reporting of a current play which, according to its author, was inspired and triggered by the real-life event. And, once it be established that the reported matter is newsworthy, I query whether the fact that the article may also have been intended to advertise or promote the play is, in and of itself, sufficient basis for subjecting the defendant to a cause of action under the provisions of the Civil Rights Law. If the article is of such a nature as not to come within the proscription of section 51—because it is, on its face, an account of newsworthy information—it is not brought within its coverage by virtue of the fact that it may, incidentally, have been written with an eye toward promoting the play or, as is the underlying purpose of every article, in the hope of bolstering the magazine's own appeal and circulation. As Presiding Justice BOGERT wrote, in dissent below, "To hold \* \* \* that a violation of section 51 may be established by a showing that a newsworthy item has been published solely to increase circulation injects an unrealistic ingredient in the complex of the right to privacy, and would abridge dangerously the people's right to know".

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the overriding social interest in the dissemination of news, an almost absolute privilege has been extended to the use of names and pictures in connection with the reportage of news. \* \* \* Once an item has achieved the status of newsworthiness, it retains that status even when no longer current".

In short, it is my judgment that the plaintiff failed to make out a case and, accordingly, I would reverse the judgment appealed from and dismiss the complaint.

Judgment affirmed, etc.

[fol. 518] Triple Certificate to foregoing paper (omitted in printing).

[fol. 519]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK  
State of New York, ss.:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 15th day of April in the year of our Lord one thousand nine hundred and sixty-five, before the Judges of said Court.

Witness, The Hon. Charles S. Desmond, Chief Judge,  
Presiding. Raymond J. Cannon, Clerk.

REMITTITUR—April 15, 1965

[fol. 520]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK  
Sup. Ct. No. 244

JAMES J. HILL, Respondent,

vs.

TIME, INC., Appellant.

Be it Remembered, That on the 10th day of June in the year of our Lord one thousand nine hundred and sixty-four, Time, Inc., the appellant - in this cause, came here unto the Court of Appeals, by Cravath, Swaine & Moore, its attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Supreme Court, New York County. And James J. Hill, the respondent - in said cause, afterwards appeared in said Court of Appeals by Nixon, Mudge, Rose, Guthrie & Alexander, his attorneys.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Court of Appeals having heard this cause argued by Mr. Harold R. Medina, Jr., of counsel for the appellant - , and by Mr. Leonard Garment, of counsel for the respondent - , and after due deliberation had thereon, did order and adjudge that the judgment herein be and the same hereby is affirmed, with costs, on the majority and concurring opinions at the Appellate Division. And thereafter a motion to amend the remittitur having been granted this remittitur is hereby amended by adding thereto the following: Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, viz.: Whether sections 50 and 51 of the Civil Rights Law of the State of New York, as applied to defendant, were invalid under the First and Fourteenth Amendments to the Constitution of the United States. The Court of Appeals held that Sections 50 and 51 of the Civil Rights Law of the State of New York, as so applied, were valid.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

[fol. 521] Therefore, it is considered that the said judgment be affirmed, with costs, etc., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, etc.

Raymond J. Cannon, Clerk of the Court of Appeals  
of the State of New York.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 522]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

At a Court of Appeals for the State of New York,  
held at Court of Appeals Hall in the City of  
Albany on the Twenty-seventh day of May A. D.  
1965.

Present, Hon. CHARLES S. DESMOND, Chief Judge, pre-  
siding.

Mo. No. 536

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JAMES J. HILL, Respondent,

vs.

TIME, INC., Appellant.

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ORDER AMENDING REMITTITUR—May 27, 1965

A motion to amend the remittitur in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion be and the same hereby is granted, the return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, *viz.*: Whether sections 50 and 51 of the Civil Rights Law of the State of New York, as applied to defendant, were invalid under the First and Fourteenth Amendments to the Constitution of the United States. The Court of Appeals held that sections 50 and 51 of the Civil Rights Law of the State of New York, as so applied, were valid.

And the Supreme Court of New York County hereby is requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

A copy

Gearon Kimball, Deputy Clerk.

[fol. 523]

IN THE SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK  
 Index No. 8139-1955

JAMES J. HILL, Plaintiff,  
 —against—  
 TIME, INC., Defendant.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE  
 UNITED STATES—Filed July 13, 1965

I. Notice is hereby given that Time, Inc., defendant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Court of Appeals of the State of New York, entered in the office of its Clerk on April 15, 1965, affirming a judgment of the Supreme Court of the State of New York, County of New York, in favor of plaintiff, entered on October 23, 1964, upon the order of modification of the Appellate Division of the Supreme Court, First Judicial Department, filed May 14, 1963.

This appeal is taken pursuant to 28 U.S.C. § 1257 (2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States and include in said



transcript the record on appeal in the Court of Appeals of the State of New York.

III. The following question is presented by this appeal:

Whether Sections 50 and 51 of the New York Civil Rights [fol. 524] Law in permitting the award of damages for invasion of privacy upon the facts of this case abridge the freedom of the press guaranteed by the First and Fourteenth Amendments to the Constitution?

July 13, 1965

Cravath, Swaine, & Moore, Attorneys for Defendant,  
1 Chase Manhattan Plaza, New York, N. Y. 10005.

To:

Clerk of the Above-Named Court,

Messrs. Nixon, Mudge, Rose, Guthrie & Alexander, Attorneys for Plaintiff, 20 Broad Street, New York, N. Y. 10005.

[File endorsement omitted]

[fol. 525]

SUPREME COURT OF THE UNITED STATES

No. 562—October Term, 1965.

TIME, INC., Appellant,

v.

JAMES J. HILL.

ORDER NOTING PROBABLE JURISDICTION—December 6, 1965

Appeal from the Court of Appeals of the State of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[fol. 526]

IN THE SUPREME COURT OF THE STATE OF  
NEW YORK

SPECIAL AND TRIAL TERM, PART X

CASE AND EXCEPTIONS

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

\* \* \* \* \*

[fol. 527] OPENING ADDRESS FOR PLAINTIFFS

Mr. Garment: Ladies and gentlemen of the jury, the law gives me the privilege, as counsel for the plaintiffs, to speak first. I want to make clear to you that what I say to you in the course of my opening statement is not evidence and any comments or statements I may make about the law are in no way controlling. That is the sole province of his Honor. Ultimately, at the end of the case, after the final arguments are made, his Honor will instruct you on the law before you deliberate and render your verdict.

The purpose of the opening statement is to give you a total view of the case. Necessarily a lawsuit comes in in bits and pieces. Witnesses testify about transactions, not necessarily in chronological order. There are interruptions. There are documents offered. There are arguments. At this point I want to give you a total view of what we claim in this case.

Yesterday you heard the lawyers talking about freedom of the press and you heard myself in particular talking about the so-called right of privacy under the law of the State of New York.

I don't know whether any of you jurors have heard of the statute governing the right of privacy in New York. You may have heard about the necessity for consent being [fol. 528] obtained in connection with photographs and reproductions of that character. But there may be a question in your mind today as to what this right of privacy

has to do with the freedom of the press, what line there is between the so-called freedom of the press and the individual's right of privacy. And I want to talk briefly about that.

First of all, where news is concerned—and by news I mean the truthful reporting of current events or events of general information and interest, or where fair comment on that news is concerned, there is no right of privacy.

The press has the right to write about anyone or anything that is newsworthy, and that includes matters ranging from affairs of state to the *Twist*. It includes gossip columns. The right is available to the *New York Times* equally as it is to any gossip magazine. The courts will not interfere with questions of taste. That's left—good taste—to the sense of self-restraint of the publication itself, the newspaper or magazine, as the case may be. There is an enormous area in which the press can operate without any restraint except its own inherent sense of what is right and proper and fair. Now, out of that enormous area the law has carved one small area, one small island for the individual, and that's called the right of privacy, and it is embodied in a statute that was enacted by the legislature here in New York, and it is a limited right of the individual as against the freedom of the press.

[fol. 529] But in our view because the right is limited, because that island or that area is so small, it's all the more precious, it's all the more important, it's all the more worth preserving.

Now, what does the law say in general terms? It says that it shall be unlawful for any person, firm or corporation to use someone else's name, portrait or likeness for purposes of trade or advertising without his or her consent in writing. And it also says that anybody who violates the law shall be liable for any injuries that result from the violation of the law; and where the violation is a knowing violation, where it is something other than an accident, the jury shall be empowered to award punitive damages in its discretion.

Now, again, what does trade or advertising purpose mean when you are talking about a newspaper? Obviously, a newspaper is in business. It is in business to sell newspapers. News is part of its business. And the Constitution says that type of business is constitutionally protected. But when a publication goes beyond reporting news and when it uses either its news columns or its advertising space and uses somebody's name or permits somebody's name and private affairs to be used for what is basically a commercial purpose rather than a news purpose, then the law is violated. I think perhaps the best way to explain those words would be to give you an example.

Suppose I were trying a personal injury case in this courthouse and one day I was driving back to my house in Brooklyn, and over the Brooklyn Bridge I had an accident and I was injured, somebody else was injured, and reporters came and photographed the accident.

Now, that's news. That could be reported everywhere. That could be on the front page of the New York Times. It could be on the front page of the Daily News. It might be ridiculous. There might be no point to what was done. But that would be news, and there is nothing I could do about it. It might be interesting to the reading public as news.

But suppose some time passes and somebody gets the idea of taking that incident as it was reported and preparing an advertisement or a feature article in collaboration with some advertiser who manufactures seat belts, and that the theme of the advertisement is, "See what happened to this lawyer who didn't practice what he preached? If he had been using 'X' seat belts, then this would never have happened"—telling the story of the accident, reproducing my picture, reproducing the news account.

Now, that would be a commercial use. That would be an advertising use. That would no longer be legitimate dissemination of news. It would go beyond reporting news.

Suppose that same account were dramatized, were fictionalized, were embellished with a lot of matter out of some writer's imagination on a newspaper or in some advertising agency and that was published. If it were fictional, if it were so embellished as to really give you a distorted impression of what actually happened, again, that [fol. 531] would not be news. That would be a commercial use. It would go beyond fair comment on the news.

Well, ladies and gentlemen, in general terms, that's what this case is about. I will try to apply that example as I have given it to you to the facts of this case which I will speak about now briefly.

I want to talk about the facts of this case chronologically. That may not necessarily be the way the evidence comes in, but for purposes of explaining to you the entire case, giving you a total picture, I think that would be the most useful way of doing it.

We start in the year 1946. A young writer, talented, a very competent craftsman, named Joseph Hayes, one of the defendants in this case, became interested in the hostage theme, the idea of ordinary people who are held captive by desperate men, criminals or escaped convicts. And in 1946 he published an article, wrote a story that was published, a fictional story that was published in the Woman's Home Companion involving the hostage theme, involving someone who performed various acts with the knowledge that his son or with the thought that his son was being held as a hostage.

Now, this is a theme that has gone through literature for many years. There have been movies about it. You may remember the movie Blind Alley a few years ago, the play and movie The Petrified Forest; and there were many others involving this idea of people being held hostage. [fol. 532] Mr. Hayes was interested in this idea and in its dramatic possibilities.

Over the years after 1946 there were a number of hostage cases in the news. In 1947 there was one case. In 1948

there was another case. There were cases in every year that followed. In California there were three escaped criminals, convicts, who took over a home and held the people hostage. In Ohio, in Michigan, in New York State there were incidents of desperate men, sometimes three men, sometimes five men, in a couple of cases brothers, who took over homes, farmhouses, held the people captive.

Mr. Hayes was a methodical writer and he kept clippings, research clippings, and as the year went along he evolved gradually the idea for a play or novel involving this theme of people held hostage.

One of the incidents that he knew about was the incident involving the Hills. That had happened in 1952. And he had a clipping about the Hill incident just as he had a clipping about all such other incidents around the country. And there were incidents after the Hill incident. There was one in Pennsylvania, a farmhouse, a family that was held hostage by escaped convicts. In some of the incidents there was violence. In some of the instances there were killings right on the scene of the crime where the people were held hostage.

In any event, in 1953 he wrote and in 1954 he published a novel call *The Desperate Hours*. It evolved out of all of these various true life incidents. It evolved out of a personal connection.

[fol. 533] Mr. Hayes lived with his family, his young children and his wife, in a suburban house overlooking the Federal Penitentiary at Danbury, Connecticut, and he will tell you—and you will see writings—when he thought about convicts escaping from that penitentiary and taking over his own house. And that was another element along with all the other factors I have spoken about.

Ultimately *The Desperate Hours* was published. *The Desperate Hours* was different from all these hostage incidents. It was a very melodramatic, a very exciting, very well put together story about a family held hostage. There were killings. There was violence. There was contempt

by the convicts for the people they were holding hostage. The father went out of the house and performed errands for the convicts knowing that his family was held hostage. The question was whether he would go to the police, whether he would do these errands, try to work the family out of its problem by himself.

There were killings right on the scene, right at the house. There were attempts to escape on the part of the family—completely different from any of these hostage incidents but involving this basic idea of how people might react dramatically if they were held in this kind of an abnormal situation, if they were gripped by fear, if they had concern about their children and their own lives and were pitted against ruthless and desperate men.

Well, that's *The Desperate Hours*. It came out in 1954. It was a very exciting, very successful book.

[fol. 534] Now we go to the Hills and their incident. In 1952 the Hills were living in a place called White Marsh Township, Pennsylvania. They were living in a converted old farmhouse, a great big place. There was the plaintiff James Hill and the plaintiff Elizabeth Hill and their five children, two teen-age daughters, an 11-year-old boy and two four-year-old twin boys.

On September 11th, for 19 hours, winding up September 12th, the family was held hostage by three men who escaped from Lewisburg Penitentiary. It was a harrowing experience. Most of the time Mrs. Hill was alone in the house with these men. But there was no violence. The men behaved under all the circumstances decently.

There was no profanity; there was no touching of any of the furnishings. There was no contempt for the people of the house. There were no melodramatic incidents. There was no going out of the house. It wasn't anything like *The Desperate Hours*. Ultimately you will see the motion picture, you will hear the story of the incident, you will be able to determine what relationship there could have been between them. You will be able to see the difference.

Now, when the convicts cleared out, left the house, there was a manhunt for ten days. Ultimately, as you will hear, they were captured. Two of them were killed and a detective was killed. There was a great deal of publicity at the time of the incident. The police came. The press came.

The Hills told the press what happened. They were very concerned about getting the story straight, making clear [fol. 535] that there had been no violence, that there had been no molesting, that there had been no incident or incidents that would affect young children, impressionable children. They turned away from any attempt to make money out of this. The Hills wouldn't permit themselves or their children to be made a spectacle out of. They wouldn't have anything to do with publicity ventures.

They moved. They moved because Mr. Hill's business required him to move. They accelerated the move, in part, by this incident. But, in any event, they moved to Greenwich, Connecticut. And in 1953 it quieted down after a while, comment, questions about this actual incident.

In 1954, the first coincidence. The book came out, *The Desperate Hours*. People who knew about the real incident asked them about it: Was there some connection? Was this their story? Did they have anything to do with it? The answer was obviously no, they didn't have anything to do with it. I'm sure that throughout the country other people, other families that had been held hostage were similarly questioned and gave similar answers. Well, that died down after a period of time.

Their actual name wasn't used. The name Hilliard was used. That's going to be a feature in this case.

I want to stop just for a brief moment. The defendants will talk a lot about similarities, but I think when the evidence comes in, you will see that one of the most convincing [fol. 536] arguments for the fact that the author did not intend to have this family in mind when he wrote *The Desperate Hours* was the use of the name Hilliard because no writer would come within a hundred miles of a real life



name when he is writing about a real life theme. But that is for the trial. We will wait and see what the evidence is on the subject.

In any event, the questioning and comment died down. Then the book was converted into a play, and the play was opening, and there was just a little bit of talk about it. There was no great problem there. But even as the Hills were telling people that they had no relationship to *The Desperate Hours*, that this was not their story, that there had not been any violence, that they had not collaborated with the author, a group of very talented journalists, publicity people, theatrical people, were at work in Philadelphia, undoing everything that this family was trying to do.

What was happening? This is the second coincidence. Luck—that is an important feature in this case—the Hills' bad luck. The play was having its out-of-town trial in Philadelphia. The Hills lived near Philadelphia. Life saw a golden opportunity to tie the two together, to present an interesting, newsy kind of article.

Well, you will hear the details of this in the proof. But what happened was this: A senior editor of *Life Magazine* with his staff and the various people connected with *The Desperate Hours*, including the author, got together. *Life Magazine* went to the house that the Hills had lived in. They paid the people in the house \$50 to permit them to [fol. 537] come in and take photographs of scenes from the play in the house where the family had lived. And then they published an article.

Now, keep in mind the background. They published an article saying to 25 million readers and to everybody that knew the Hills, "True crime inspires tense play." A picture of the house, a picture of a cropped headline from the local newspapers, reference to this incident and this incident alone as the inspiration for *The Desperate Hours*.

Now, we could stop right with the headline, and I say to you that that article was completely false if there wasn't another word. There was no reference to this being the

partial inspiration for it. There was no reference to any other incident or incidents. There was no reference to the thousand and one elements that went into *The Desperate Hours*.

I say the article was false right at the start, right at the headline. That is what involved the Hills in it, this premise, "True crime," their incident inspired *The Desperate Hours*.

The article went on. I think we will be able to show to you that Life's idea was they might as well be hung for a sheep as well as a lamb. They were saying this was inspired by the Hill family; they might as well say it was the story of the Hill family; they might as well really have a news article, really give Life impact, drama, vividness.

So the article goes on and says that Americans read about the incident of the Hill family all over the country. Later they read about it in the book inspired by the family's [fol. 538] experience. Now they can see the story reenacted in the play, and next year they will see it in the movie—just as casual as all that.

The Hills were now *The Desperate Hours* family and they were *The Desperate Hours* family from that point on and to this day. They were associated with the violence; they were associated with everything that went on in *The Desperate Hours* because there isn't one legitimate, clear-cut word or phrase of qualification in that article as to the relationship between this family and *The Desperate Hours*. But, again, that is a matter for the evidence. This is our claim.

Now, why did Life do this? In short, our claim is that they did it for a commercial reason. They did it in order to have a lively article. They did it to make the magazine enjoyable, entertaining, as Mr. Medina said yesterday. That's what they do and look for in every article. And they do it with the greatest skill because they have the best, the finest, the most talented people that money can hire to do this work. And they did it not necessarily to sell more

magazines, but because it fitted in with their policy, to look for an angle, and this was an angle they found.

Now, why did Joseph Hayes do it? That's obvious. He had an important play, he had an important book. It's kind of understandable. This was the absolute pinnacle of publicity that anyone could obtain, coverage in *Life Magazine*, a magazine that has the power to make or break individuals, individuals in the theatrical field, a magazine that comments influentially on matters of state, a magazine that is read everywhere, that is believed everywhere.

As a matter of fact, the Hills believed this article when it said that *The Desperate Hours* was inspired by their incident. They took it at its face value, and in their first complaint that you will hear about they said that the author—they assumed that the author must have told *Life Magazine* that *The Desperate Hours* was inspired by the Hill incident.

How else could *Life* publish this? How else could *Life* say that this was inspired by their incident unless the man who wrote the book told them? And since it was plain that this had been done in collaboration, the actors went out to the house, et cetera; the author must have told them.

Well, after years of digging—and, in a publication case, believe me, you have to dig, because you don't find your witnesses standing around—the fact that was developed was that he never told them that. You wait for the evidence. You will hear how this came about. They knew that it wasn't inspired by this specific incident.

Now, was Mr. Hayes just an innocent bystander? Did he just happen to get caught up in the machinery of publicity? Does he have a legal liability? Does he have a moral liability? I will let you decide that at the end of the case. You will hear all of the evidence. Certainly, he was a secondary, minor figure. His motivation is understandable. His wrong is not necessarily excusable for that reason.

[fol. 540] Now, what do we say about all this in brief? We say that there is no question but that this article was

false from beginning to end in so far as its use of the Hills' name was concerned; that they were dragged back into the public eye as part of a phony news article, that they would not have been in this article but for this device, and that it was a use for commercial purposes and for advertising purposes.

Now, what happened to the Hills? What is our claim about that? It's hard to put into words what can happen to people when they get into the meat grinder of national publicity. The people that write for magazines and newspapers—maybe you and myself in a sense tend to think of these things as fixed pictures. You look at a magazine once and that's it—when it doesn't involve you. You look at an article in a newspaper and that's it. **And I think that's the way people who publish newspapers and magazines frequently think. Out of sight, out of mind.**

But these people, the Hill people, from the time the Life article was published right through the run of the book, the run of the play, the run of the movie were The Desperate Hours family. They were cheapened by it in their community. They were subjected to comment and questioning. Fact became fiction and fiction became fact. What happened to the girls? Had you told us the right story before? How could Life say something like this unless it were true? You mean to say that you didn't have anything to do with this article? You didn't sell the story to Hayes? You didn't collaborate?

[fol. 541] And, worst of all to the mother, who spent the major part of the time in real life with the convicts, in the presence of fear—and you will have to think about that personally; try to put yourself in her place, with five kids in the house—in her case, time and time again, there was forcibly brought back to her mind the incident of 1952 and what might have been.

And in *The Desperate Hours* what might have been became virtually a fact. All of the violence that was below the surface in real life became a fact in *The Desperate Hours*.

Now, I told you yesterday that Mrs. Hill wasn't a well woman when the Life article came out, and you will hear the evidence about that. She had an active, busy life. She had five children. She had been through this experience. She had her problems. She was in her middle forties. But she was functioning. She was not disabled.

The Life article, we say, and the aftermath of that Life article crippled this woman. It struck a blow at the heart of this family. Wait to see what publicity can do to a family.

What are we asking for? We are asking for compensation. I don't know how you are ultimately going to be able measure that—compensation for the actual anguish, the suffering, the cheapening of these people, the exposure to this kind of comment, talk, having their efforts of two and a half or three years put to naught, their efforts to put this behind them, their efforts to have their children forget about it, their efforts to try to forget it, their efforts to [fol.542] have people stop insinuating something went wrong there.

What their feelings were you will have to draw from your own experience, your own feelings; you will have to put yourselves in their places. You will have to see how you would have felt.

In Mrs. Hill's case there will be medical evidence of how it affected her, and I ask you to wait until all the evidence is in to evaluate the role that this identification in this Life article had in her illness.

We are also asking for punitive damages, exemplary damages, as it is described in the statute, the idea of the statute being that the jury should have the power under given circumstances to make an example, to deter, to punish where the facts require it. Well, you will hear the evidence on that.

This was not haphazard, this was not accidental. This was deliberate. The Life people knew what they were doing. We do not and will not claim that it was done out of

anger or spite or malice towards the Hills. If there were any such human emotion involved, that would be a circumstance that you could take into consideration. So far as Life Magazine was concerned, so far as all of the people connected with this publicity stunt were concerned, the Hill family did not exist.

We will be asking for punitive damages for their callous, reckless, total indifference to the rights and feelings of a group of human beings.

\* \* \* \* \*

[fol. 543]

OPENING ADDRESS FOR DEFENDENT TIME, INC.

Mr. Medina: With your Honor's permission, ladies and gentlemen.

One of the most difficult things to contend with both here in court and outside, I guess, is the big lie technique.

If a fellow says often enough and earnestly enough they lied, had bad faith, didn't do things correctly, after a while you are going to say, "Gee, there must be something to it."

And that is precisely what you are faced with here, because the direct charge is made that we published a false article, that we knew it was false, and we were trying to sell tickets to the play rather than to report upon a newsworthy event in the entertainment field. And that is the crux of the case.

It is a serious case to us because it is a direct attack upon our integrity. It is also a serious case to Tom Prideaux, because if he did what these plaintiffs say he did he is [fol. 544] guilty of a criminal offense and he certainly shouldn't be in our employ any more.

So that from our point of view we assume responsibility for this article, and we are indeed earnest when we say we think we are right.

Now, what did we do? The novel *The Desperate Hours* was a best seller. It had been made into a movie which was being withheld while a Broadway play was prepared.

Certainly, if there ever was a newsworthy event in the entertainment field, this was it, to report on the opening of a Broadway play, and moreover a Broadway play which was based upon a best seller and which had been already made into a motion picture.

And that is all we did. We had an article with a great big headline on it, "True Crime Inspires Tense Play."

And the first issue that you are going to have to pass upon is as to whether the crime did inspire the play, because these plaintiffs here have to show three things if they are going to recover—and I don't think any of those three things will be shown.

First, that the play wasn't inspired by the crime; secondly, and of equal importance, that we knew it wasn't inspired by the crime; thirdly, and of equal importance, that we, knowing that this was false, went out wantonly, for the purpose of advertising the play and not to report upon a newsworthy event, and therefore lost the normal privilege of reporting on news.

[fol. 545] So that those three elements—I want you to keep your eye on the ball here especially when you have this big lie technique thrown at you: Was it inspired? Did we know whether or not it was inspired? Were we acting in good faith? And what was our motive in publishing the story?

I may also add that even if it wasn't inspired, if there was a connection between the two and we in good faith believed it, we are entitled to publish this article.

Now let me give you a little background. There are just three dates that you have to remember in this case—four, I guess. One is September, 1952, when the convicts came into the Hill home. Next is the spring of 1953, when Mr. Hayes wrote his novel, a few months after the September 1952 incident.

Then a year rolls around to the summer of 1954, and Mr. Hayes wrote the play. And finally, in February of 1955, the play opens and we wrote the article about it.

So it is in September 1952, the incident; the spring of 1953, the book was written; the summer of 1954, the play was written; and February 1955, we did the review of it.

Now, what happened back in September, 1952? Mr. Hill and his wife, in their mid-forties, with a teen-age daughter, a son aged 10, and two young children lived in a suburban home outside Philadelphia. It was in mid-September.

Mr. Hill and the daughter left for work, and at 8:30 in the morning three convicts appeared—not one, not two, not four, not five—three. Two of the convicts were brothers. They came into house, and as Mr. Hill and the daughter returned later that day, they were captured. The convicts stayed in the home 19 hours. The family was unharmed and the convicts left around 3 o'clock in the morning.

Shortly thereafter, Mr. Hill went out on his front porch, where many newsmen were gathered with a microphone, and issued a statement as to what had occurred in that house. This is Mr. Hill himself, not our doing.

That statement was in substance reported in papers throughout the country, including front-page stories in the New York Times and the New York Herald-Tribune, which we would have for you.

Mr. Hayes read the reports in the New York papers and took the clipping—and mind you, this is September, 1952—and he goes off, and in the spring of 1953 he produces a novel, and the plot is laid in the fall in a suburban house with a family in their mid-forties, with a 17-year-old daughter, with a 10-year-old son. And the name of the family is not Hill, it is Hilliard.

And at 8:30 in the morning, the precise hour that the convicts had arrived in the original incident—and which you will see in the newspaper account which came from Mr. Hill himself—at 8:30 in the morning three—not one, not two, not four—three convicts arrived, two of them brothers, and they arrived after the father and the daughter had left the house, just as in the real life incident; and they



stayed in the home and they captured the father and the [fol. 547] daughter as they came back in the afternoon, just as in the real life incident; and the family was unharmed and the convicts left in the middle of the night.

Every single item in *The Desperate Hours*, except for the actual incidents in the house, came from the *New York Times*, which came from Mr. Hill's own lips.

And I say to you that when you put those together it is an inescapable conclusion that the true crime did inspire that play, and there is no other conclusion possible.

Certain it is that was the conclusion that we reached and which we had been told and which was affirmed by Mr. Hayes, because he said that the play had been based upon an incident.

And when we went down and took our photographs, Mr. Hayes was present. He never said we were wrong in going into this Philadelphia house; that it had nothing to do with his play.

So we were acting in perfectly good faith in coming out with an article on this newsworthy event in the present, the play, and the newsworthy event in the past, the crime, which was a matter of interest to the public, and that is all we did was to put those together, something that Hill's friends and family had for some months put together.

When the novel came out, all their friends assumed it was their story. Indeed, in three sworn complaints prior to the present complaint, Mr. and Mrs. Hill swore that the play was based on their story.

[fol. 548] Now for their own best reasons they want to come in and say the play wasn't based on the story, ergo, you, *Life*, lied.

And I say to you that we didn't lie, that we acted in good faith, that we reported a newsworthy event, and that we and Mr. Prideaux are entitled to be cleared of these lies against us.

Thank you.

\* \* \* \* \*

[fol. 549]

April 11, 1962

\* \* \* \* \*

KATHLEEN ST. JOHN, 6 Keofferan Road, Old Greenwich, Connecticut, called as a witness on behalf of the plaintiffs, [fol. 550] being first duly sworn, testified as follows:

Direct examination.

By Mr. Zoeller:

Q. Mrs. St. John, I will ask you to speak out very loudly and actually call out to me so all the members of the jury can hear all of your answers. Do you know the plaintiffs in this action, Mr. and Mrs. Hill?

A. Yes, I do.

Q. You are Mrs. Hill's next door neighbor, are you not?

A. Yes.

Q. When did you first meet the plaintiffs?

A. I met Mrs. Hill about two weeks after she moved to Old Greenwich, to a house right next door to mine.

Q. Did you meet Mr. Hill shortly thereafter?

A. Yes, perhaps a week or so.

Q. During that time or following the time that you first met Mrs. Hill, did you see her from time to time during the following year?

A. Yes, I did. We became acquainted quite rapidly and we visited back and forth often. We became quite good friends.

Q. When you say often, would you give the jury an approximation of how frequently you would see Mrs. Hill?

A. Well, almost daily.

Q. And did you and she also belong jointly to any social or community organizations?

A. Well, not immediately, but about two years later, when her twins and my boy started in first grade, we were able to have definite times together; so we had a sewing group that met every Tuesday in the afternoon.

[fol. 551] Q. Could you indicate to me approximately the year that Mrs. Hill first became a member of this sewing group?

A. 1954.

Q. Approximately when in 1954 would this be, Mrs. St. John?

A. Well, in the fall, after school opened, after Labor Day.

Q. And during the remainder of the year 1954, did Mrs. Hill attend regularly the meetings of this sewing group?

A. Yes, indeed.

Q. Were there certain social functions that arose out of the sewing group?

A. Yes. It became the focal point for most of our activities, this group of twelve women, and then their husbands.

Q. So that not only the women were friends but the husbands were friends and you would meet from time to time; is that right?

A. Yes.

Q. Now, would you describe Mrs. Hill as you first knew her, when she first moved to Old Greenwich, Connecticut in late 1952?

Mr. Medina: Your Honor, I assume I have a continuing objection to this entire line of testimony on the ground that no foundation has been laid for it by proof of use of the name or photograph of Mrs. Hill.

The Court: I might say to you, Counsel, that the Court has come to the decision that Mrs. Hill is a proper plaintiff in this case. I will elaborate upon my reasons in the absence of this jury. I am going to permit it, if that is the basis of your objection.

Mr. Medina: Then I assume I may have a continuing objection throughout the remainder of the trial.

The Court: Yes.

[fol. 552] By Mr. Zoeller:

Q. I asked you if you could describe to the jury Mrs. Elizabeth Hill as you first knew her in late 1952.

A. Well, I was immediately attracted to Mrs. Hill because she was—

The Court: Mrs. St. John, would you mind sitting back, please, and keep your voice up. I am having some difficulty in hearing you.

A. (Continuing) She was a most attractive person and you really warmed to her immediately because she was so gay and vivacious and full of life. She had a great zest for everything, and I had to admire her, too, for the fact that she ran this large home and a large family with such efficiency and with such devotion. She was a most delightful neighbor, wonderful.

Q. Mrs. St. John, through the year 1953 did Mrs. Hill remain as you have just described her now?

A. Yes.

Q. Did she remain the same during the year 1954?

A. Yes.

Q. Did there come a time, Mrs. St. John, when you first noticed a change in Mrs. Hill's condition?

A. In the summer of 1955 she became other than she was when I met her.

Q. Now, let me just ask you, prior to the summer of 1955, do you recall an incident that occurred on or about February 25, 1955 involving Mrs. Hill and yourself?

A. Yes. On the 22nd of February?

[fol. 553] Q. Well, whatever the date. Will you describe what occurred.

A. I was together with Mrs. Kirk and Mrs. Hill for an afternoon. We took a walk and came back to Mrs. Kirk's home for tea. While we were there we examined a copy of Life Magazine that had appeared in the mail that day.

Mr. Medina: May the witness be cautioned not to give us any conversations or statements by Mrs. Hill?

The Court: Just tell us what happened, but don't tell us what anybody said.

The Witness: Yes.

Q. Mrs. St. John, I show you a copy of Plaintiffs' Exhibit 10 in evidence and I refer specifically to page 75 and the two pages following that, and I ask you if that is the copy of Life Magazine that you have reference to.

A. Yes, this is the copy.

Q. Did you and Mrs. Hill and Mrs. Kirk read those three pages together?

A. Yes, we did.

Q. Now, would you describe Mrs. Hill's reaction, bearing in mind the Judge's admonition about not going into anything she said, but would describe Mrs. Hill's reaction when she read that article?

A. She was very much upset by seeing the article. She was very much disturbed by it.

Q. Now, you have stated that there came a time in the summer of 1955 when you noticed a change in Mrs. Hill's condition. Would you describe what that was that you noticed?

[fol. 554] A. Mrs. Hill began to show signs of periods of depression and she changed from the vital, vivacious person that I had known over the past two or three years to someone who at times became very much withdrawn and very lacking in self-confidence and unable to enjoy her family or her friends to the degree that she had been doing so.

Q. Was there any change at or about that time in Mrs. Hill's social activities and her activities with the sewing group that you have described?

A. Well, as I say, she had periods of being fairly well and able to go about. In that case she would come to our group meetings and parties. At other times when she had these depressed periods she would prefer to be alone and would not be able to come.

Q. Could you describe, Mrs. St. John, Mrs. Hill's condition in the period that followed the summer of 1955?

A. The situation became more grave for her the following summer.

The Court: More what?

The Witness: Grave.

The Court: Grave, G-r-a-v-e?

The Witness: Yes, more serious.

A. (Continuing) Her depressed periods were even lower and she was under the care of a psychiatrist then.

Q. I would like you to describe to the jury, Mrs. St. John, Mrs. Hill's condition during the summer of 1956, when you say that she became lower.

A. Well, she changed completely in these depressed periods which came in waves, ups and downs. Her eyes had this lost and I would say discouraged expression. Her face hadn't its usual sparkling expression of gaiety. Her hair was rather unmanageable, perhaps. She didn't have the same joy and enjoyment in her pretty clothes and she was an entirely different person. She had to force herself to see her friends and avoided it when she could.

Q. Were there occasions, Mrs. St. John, when, in your presence, Mrs. Hill was crying and tearful during this period?

A. No, I never saw her in tears.

Q. Was there any change at that time or any further change in the frequency of her social engagements in which you participated?

A. Yes. They were much fewer. As I say, she would take long walks alone on the beach and retreat from certain things that the rest of us would be doing. She couldn't keep up with it.

Q. Can you describe just in brief, in general terms, what Mrs. Hill's condition has been following that summer of 1956?

A. She had the same periods of depression followed by perhaps a slight rise, the same periods of ups and down, and she is not well; she is not a well woman.

Q. Has that continued to date?

A. Yes.

Q. At any time following the summer of 1955, when you first noticed the change in Mrs. Hill's condition, had she resumed social activities to the same degree that she had engaged in them prior to that time?

A. Not to the full extent, no.

[fol. 556] Q. At any time, Mrs. St. John, subsequent to that summer of 1955, when you first met Mrs. Hill—

Mr. Zoeller: Withdrawn.

Q. At any time subsequent to the summer of 1955, when you first noticed a change in Mrs. Hill, had she ever been the same as when you first knew her in 1952, when she moved to Old Greenwich, Connecticut?

A. No, sir.

Mr. Zoeller: I have no further questions.

Cross examination.

By Mr. Malino:

Q. You say that Mrs. Hill made a change, that you noticed a change in her in the summer of 1955.

A. Yes, sir.

Q. Did that continue to the end of 1955?

A. Well, it was a question of ups and downs. The summer period started a down slope for her.

Q. What do you mean by periods? I mean, what was the length of these periods?

A. Well, perhaps a month or two, three months perhaps she would be on the upswing, which would go very high, perhaps, and then when she went down, she would be in despair.

Q. Do you remember at all—I mean, are you clear as to the time element—this is now seven years ago—in 1955 are you clear as to the time element of these ups and downs?

A. Of those waves, no, sir.

Q. Would you say that that continued through January and February of 1956?

A. Yes, I think it continued through.

[fol. 557] Q. The ups and downs?

A. Yes.

Q. It was very noticeable, wasn't it?

A. Yes.

Q. And anybody could notice it who knew her?

A. Yes, sir.

Q. Do you know whether a few years ago she joined a golf club and was playing golf?

A. No, Betty Hill never played golf. Her husband joined a golf club, but she does not play golf.

Q. Do you know if she tried to play?

A. I don't think she did. She is not athletic.

Q. Do you know whether she joined a swimming club a few years ago?

A. Yes, they did.

Q. And that she swims?

A. She does swim, yes, sir.

Q. You said she resumed some of her activities but not to the same extent. Did she resume her activities in the PTA?

A. She occasionally accepted a job for the PTA, yes.

Q. And also in this PEO, which is the sewing circle? Is that right?

A. No, that's another organization.

Q. Is that another organization?

A. Yes. She occasionally attended those meetings, too.

Q. Are you a member of PEO?

A. No, sir.

Q. I didn't understand. I am sorry.

A. She made a brave and terrific effort to carry on even though she was having treatments and tried to and was



able to run her family under these circumstances, made an effort to go to these things. She could go to them and still not be well. And that's the way she was.

Q. Did she play bridge with you?

A. Occasionally.

[fol. 558] Q. That was before 1955, before the summer of 1955?

A. Yes, we had occasional games.

Q. And occasionally in more recent years?

A. Yes, sir.

Q. Have you been intimate with Mrs. Hill?

A. I consider her one of my closest friends.

Q. What do you call her when you speak to her?

A. Betty.

Q. Is that the only name that you call her by?

A. Yes.

Q. When you introduce her to somebody, you introduce her sometimes as Betty?

A. Betty Hill, yes.

Q. And sometimes as Mrs. Hill?

A. Well, it would depend on the person I was introducing. To a child I would call her Mrs. Hill. To a contemporary I would call her Betty.

Q. Do you ever call her anything besides Betty or Mrs. Hill?

A. No.

Q. Have you ever heard any body call her anything other than Mrs. Hill or Betty?

A. Her mother used to call her Elizabeth.

Q. Anybody else call her anything else in your presence?

A. I don't think I have ever heard her called anything else.

Q. Did you ever hear her call herself anything other than Betty or Elizabeth or Mrs. Hill?

A. No.

Q. Did you ever hear of the name Elizabeth Selfridge Hill?

A. Well, that's her maiden name, yes.

- Q. That's not her maiden name, is it?  
 A. No. Elizabeth Selfridge was her maiden name.  
 [fol. 559] Q. You knew that, didn't you?  
 A. Yes.  
 Q. How long have you known that?  
 A. Almost as long as I have known Betty Hill.  
 Mr. Malino: That's all.

Cross examination.

By Mr. Medina:

- Q. Mrs. St. John, you read the novel The Desperate Hours, didn't you?  
 A. Yes, I did.  
 Q. And that was when it first came out?  
 A. Shortly after.  
 Q. After you had read it you went to Mrs. Hill, didn't you?  
 A. I don't remember making a particular visit to her because I had read the book. I probably saw her as I always saw her almost daily.  
 Q. Didn't you say to her: "This is your story" ?  
 A. No, sir.  
 Q. Do you know a Miss Elsie MacKenzie?  
 A. I know a Dorothy MacKenzie.  
 Q. That's her sister-in-law, I believe.  
 A. Oh, Elsie, yes. She lives in Philadelphia. I do.  
 Q. And do you remember the fall of 1954, when Miss MacKenzie was here?  
 A. Yes, sir.  
 Q. And her sister-in-law, Mrs. Dorothy MacKenzie, was present?  
 A. Well, I met her at their home, yes.  
 Q. And a Mrs. Kirk was present?  
 A. Well, possibly. It was a party for Elsie, I assume.  
 Q. And a Mrs. Lennhardt was present?  
 A. Yes.

Q. And you were present?

A. Yes.

Q. And didn't Miss MacKenzie state to Mrs. Hill: "Your story has been written up in a book. Have you read it? [fol. 559a] Think of it, your incident has been written up in a book!" ?

A. I have no recollection of that.

Q. You don't recall that happening at all?

A. No, sir.

Q. Do you recall any mention of that book in 1954 in front of Mrs. Hill?

A. I don't recall any specific mention of it, no.

Mr. Medina: That's all.

|            |   |   |   |   |                |   |
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| [fol. 560] |   |   |   |   | April 13, 1962 |   |
| *          | * | * | * | * | *              | * |

STANLEY R. DEAN, M.D., 247 Ocean Drive West, Stamford, Connecticut, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Garment:

Q. Dr. Dean, where are you licensed to practice medicine?

A. In Connecticut, New York, Michigan and Massachusetts.

[fol. 561] Q. Would you briefly summarize your medical training.

A. I graduated from the University of Michigan Medical School in 1934—

Q. Please try to keep your voice up.

A. —and then served a year of general internship at the Hurley Hospital in Flint, Michigan. Thereafter I went into psychiatric training. I was at the Taunton State Hospital as resident psychiatrist from 1935 to 1937, and this was combined with a research fellowship at the Boston

Psychopathic Hospital. Thereafter I continued my training at the Fairfield State Hospital in Newtown, Connecticut until 1940 and went into private practice.

Q. Would you tell us what your hospital affiliations have been up to the present time?

A. I am staff psychiatrist at the Stamford Hospital at St. Joseph's Hospital in Stamford, Connecticut.

Q. Were you at one time connected with the psychiatric clinic at Stamford Hospital?

A. Yes, sir. I was chief of the psychiatric clinic from 1940 until 1943, when I joined the Medical Corps of the Army.

Q. Dr. Dean, are you a Diplomate of the American Board of Psychiatry and Neurology?

A. Yes, sir.

Q. Would you describe what that means.

A. A Diplomate means that a doctor has met certain standards set up by a national board of medical specialists. Specifically it means that he has passed a series of examinations and has undergone training, practice and experience such as to make him acceptable to other members [fol. 562] of the medical profession, hospital boards and the public at large as a qualified and recognized specialist.

Q. Dr. Dean, have you received any specific professional honors or awards?

A. Yes, sir.

Q. Would you tell us what they were?

A. Well, I am a member of AOA, the National Medical Honorary Society. I have received an award from the New England Psychiatric Association for research in psychiatry.

Q. Dr. Dean, have you written articles in connection with your medical specialty which have been published in medical journals?

A. Yes, sir.

Q. Approximately how many?

A. Approximately 30.

Q. Would you indicate a few of the journals in which these articles appeared?

A. Various medical journals in this country and one in England. In this country the Journal of the American Medical Association, Archives of Neurology and Psychiatry, Journal of Nervous and Mental Disease, Journal of Laboratory and Clinical Medicine, and several others.

Q. Dr. Dean, is there an award that is granted annually that bears your name?

A. Yes, sir.

Q. By what institution is that award granted?

A. It's granted by the National Behavioral Science Foundation.

Q. And is that known as the Stanley R. Dean award?

A. Yes, sir.

Q. Dr. Dean, did there come a time in 1956 when Mrs. Elizabeth Hill came under your psychiatric care?

A. Yes, sir.

[fol. 563] Q. Would you tell us what that date was?

A. August 16, 1956.

Q. At that time did Mrs. Hill come to your office?

A. She did.

Q. Was she accompanied by anyone?

A. Yes, she was, by her husband.

Q. Did you conduct a separate examination of Mrs. Hill?

A. Yes, sir.

Q. Did you conduct a neurological examination of Mrs. Hill?

A. Yes, sir.

Q. Was that to determine whether there was any injury or impairment to her nervous system?

A. Yes, sir.

Q. Did you also conduct a psychiatric examination?

A. Yes, sir.

Q. Did you obtain a history from Mrs. Hill?

A. Yes, sir.

Q. Would you very briefly summarize the history that you received from Mrs. Hill?

A. Mrs. Hill told me about her health prior to the convict incident, which was good. I obtained information as to a

partial hysterectomy in 1950. She described the convict incident and her feelings of fright while it took place. She had no significant difficulties after that incident. In 1954 she experienced some anxiety and depression and was treated by a local general practitioner with hormones, tranquilizers, vitamins, and so forth. But she developed no actual disability during that time.

Q. Keep your voice up, please, Doctor.

A. She further described the article in Life Magazine which connected The Desperate Hours with her family and [fol. 564] her reaction to it, and she described the worsening of her symptoms of depression and anxiety starting with the spring or summer of 1955 and becoming progressively worse up to the time she was referred to me by a physician in Old Greenwich, Dr. Reed.

Q. Dr. Dean, is that summary which you just gave to the jury taken from notes which you made at the time of your consultation or consultations with Mrs. Hill?

Mr. Malino: Which is it, consultation or consultations? I would like to know when those notes were made.

Q. At the time of your consultation with Mrs. Hill.

A. Then and on subsequent consultations.

Q. And do you have all of your medical notes with you here in court today?

A. I have.

Q. Would you describe briefly, Dr. Dean, Mrs. Hill's appearance and complaints on the occasion of her first visit to you on August 16, 1956?

A. Yes. Mrs. Hill presented a picture of extreme depression and gloom, melancholia. She appeared haggard. Her facial expression was one of intense sadness. She cried almost continuously. She spoke in a low, barely audible voice. She expressed feelings of abject hopelessness, feelings of uselessness. She felt that she had nothing to live for. She kept repeating over and over again, "I'm licked." She expressed strong suicidal impulses and extreme agitation.

[fol. 565] Q. Did you make a provisional diagnosis at that time?

A. Yes, sir.

Q. And was that diagnosis confirmed by subsequent observation and treatment of Mrs. Hill?

A. It was.

Q. What was that diagnosis?

A. The diagnosis was severe reactive depression of psychotic proportions.

Q. Would you explain what you mean by the term "reactive depression"?

A. Yes. Reactive depression means that the breakdown has occurred as the result of a reaction of the nervous system to a severe shock caused by some external specific situation.

Q. Would you explain what you mean by the phrase "psychotic proportions"?

A. Yes. By psychotic proportions I meant to indicate that her condition was so severe as to render her disabled, so severe that she was no longer able to control her abnormal feelings and impulses.

Q. Did you initiate some form of psychiatric treatment promptly after that first consultation?

A. I did.

Q. And what was that treatment?

A. I felt we were dealing with a psychiatric emergency, that no time was to be lost, and I advised and instituted electric shock treatment.

Q. Would you describe briefly the nature and function of electric shock treatment?

A. I will try. In electric shock treatment we apply electrodes, metal electrodes, to the skull, generally to the temples of the skull, and then by means of a specialized [fol. 566] apparatus, a charge of electricity is sent through the brain. The immediate effect of it is to produce instant unconsciousness, followed rapidly by a generalized seizure very closely resembling an epileptic fit.

Q. And what is the function of electric shock therapy?

A. The function of electric shock therapy is to try to obtain as rapid relief of symptoms as possible. Electric shock therapy, among other things, among other effects, produces confusion and loss of memory. It helps the patient to forget or to blunt some of the distressing memories and worries that have plagued her mind.

Q. How many shock treatments did Mrs. Hill have in the initial series?

A. In the initial series she had six shock treatments.

Q. Over what period of time were those treatments administered?

A. Somewhat less than two weeks.

Q. What was her reaction to those treatments?

A. She improved to the extent where I felt we could then institute other types of treatment.

Q. And did you institute such other types of treatment?

A. Yes, sir.

Q. Briefly what were those other types of treatment?

A. Psychotherapy supplemented by various medications designed to help her state of mind.

Q. Would you describe, Doctor, the course of Mrs. Hill in treatment subsequent to August 1956?

A. She was quite resistant to treatment in general. She would have periods of improvement followed by periods [fol. 567] of relapse of moderate or severe degree.

It became apparent to me as time went on that I was dealing with a chronic, recurrent, persistent illness, and it became necessary eventually to institute further courses of shock treatments.

Q. When were they administered?

A. She received additional electric shock treatments in November of 1960. I gave her three shock treatments at that time and then again in January of this year. It was necessary to start in January—began on the 24th, and we are still continuing at the present time.

Q. How many shock treatments has Mrs. Hill received in the present series?

A. To date she has received 15 shock treatments.



Q. Doctor, I am now going to put to you what the law describes as a hypothetical question. I am going to ask you to assume various facts about which there has been testimony. It is a requisite of the law that I propound this question to you. I want you to follow it carefully and then at the conclusion of this hypothetical question I will put to you some further questions.

Now, Doctor, I ask you to assume the following facts:

On September 11 to 12, 1952, Mrs. Hill, who was then 43 years old, and her family were held captive in their home in Whitemarsh, Pennsylvania by three escaped convicts for a period of 19 hours. The convicts arrived at the house in the morning while Mrs. Hill was alone with her [fol. 568] twin boys, then aged 4, and another son, then aged 11. The convicts were armed. In the late afternoon Mrs. Hill's two daughters, then aged 17 and 15, returned home. Mr. Hill returned home about two hours later. The convicts finally left the home about 3 A. M. on September 12, and during the entire period when the convicts were in the house there were no assaults upon, or molestation of, any members of the Hill family or any improper language or destructive acts on the part of the convicts. At the time the convicts were in her home Mrs. Hill was distressed and frightened but did not cry and remained calm.

After the convicts left the home, and following out instructions from the convicts, the Hill family waited 5 hours then notified the police, and they were then questioned in detail by local and state police and the F. B. I. and later by the Press. Mr. and Mrs. Hill made it clear that there had been no violence toward any member of the family and that the convicts had behaved decently under the circumstances.

The incident was widely publicized, particularly by the newspapers in the Whitemarsh-Philadelphia area. On September 22, 1952, the three convicts who had held the Hill family captive, were cornered by the New York City police in a Manhattan apartment, and two of them were shot and the third captured in a gun duel in which one

policeman was killed and another seriously wounded. A news account of the killing included a picture of the bullet riddled bodies of two of the convicts which came to Mrs. Hill's attention.

[fol. 569] Mrs. Hill and her husband cooperated in normal news coverage just after the incident but rejected all offers to publicize their experience in any manner that went beyond normal news coverage.

Mrs. Hill suffered no apparent ill effects from the incident. During the remainder of 1952 and throughout 1953 Mrs. Hill's health was very good and there were no significant medical complaints, except for a period of upset and nervousness—lasting for a few days—near the end of September 1952, for which the family doctor prescribed sedation.

In November 1952, Mrs. Hill and her family moved to Old Greenwich, Connecticut. Shortly after the move, comment and publicity about the Whitemarsh incident ceased. At the time of her arrival in Old Greenwich, Connecticut, Mrs. Hill was described as an attractive and vivacious woman, who was very outgoing and interested in civic and church activities, in addition to managing her home. Mrs. Hill also participated in normal social activity. She was able to manage her family and home efficiently, as she had done prior to September 1952.

In early 1954, a book entitled *The Desperate Hours* was published. The book was a fictional work about a family living in Indianapolis who are held hostage by three escaped convicts and are involved in numerous violent and melodramatic events including numerous acts of brutality [fol. 570] toward members of the family. Mrs. Hill did not read the book but after its publication comment and speculation by friends and acquaintances as to whether *The Desperate Hours* was the story of or connected with the Hill incident was revived to some extent.

In the summer of 1954 Mrs. Hill began to suffer nervous spells along with periods of fatigue and depression. At this time she consulted a local general practitioner who

prescribed hormones, sedatives and vitamins. She visited the general practitioner from time to time during the remainder of 1954 and during 1955. Until the summer of 1955, however, Mrs. Hill was able to perform her normal household duties. Her next door neighbor—who saw Mrs. Hill almost daily—noticed no change in Mrs. Hill's appearance or general makeup and personality. At about the beginning of 1955 Mrs. Hill learned that *The Desperate Hours* was being prepared as a play and was scheduled to open sometime early in 1955.

On February 28, 1955, *Life Magazine* published a three-page article with photographs and comment specifically connecting the incident in which the Hill Family was involved in 1952 with the novel, play and motion picture *The Desperate Hours*. The article contained a photograph of the former Hill home at Whitemarsh, Pennsylvania, along with photographs of the cast of *The Desperate Hours* reenacting scenes from the play at the Hill home. It also contained a headline from the September 12, 1952 edition [fol. 571] of the *Philadelphia Daily News* announcing the Hill incident. The caption for the article was "TRUE CRIME INSPIRES TENSE PLAY" and the subheading read "The Ordeal of a Family Trapped by Convicts Gives Broadway a New Thriller," *The Desperate Hours*. The text of the article began as follows:

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

The article came to the attention of Mrs. Hill on or about February 25, 1955. At the time she was at home in the company of two other ladies. When Mrs. Hill saw the article she was visibly upset.

Following the appearance of the Life article Mrs. Hill was subject to extensive questioning and speculation on the part of friends, neighbors and acquaintances concerning what had taken place at the Hill home in 1952. Persons who had not previously known about the Hill incident were now informed of it and began asking Mrs. Hill and her [fol. 572] husband questions. These questions related principally to the relationship between the events and persons portrayed in *The Desperate Hours* and the Hill family and their 1952 experience. Further questioning and comment related to the role played by the Hills in the preparation of *The Desperate Hours*, the Life article and other publicity surrounding the book, play and motion picture. This continued through the opening of the motion picture in the fall of 1955 and thereafter. The motion picture was widely publicized and some of the advertising which emphasized the frightening and violent events of *The Desperate Hours* was seen by Mrs. Hill.

In the summer of 1955 Mrs. Hill consulted a psychiatrist for the first time in her life, but after four visits discontinued treatment.

In the fall of 1955 she became increasingly depressed to the point where a change in her appearance and personality became apparent to her next door neighbor, Mrs. St. John. This condition continued to worsen through 1955 and 1956. Her periods of depression increased. She became increasingly self-conscious and withdrawn to the point where she avoided leaving the house. Finally she was no longer capable of performing her household duties. She began to neglect her personal appearance, frequently wearing the same dress day after day until her husband suggested that she change to another dress.

By mid-summer of 1956 Mrs. Hill had withdrawn almost completely from her normal activities and was unable to [fol. 573] manage her home. At this point she visited her family physician, Dr. Francis Read, who referred her to you.