

In addition to these facts, Doctor, will you also assume Mrs. Hill's appearance and symptoms on the occasion of her first visit to you, the history which she gave you as well as the course and progress of her condition in treatment, which you have already testified about.

Now, Doctor, do you have an opinion which you can state with reasonable certainty as to the relationship between the identification of Mrs. Hill and her family with The Desperate Hours in the Life article and Mrs. Hill's condition as you diagnosed it in August 1956?

A. Yes, I have.

Q. What is that opinion?

Mr. Medina: Your Honor, I object to the hypothetical. It does not state that the novel closely parallels the Hill incident in all aspects other than the occurrences in the house. It does not include reference to the Collier's serialization of the same novel or the Pocket Books having brought that out.

There is no proof, as stated in the hypothetical, that persons who had not previously known of the Hill incident questioned Mrs. Hill after the Life article.

It does not include reference to Mr. Hill's action in taking Mrs. Hill to Whitmarsh in 1955 to look over the house and in making sure that another reference came up to The Desperate Hours in any way, when anything came up like that, he showed it to her.

[fol. 574] Mr. Garment: Your Honor, I think this matter is proper for cross-examination. I could have included four hours worth of testimony.

The Court: I am going to overrule the objection. The hypothetical question is substantially based on the facts as have been adduced in this case.

You may, of course, Mr. Medina, in your cross-examination ask this doctor if he had known so and so, these facts which you now state, would that change his opinion.

Mr. Medina: Well, there are other omissions, but I won't go into them now.

The Court: You can do it on cross-examination.

The objection is overruled.

The question, Doctor, is what is your opinion.

Q. What is your opinion, Doctor?

A. It is my opinion that the connection related by you was the direct precipitating cause of her condition.

The Court: Of her condition?

The Witness: Of her illness at the time I saw her.

Q. Would you explain to the jury on what you base that opinion?

A. Well, here we have an average American woman, an American housewife, a mother of five children, an active member of her community, in good health, able to function in a very adequate and normal way.

[fol. 575] On September 11th three convicts broke into her house. She was alone most of the time with her children, including two 'teen-age daughters, and she was initially terrified for fear of what they may do to her. She was frightened by the possibility of rape, assault, violence—

Mr. Malino: I didn't hear any testimony to that effect at all, any place, that she was terrified or anything like that.

The Court: Overruled. That is, the Court will take judicial notice of the fact that when an incident of this kind occurs, there must be some reaction by the person. However, if the doctor is going a little far in his explanation of what happened, you can cover that in your cross-examination.

Overruled.

Mr. Malino: Exception.

Q. Go ahead, Doctor.

A. As the hours went by she felt a tremendous sense of relief that these terrible possibilities didn't occur. She wanted nothing more than to forget the whole incident after that for the sake of herself and the family.

She moved some two and a half months later to another community, in Old Greenwich, Connecticut, where again she functioned adequately and well in her home and in the community.

Then, in 1954, her attention was called to the book *The Desperate Hours* and again she became quite worried and anxious, because she feared that somebody would now connect her story, through which she had gone unscathed, with the lurid and rather horrible contents of the book and later the play.

Mr. Malino: May I have the question read? I don't remember what the question is any more.

Do you remember what the question is?

Mr. Garment: The question was addressed—

The Court: I will let him read it.

I might point out, counsel, that this is the treating doctor, and the treating doctor can testify to history or what was told to him by the patient because it was done in the course of the treatment which he was administering.

Mr. Malino: But he hasn't testified that any of this was told to him by the patient.

Mr. Garment: He is giving an explanation for his opinion.

The Court: You still want the question read?

Mr. Malino: He doesn't say he was told this by the patient. We have testimony that she never read the play or saw the picture, and he is now telling about the lurid—

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

Mr. Malino: I don't know how the jury can ever get it straightened out if they rely on the doctor's testimony.

[fol. 577] Mr. Garment: Your Honor, I think Mr. Malino should hold a statement of that sort for summation.

Mr. Malino: I would like to have the question read.

The Court: No, it's a proper objection.

Mr. Malino: May I have the question read?

The Court: Yes. Read the question.

(The reporter read the last question.)

The Court: Do you remember where you were?

The Witness: I think I do, your Honor.

A. (Continuing) I believe I began to point out that she had made a good adjustment to her new life in Old Greenwich until 1954, when the book *The Desperate Hours* appeared and she heard about and, subsequently, about the play, and she then began to fear that people would connect her with the very things that she had initially dreaded and which had never happened; that people would connect her experiences with the lurid and terrifying experiences depicted in the book. And she developed some anxiety about that.

She had treatment, some treatment, from a local general practitioner, who prescribed sedatives, vitamins, hormone treatments—but without relief.

Finally, the very thing that she had dreaded would happen did happen. Her name was connected with the terrifying and frightening events of the book and the play by [fol. 578] the article which appeared in *Life Magazine* sometime in February 1955. This proved to be such a shock to her nervous system that she couldn't take it. She simply broke down.

Q. Doctor, can you state with reasonable certainty your prognosis with respect to Mrs. Hill, that is, what would be the future course of her condition?

A. I can state my opinion.

Q. Yes, with reasonable certainty.

A. This woman has been sick, and at times seriously sick, for almost seven years. I am afraid, and I believe, that this is a chronic condition which will require her to have some psychiatric observation and treatment for the rest of her life.

Q. Doctor, is it your opinion, again with reasonable certainty, that the condition that she is in now represents a continuation of the condition in which you found her in August of 1956?

A. Yes, sir.

Q. In this intervening period of time what has been the general course of her condition?

A. It has been characterized by a rather up and down course. At times she would respond to treatment; at other times she wouldn't. Her course in general has been quite unpredictable.

Q. She has had good periods, has she not?

A. She has had some good periods, yes.

Q. And she has had some bad periods?

A. Very bad.

Q. Dr. Dean, earlier in the case Mr. Hill testified as to the bills for professional services that you rendered to him [fol. 579] in connection with your treatment of Mrs. Hill, and he also testified as to the amounts that were paid and to the amounts that remained unpaid.

Mr. Garment: I would like at this point, your Honor, to offer in evidence Dr. Dean's bills—after he has had an opportunity to identify them.

Q. Are those your bills that were rendered to Mr. Hill in connection with the treatment of Mrs. Hill (handing papers to witness)?

A. Yes, sir.

Mr. Garment: I offer them in evidence.

Mr. Medina: I object to them.

There is no basis as to reasonableness.

The Court: It seems to me you are cluttering the record now. Mr. Hill has testified as to the amount. You can ask this witness whether that is the fair and reasonable value of his services, without putting the bills in.

Q. Doctor, the amounts of the bills that you rendered to Mr. Hill represent the fair and reasonable value of your professional services; do they not?

A. Yes, sir.

The Court: What was the amount?

Mr. Garment: That was put in through Mr. Hill.

Q. The total amount was approximately \$7,000; is that correct? Does that refresh your recollection?

A. I don't recall the total amount.

[fol. 580] Mr. Garment: It is in the record, your Honor.

The Court: \$7,317.50, I see.

Mr. Garment: Thank you. And of that amount I believe approximately \$5,000 has been paid.

Mr. Medina: \$5,207.50.

The Court: I stated then at that time it makes no difference if it was paid or not if the defendant is obligated to pay it.

Mr. Garment: That's all I have of the doctor.

I would like to state for the record, though, before cross-examination starts that the defendant Time, Inc. waived the right to a physical examination—that would be a psychiatric examination—of the plaintiff Elizabeth Hill, which right had been secured to them by stipulation and, further, that the defendant Time, Inc., requested and received a copy of Dr. Dean's medical report.

You may cross-examine.

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

Cross examination.

By Mr. Malino:

Q. Am I correct, Doctor,—I tried to listen to your testimony very closely, Doctor. Am I correct in assuming or understanding that what you are saying to the Court [fol. 581] and jury here is that Mrs. Hill's illness in 1956, when you saw her, and since that time is due solely to the Life Magazine article?

Mr. Garment: That wasn't his testimony at all, and I don't think the question should be put in that form. The testimony was in response to a specific question that it was precipitated.

The Court: Will you accept that amendment and ask him whether it was precipitated by this article?

Mr. Malino: I don't know what that means.

Q. You said it was precipitated by the Life article.

A. Yes.

Q. Did you mean to limit your testimony to that, that it was just precipitated by the Life article but not caused by the Life article?

Mr. Garment: I object to it, your Honor. That was his testimony.

The Court: Wait a minute. Now we are getting into semantics. However, if the doctor is able to distinguish between those two words he can answer the question. It seems to the Court that the meaning of both those words is almost identical. However his understanding professionally may be different. I will permit the question.

Mr. Malino: I want to know whether Dr. Dean's present opinion is that Mrs. Hill has been suffering since 1955 solely because of the Life article. I want to know that.

[fol. 582] The Court: This is cross-examination, sir. You have wide latitude. You may ask the question in any form.

Mr. Malino: Thank you.

By Mr. Malino:

Q. I would like to know that.

A. When I stated that it was precipitated—

Q. Will you answer that yes or no, first?

Mr. Garment: Mr. Malino, I think you asked him—

Mr. Malino: Why don't you let him answer?

The Court: Let's hear the question.

Q. Is it your opinion that her condition was caused by this article, only caused by this article?

A. Her condition when I saw her was caused by the connection of the Life article with the fictitious events depicted in the book.

Q. Then it is your testimony also that if the Life article had never been published she would not have had this condition; is that right?

A. That is my conviction.

Q. That is your conviction? That is your opinion?

A. Yes, sir.

Q. Is it also your opinion that if the Life article—I am now asking you a hypothetical question—if the Life article had been—you have read the Life article, have you not?

A. Oh, yes.

Q. If the Life article—did you read it with Mrs. Hill?

A. No, sir.

[fol. 583] Q. I see. If the Life article had been precisely the same as it was except that it did not contain the name “Hill” but otherwise described or identified the Hill family, would your opinion be the same, that the article caused the condition?

A. I believe it was the identification, the connection, that produced her breakdown.

Q. But if she had been identified by reference to where she lived or other identification other than the use of the name “James Hill” or “Hill family” would your opinion be the same? Would she have had the same condition?

A. I believe that any indication by physical description, by where she lived, by her name, that would lead any person to recognize that she was the principal and her family were the principals involved in this would have produced the same identical condition.

Q. You said there was a general practitioner treating Mrs. Hill, had been treating Mrs. Hill. Do you know his name?

A. She was referred to me by Dr. Read. I consulted with him.

Q. Did you know that she had also been treated for a year or more by another doctor?

A. Yes, sir.

Q. Did you know his name?

A. Dr. Brock.

Q. You didn’t refer to it in your synopsis of what Mrs. Hill told you; is that right?

A. No, sir.

Q. Is it in your notes?

A. I did refer to the fact that she had been treated by a general practitioner. I didn't name him.

[fol. 584] Q. Is it in your notes? Is his name in your notes?

A. Yes, sir.

Q. But you didn't read it?

A. (No reply.)

Q. You didn't read it just now?

Mr. Garment: I object.

The Court: That's true.

A. I didn't mention him by name.

Q. Did you leave anything else out of your notes? That's what I am really getting at.

A. I don't believe I left anything pertinent to the case out of my notes—in my opinion.

Q. Did you consult with Dr. Brock at all?

A. No.

Q. When Mrs. Hill came to you for treatments other than shock treatments, did she come alone?

A. Yes.

Q. Did she drive herself?

A. Sometimes she drove herself, when she was able to. When she wasn't, she was driven there.

Q. The first time that Mrs. Hill came to your office, did you see her?

A. Yes.

Q. Was there a Dr. Waxberg in your office?

A. Yes. He was my associate at the time.

Q. Did he see her?

A. Certainly he saw her.

Q. Did he see her before you saw her?

A. No, sir.

Q. Would you look at your notes and see whether Dr. Waxberg treated Mrs. Hill before you saw her.

A. Dr. Waxberg did not treat Mrs. Hill.

[fol. 585] Q. Would you look at your notes, please? This is in 1956 we are talking about.

Mr. Garment: Get your entry for August 1956, Doctor.

A. I have notes here in my own handwriting dated August 16, 1956, describing her first visit to me.

Q. Were you in the office the week before August 16, 1956 or were you on vacation?

A. I don't recall. I do know that she spoke to me before she came to my office to make the appointment, and she told me about it, and so did Dr. Read, over the telephone, before the appointment was made.

Q. Did you discuss this with Dr. Waxberg at all, Mrs. Hill's case?

A. Yes, to some extent.

Q. Did he see her?

A. Yes, he saw her. But Dr. Waxberg had his own patients. He was an associate of mine who had his group of patients to treat, and I had my group of patients to treat. He was not concerned with her treatment.

Q. At any time?

A. No, sir.

Q. You have been in psychiatric practice since 1934; is that right?

A. Yes, sir. Excuse me, I will correct that—no, since—well, I started training in 1935. I have been in actual practice since 1940.

Q. Have you done any general practice since that time?

A. Never.

Q. Do your records show whether at the initial meeting that you had with Mrs. Hill whether you took any tests of [fol. 586] her blood or urine or blood pressure or her pulse or anything of that sort?

A. Yes. We have blood tests and blood pressures and weights not only in the beginning of treatment but throughout her course of treatment.

Q. What was the first date that you took that?

A. August 16, 1956.

Q. Did Mrs. Hill or Mr. Hill tell you about the pendency of this lawsuit?

A. Yes, sir.

Q. In January of this year, when you say you treated her, did she tell you that the trial of the lawsuit was imminent?

A. Yes, sir.

Q. Would you say that Mrs. Hill is mentally competent and during this entire time was mentally competent?

A. Not during the entire time.

Q. Does your record show whether she was mentally competent in March of 1956? Well, your records wouldn't show that. You didn't see her until August.

A. That's correct.

Q. So that your records wouldn't show that?

A. No.

Q. Would it be your opinion that she was mentally competent in March 1956?

A. I would say so.

Q. If she signed a verification to a complaint based on the play and the Life article in March 1956 that was a rather lengthy complaint with copies of the Life article attached to it, would you say that would have any effect upon her at all?

A. You are speaking of March 1956?

Q. March 7, 1956.

A. Of course I hadn't seen her then, Mr. Malino. So really I can't say.

[fol. 587] Q. You wouldn't be able to say.

A. No.

Q. In fact, you wouldn't be able to say anything at all about these things you testified to before August 1956 except those things that you have assumed that would be natural and those things that Mr. and Mrs. Hill told you. Is that right?

Mr. Garment: I object to the form of that question.

The Court: I will allow it.

Do you understand the question, Doctor?

The Witness: Would you mind repeating it?

The Court: Read it.

(The reporter read the pending question.)

The Court: In other words, is the question, is the opinion that this doctor gave, would that be based only upon this information which he got since August 1956?

Mr. Malino: That's right.

A. On the basis of the history which gradually evolved from my treatment I was able to form some estimate or opinion of her previous condition. But it was only, of course, on the basis of the history that she furnished me.

Q. So when you said before that you could not give us an opinion as to what her condition was in March of 1956, because you weren't treating her then, that was a little bit technical, wasn't it?

[fol. 588] A. Well, there are a lot of technical things here, of course.

Q. In Mr. Garment's question he didn't refer to Mrs. Hill's partial hysterectomy in 1950. That had no connection with her condition at all?

A. I don't believe it had any connection whatsoever.

Q. I show you Plaintiffs' Exhibit 14 and ask you to look at it and ask you if you ever saw that before?

A. I don't recall whether I saw this particular one. But I have seen several of them.

Q. Mr. Hill brought them to show them to you?

A. No.

Q. You saw them on your own account?

A. Yes. I believe it was a well known case.

Q. What was a well known case?

A. It was a well known book, rather, play and subsequent movie.

Q. Did you notice by any chance that this picture came from a Chicago newspaper?

A. Yes, I did.

Q. Were you in Chicago at that time?

A. No.

Mr. Garment: Your Honor, he said he didn't remember seeing that.

The Court: His recollection was that he didn't recall seeing that one.

Q. Did Mr. or Mrs. Hill tell you at any time that on or about February 2nd or soon thereafter, 1956, Mr. Hill brought this picture back from Chicago and showed it to his wife?

A. I can't identify that particular picture, but I know that she did see various pictures of that nature.

[fol. 589] Q. And did you know that her husband showed them to her?

A. It is my recollection that he probably did show some of them to her. Others she saw herself.

Q. Would you say that showing her these pictures of scenes from the motion picture, advertisements, and references to their real life story would have affected her in any way?

A. I have already testified that her fear was that she would be identified with the victims depicted in the story, and that certainly did affect her.

Q. So that in February of 1956 she would be affected by this advertisement; is that right?

A. Yes, I believe so.

Q. Would she have been affected by the visit to the house that she made with her husband a month or two or three after the Life article came out?

A. I would imagine that she would be. I can't say with certainty.

Q. You wouldn't say that as positively as that she was affected by the Life article itself?

A. I couldn't say that as positively, no.

Q. Because you haven't been questioned about that by counsel for the plaintiff; is that right?

A. What was your question?

Mr. Malino: Read it, please.

The Court: And read the question before that.

(The reporter read the two previous questions.)

[fol. 590] A. That's a strange question to me. I can only say that I am not influenced by what my counsel asks me. I am telling the truth as I know it, sir.

Q. You know the point being made in this lawsuit, don't you?

A. Yes, I think I am familiar with it.

Q. Would you say that there was any connection between the commencement of litigation here toward the end of June 1955 and Mrs. Hill's first visit to a psychiatrist four or five weeks thereafter—any psychiatric connection? I don't mean a business connection.

A. I believe that probably played some role. There were other things that also played important roles. I think that this woman would have been equally frustrated and defeated if nothing had been done about the illness and damage that she had undergone.

Q. Did you ever know, did Mr. Hill or Mrs. Hill ever tell you at any time that during the time that Mrs. Hill was kept captive in the house her daughters telephoned her, asking her to meet them or inquiring why she had not met them at the bus stop to pick them up and bring them home?

A. Without referring to my notes, I can't recall that.

Q. You may refer to your notes, if you wish.

A. Do I have to do that?

Mr. Garment: I will concede there is no reference to that there.

Q. Would you say if that happened, if her daughters called up Mrs. Hill and inquired why she had not called for [fol. 591] them in the car, as she always did, and she told them to come home some other way, that that might have preyed on her mind?

A. I should think it would.

Q. Did Mr. or Mrs. Hill tell you what Mrs. Hill's daily routine was at Whitmarsh before the convicts came there

and what her daily routine was in Old Greenwich after she moved there?

A. Yes. I have a pretty good idea of what it was.

Q. Will you tell us what they told you?

A. Well, she had a house and five children to take care of. She did the cleaning, the cooking, a good bit of the chauffeuring. She found time to keep her children's clothing in good order, to get them off to school, to take part in various community activities. I got the impression that it was pretty much the routine of an average housewife.

Q. You mean having a 22-room house?

A. Well, that's a little bit out of the average, of course.

Q. But you knew that?

A. But she didn't use all of the rooms in the house.

Q. That's true. Did you know that she chauffeured her husband, too?

A. It's my recollection that occasionally she did.

Q. Did you think there was any possibility, as a normal woman who had had some woman's troubles, that she may have been overwhelmed by the obligations that she had to [fol. 592] her family and to outside interests, to the community, as a good citizen; that she just felt licked, as you said, because she couldn't do all the things that she felt she ought to do?

A. Mr. Malino, I do not. This is a remarkable woman. She not only was able to acquit herself creditably and well of her ordinary duties, but I think the manner in which she handled the entire convict incident is a tribute to American womanhood.

Q. I agree with you on that and I have met Mrs. Hill and anything you say about her I will agree with—except the cause of her illness.

A. Certainly her lack of hysterics, her level-headedness during that entire episode was as different from a picture of an overwhelmed, hysterical woman as day is from night, Mr. Malino.

Q. You knew, didn't you, Dr. Dean, that she had not read the book, seen the play or seen the picture?

A. I did know that.

Q. Did you suggest that she read it?

A. No, sir.

Q. You referred to the National Behavioral Science Foundation.

A. Yes, sir.

Q. I would just like to ask you this: Whether in your opinion human behavior is a science in the same sense that mathematics, physics or chemistry is a science, or are there areas of doubt?

A. There are areas of doubt, of course.

Q. And are there many factors which must be considered in determining a cause of a condition in a human being?

A. That's true of every one of us.

[fol. 593] Q. Psychiatrists might differ?

A. I think we are pretty well agreed that every human being has a predisposition to something. Every human being carries a powder charge, and if the trigger is pulled sufficiently hard an explosion can occur. Every wire has its breaking point. It only determines when that breaking point is reached, sir.

Mr. Malino: Thank you.

Cross examination.

By Mr. Medina:

Q. The thing that disturbed Mrs. Hill was the connection between the book and her incident in Philadelphia, was it not?

A. Yes.

Q. And the September 1952 experience had been a harrowing adventure?

A. It had started out as being harrowing and left her grateful to God that she had escaped unscathed.

Q. But the September 1952 experience was a harrowing adventure, was it not, Doctor?

A. Certainly it was.

Q. And then in March of 1954 she was shocked and dismayed when she heard that the novel *The Desperate Hours* had been published, was she not?

A. She was frightened, Mr. Medina.

Q. Wasn't she shocked and dismayed?

A. I prefer to say that she was frightened and apprehensive, because she feared that someone might connect her story up with this highly melodramatic and violent version.

Q. Isn't that your own language, Doctor?

A. It is my opinion, sir.

Q. Isn't the language "shocked and dismayed" your own language?

A. It could very well be.

[fol. 594] Q. Didn't you write to Mr. Garment in January of 1957, after you had had an examination of Mrs. Hill in 1956, giving certain opinions?

A. Yes.

Mr. Garment: Just one second. If you are going to make reference to a paper, Mr. Medina, I think you should offer it in evidence first.

Mr. Medina: I have no intention of offering it in evidence, Mr. Garment. This is cross-examination.

The Court: The objection is overruled.

Q. And didn't you state—

The Court: Did you use that term in that report that you made?

The Witness: I know I did. I am fully aware of that.

Q. Let me show you page 3 of your report, the top of this paragraph right here. Isn't it your own language that Mrs. Hill in 1954 was shocked and dismayed?

Mr. Garment: Your Honor, he should put the exhibit in evidence if he is asking this witness about the contents of it.

The Court: This comes in a different category. He does if he wants to prove prior inconsistent statements. Otherwise he doesn't have to put it in. The doctor has admitted

that he used that language, and I will allow his answer.
[fol. 595] Mr. Garment: Mr. Medina, you do not propose to offer the report?

Mr. Medina: Of course not. And you know that, Mr. Garment.

A. I did use that language. And I consider shock, dismay and fear very closely allied.

Q. But you did use the language "shocked and dismayed"?

A. Obviously I did.

Q. So there is no difficulty when I ask you whether wasn't she in March 1954 shocked and dismayed at the appearance of the novel *The Desperate Hours*. Isn't the answer clearly "yes"? Isn't it that simple?

A. I wish it were that simple. I did say that, and I gladly reaffirm it now.

Q. Thank you. And in 1954 Mrs. Hill began to feel that she was discussed and whispered about wherever she went, didn't she?

A. No. My impression was that she was afraid that she would be connected with the events of that book and that the reason for her fear or shock or dismay or allied words had to do with her fear of discovery, her fear of identification. As long as she was alien to it and people didn't connect her up with it, she could have stood that period, in my opinion, quite adequately—as she did.

Q. I ask you again, Doctor, isn't it a fact that in 1954 Mrs. Hill began to feel that she was discussed and whispered about wherever she went? If you want to look at the bottom of page 4 of that document you have before you to refresh your recollection, you may. I suggest you read the last [fol. 596] paragraph on that page. Perhaps it will shorten things.

A. I see nowhere here where I have said that towards the end of 1954 she felt she was whispered about. Could you refresh—

Q. Do you want to read the whole paragraph at the bottom of that page, Doctor?

A. "Mrs. Hill began to feel—"

Q. Just read it to yourself.

A. Well, to me at least—

Q. Have you read it?

A. Yes, I have.

Q. Now, can't you tell me whether or not in 1954 Mrs. Hill began to feel that she was discussed and whispered about wherever she went?

A. Yes. I can tell you that she did not feel that way in 1954 nor have I said that she felt that way in 1954.

Q. Isn't it a fact that in 1954 Mrs. Hill gradually became more and more self-conscious and withdrawn?

A. She became self-conscious and somewhat withdrawn, yes.

Q. In 1954 Mrs. Hill became more and more self-conscious and withdrawn; is that not correct?

A. I have already testified that she did become extremely nervous.

Q. Can't you answer yes or no, Doctor?

A. I would be glad to, if I can understand your question.

Q. Isn't it correct that in 1954, Mrs. Hill gradually became more and more self-conscious and withdrawn?

A. I think we can say she did, yes.

[fol. 597] Q. And in 1954 Mrs. Hill became anxious and depressed at the prospect of having to leave the house and of being exposed to questioning, didn't she?

A. That is not the information I received or described.

Q. Isn't it a fact that in 1954 Mrs. Hill developed muscular tension in her shoulders, at times so severe that she had difficulty in raising a cup of coffee to her mouth?

A. Not at that time, not in 1954.

Q. Isn't it a fact that Mrs. Hill in 1954 felt a peculiar generalized inward quivering, became more and more fatigued and, finally, became incapable of performing her household duties?

A. Definitely not in 1954.

Q. Didn't you write this, Doctor, in your report,—and I quote—

Mr. Garment: Now, before you start to read from the document—

The Court: Objection sustained. You can't quote from it unless it is in evidence. If there is a prior inconsistent statement, you prove it by putting that in evidence and let the jury determine whether it is inconsistent.

Q. Isn't it a fact, Doctor, that toward the latter part of 1954 her nervousness, and anxiety, and depression had become so severe that she consulted a local physician who treated her for several months?

A. That is a fact.

Q. Isn't it a fact, Doctor, that, in general, the menopause occurs on an average at the age of forty-seven?

[fol. 598] A. On an average it occurs at the age of fifty, sir. The span could be from the late forties until the middle fifties, but the average is around fifty.

Q. And isn't it a fact that in menopause depression and extreme melancholia may become a most serious manifestation?

A. It may, yes.

Q. And in menopause there may be little interest in life?

A. That's very true.

Q. And the patient may avoid other people, have little confidence in herself, be fearful and worried about trifles?

A. In general, that is possible,—in some cases, rather, it's possible.

Q. And with the menopause there may even be suicidal tendencies, sometimes carried to actual accomplishment; is that not correct?

A. In the menopause, in some cases, that's possible.

Q. And psychic disturbances quite often occur during this change of life and occasionally may progress to melancholia and hysteria; is that not correct?

A. In menopausal cases that is correct, at times.

Q. And isn't it correct, Doctor, that classically involutional melancholia is an anxious, agitated, delusional depression of the menopause?

A. I wouldn't say it's confined to the menopause. We can find depression in a variety of things, but it could be one of the symptom pictures in menopause, yes, indeed.

Q. And with involuntional melancholia, anxious anticipation, restlessness, insomnia, fatigability, and irritability are common; is that not correct?

A. In some cases, yes.

[fol. 599] Q. And the mood with involuntional melancholia varies from pessimism to frank depression?

A. In involuntional melancholia it does, yes.

Q. And these symptoms blossom into a severe agitated delusional depression?

A. In involuntional melancholia that's true.

Q. And no more profound depression is seen psychiatrically and attempts at suicide are common?

A. I would say that is a pretty good description of involuntional melancholia.

Q. Mrs. Hill told you that the Life article was false, didn't she?

A. Oh, yes.

Q. Would your opinion change if the Life article were true?

The Court: Opinion as to what?

Q. As to the cause of Mrs. Hill's illness.

A. This is a hypothetical question.

Mr. Garment: It certainly is.

Mr. Medina: Thank you, Mr. Garment.

The Court: Please, gentlemen, no remarks.

The jury will disregard any remarks made by counsel.

A. (continuing) I think if the Life article were true, it would have affected her, but not nearly to the degree that it did. And for a very good reason, if I may be permitted to state that reason.

Q. So that the truth or falsity of the Life article may make a difference as to its effect upon her?

A. Yes, indeed it does.

[fol. 600] Q. Did Mrs. Hill tell you about the novel closely parallels the incidents of September 1952 in all respects other than actual occurrences in the house?

A. No, she did not. She had not read the novel.

Q. Did she tell you that the novel was serialized by Colliers and also appeared in Pocketbooks?

A. Yes.

Q. Did she tell you that Mr. Hill—

Mr. Medina: Withdrawn.

Q. You were aware, of course, that Mrs. Hill was going through her menopause at the time you examined her, were you not?

A. I found no indication of any menopause in Mrs. Hill.

Q. Did you know that Mr. Hill was absent 65 per cent of the time in 1954 and 60 per cent of the time in 1955?

A. I don't know about the exact percentage, but I know he was absent a good deal of the time in pursuit of his work.

Q. In January 1957 your prognosis was that she would go on to complete recovery within a period of one year was it not?

A. That was my hope. It proved to be false.

Mr. Medina: Can we take the morning recess now, your Honor? I would like to study this report.

The Court: You don't want to finish with this doctor first?

Mr. Medina: I would like to review this in view of the testimony.

[fol. 601] The Court: I would like to get through with both of these doctors before the luncheon recess.

Mr. Medina: I do, too.

The Court: We will take a short recess.

(A short recess was taken.)

By Mr. Medina:

Q. Doctor, you did render a written report concerning Mrs. Hill under date of January 22, 1957, didn't you?

A. Yes, sir.

Q. And this is a copy of that report?

A. Yes, sir. This was written about six months after I first saw her.

Mr. Medina: I offer it in evidence.

Mr. Garment: No objection.

(Dr. Dean's report received in evidence as Defendant Time's Exhibit M.)

Mr. Medina: At this time, with your Honor's permission, I would like to read a small portion of this report.

The Court: Unless you want to have his comment on it, I might suggest after we get through with both doctors' testimony, that then you read as much as you want.

Mr. Medina: Certainly.

Q. Did Mrs. Hill tell you that Mr. Hill was quite irate at himself for his mistake in judgment in giving a statement to the press in September 1952, Doctor?

A. No, I don't recall that.

[fol. 602] Q. It's quite usual and normal, is it not, Doctor, that psychiatric treatment should last for an extended period of time?

A. It's sometimes necessary, not always.

Q. But in a great many instances it does last for long periods of time?

A. In many instances, it does.

Q. In many instances it never ends, does it?

A. That is true. Unfortunately, sometimes it never ends.

Mr. Medina: That's all.

Redirect examination.

By Mr. Garment:

Q. Dr. Dean, you stated that Mrs. Hill is not in her menopause?

A. Yes.

Q. On what do you base that statement?

A. On the simple facts of the case. First of all, when she broke down in 1955 she was only about 45 years old. Secondly, she was still having her periods. She was having no hot flashes, no symptoms of menopause whatsoever that I could detect.

Q. And so far you could tell is she presently in the menopause.

A. She may be at this time. She is 52. Of course every woman goes through the menopause, Mr. Garment.

Q. Mr. Medina asked you about the September 1952 incident and put certain questions to you about the harrowing nature of that incident.

A. Yes.

Q. When Mrs. Hill commenced her treatment with you, did you endeavor to obtain some objective evidence as to [fol. 603] what her reaction had been at the time of the incident?

A. Yes, sir, I did.

Q. Briefly, tell us what you did without going into any statements that were made.

A. Well, I wanted to try to assess just how much of an effect this incident with the convicts did have on her state of mind, and although I listened to her history, I asked her if she could furnish any other indication of her state of mind, and she said that she could, that she had written to a friend of hers—I believe she called her Aunt Cokie—very shortly after the incident and was able to get a copy of the letter for me.

Q. Did she get a copy of that letter for you?

A. Not a copy, but the original.

Q. I mean the letter itself.

A. Yes, sir.

Q. In her own handwriting?

A. Yes, sir.

Q. Do you have that with you?

A. Yes, I have.

Q. Is it in the original envelope?

A. It is.

Q. What date mark does it bear?

A. September 15, 1952, only a few days after the convicts broke in.

Q. And is that letter within that envelope in Mrs. Hill's handwriting?

A. I believe so.

Mr. Garment: Your Honor, I offer that in evidence.

Mr. Medina: I object to it.

The Court: I am going to overrule the objection. This comes under the same heading as statements made to the doctor to determine the history. This is the treating doctor, [fol. 604] and the rule is different with regard to that, than what we call a testifying doctor, and therefore I am going to overrule the objection.

Mr. Medina: It doesn't relate to a statement actually made to the doctor, your Honor.

The Court: He has said that it did. This is one of the bases for showing what her state of mind was at that particular time.

Mr. Garment: Right at the time of the actual incident.

The Court: Let it be received in evidence as Plaintiffs' Exhibit 33.

(The envelope postmarked September 15, 1952 and letter contained therein addressed: "Dearest Cokie" received in evidence as Plaintiffs' Exhibit 33.)

The Court: When did you get this letter, Doctor, from Mrs. Hill?

The Witness: My recollection is about a month after I began to treat her, your Honor.

Mr. Garment: "Sunday night"—that would be September 14, 1952.

"Dearest Cokie, perhaps you would like to know first hand that our family is safe and unharmed after our Thursday experience. I can't write it now for it reads like a story book. But in spite of being nearly frightened to death we are really fine.

[fol. 605] "The convicts were armed when they pushed in our kitchen, but from the moment they stepped in our house they made it clear they wanted only to hide out through the day, leaving at darkness.

"They didn't add, of course, 'taking one of our cars, too.' They were courteous to me, kind to the children, respectful of our furniture and considerate of our feelings, as much as would be possible under such circumstances.

"Jimmy was a little man. There wasn't a tear or scream from any of us for nineteen hours. I suffered only in fear of what they might do at any moment. We have been surrounded by police, FBI, newspaper reporters and so forth. We are under guard as long as the men are at large.

"Don't worry. As Jimmy whispered during that afternoon, 'Today I know there is a God.' It was our prayers that saved us.

"All our love, Elizabeth."

That's all.

Recross examination.

By Mr. Medina:

Q. It's of no interest to you as to whether or not Mrs. Hill has gone through change of life at this time?

A. She is going through what I consider change of life. That she would have had regardless of her other symptomatology. Yes, she is going through a change of life now. She has stopped menstruating.

[fol. 606] Q. And that's the test?

A. Sir?

Q. That is the test?

A. It's one test. Actually, she has no hot flashes. She has no other signs of menopause to this day, such as itching and atrophy of the genital region. She has no arthritic symptoms. She has no chills or profuse sweats. All of these are as much symptoms of the menopause as a mental condition are.

Q. I thought you told us that she was 45 years old in 1955.

A. Well, let me now estimate that so as to be as exact as I can.

Q. Isn't her age of interest to you as a doctor?

A. Of course, it is, and it was my impression that she was about 45 when I first saw her in 1955.

Q. You didn't see her until 1956, did you?

A. In 1956, rather.

Q. It was your impression that she was 45 years old in 1956?

A. Oh, no. I said in 1955, Mr. Medina.

Q. But didn't you just tell us a second ago that when you first saw her it was your impression that she was 45 years old?

A. I believe what I said was that when her breakdown occurred she was about 45 years old. I saw her in 1956, more than a year later.

Q. Haven't you got any precise figure as to her age?

A. Yes, I have. I can give you her age exactly. At the time I saw her in 1956 she was aged 46. So I assume that a year before that she was 45.

Mr. Medina: Thank you.

Q. That's what your notes show.

A. Exactly.

(The witness was excused.)

[fol. 607] LAWRENCE I. KAPLAN, 55 Penn Road, Scarsdale, New York, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Garment:

Q. Dr. Kaplan, would you state your medical qualifications, please?

A. Yes.

Mr. Medina: If it will save time, I will concede the doctor's qualifications.

Mr. Garment: No, I want no concession. I want the doctor's qualifications.

A. I am a graduate of the New York University College of Medicine in 1943. I served a rotating internship at Mt. Sinai Hospital in New York and spent approximately five years in hospital residency training in the specialties of psychiatry and neurology training at Bellevue Hospital, at Mt. Sinai Hospital and at New York Hospital.

I am a diplomate of the American Board of Psychiatry and Neurology. I have been an examiner for the Board since 1949. I am certified as a qualified psychiatrist in the State of New York.

I spent approximately five years as chief panel psychiatrist of the La Farge Psychiatric Clinic, which is a clinic in Harlem for juvenile offenders. I have been a consultant in psychiatry to the District Attorney of Bronx County for approximately ten years. I spent about six years as one of the panel psychiatrists at the Quaker Emergency Service Readjustment Center, which is for the treatment of [fol. 608] homosexual offenders, and at the present time I am associate visiting neuropsychiatrist at Bellevue Hospital, Director of the Neurological Service at the Hospital for Joint Diseases, Associate Visiting Neurologist at Mt. Sinai Hospital.

I have also been consultant in psychiatry and neurology to the United States Public Health Hospital on Staten Island and the Veterans Administration Hospital in the Bronx. I belong to the usual societies in this specialty. They are about fourteen or fifteen.

Q. Dr. Kaplan, did there come a time in or about June of 1957 when I came to see you?

A. Yes, sir.

Q. Did I at that time make available to you a copy of the report of Dr. Stanley R. Dean, dated January 22, 1957, which is Defendant Time's Exhibit M?

A. Yes, sir, you did.

Q. And did you and I discuss that report?

A. We did, indeed.

Q. Subsequently, did you have occasion to meet with Dr. Dean?

A. Yes, I did.

Q. And did you and he discuss his report?

A. We discussed his report and his treatment and management of this patient.

Q. And did you have an opportunity to examine Dr. Dean's notes?

A. Yes, I did.

Q. Have you ever seen Mrs. Hill?

A. I have not.

Q. Now, Doctor, you heard the hypothetical question which I put to Dr. Dean earlier this morning?

A. Yes, I did.

[fol. 609] Mr. Garment: Mr. Medina, will you concede the hypothetical question?

Mr. Medina: To save time, yes. There is no need for repeating it.

Q. In addition to the facts stated in that hypothetical question, Dr. Kaplan, I ask you to further assume Dr. Dean's diagnosis, namely, that on August 16, 1956 he found the plaintiff Elizabeth Hill suffering from a reactive depression of psychotic proportions, which condition has continued until the present time. Do you have an opinion, Doctor, which you can state with reasonable certainty as to the relationship, if any, between the identification of the plaintiff Elizabeth Hill and her family with The Desperate Hours in the Life article of February 1955 and the condition in which Dr. Dean found Mrs. Hill in August of 1956?

A. Yes, I have an opinion.

Q. What is that opinion?

A. In my opinion, the identification of the patient in this publicity in Life Magazine was the precipitating cause of her reactive depression, which was a psychotic depression.

Q. Would you state to the jury the basis upon which you reach that opinion?

A. Yes. On the basis of all of the information which I have about this patient—since I have never examined her, but only have learned about her from Dr. Dean and from his notes—this patient was a well organized and well adjusted individual up to the time of the incident in September of 1952, and thereafter as well, adjusting to this and compensating for the experience which she had very well.

She did have periods of anxiety and depression which were never psychotic, which never disabled her and which were related, largely, as Dr. Dean has mentioned, to her fear of being associated with the book and the play and the picture *The Desperate Hours*, although in fact it was not about her. And when her fears were realized by the publicity which occurred, she then became much more severely depressed, became agitated, disheveled, and her total adjustment disappeared and she developed a psychotic depression which was manifested by all of the symptoms Dr. Dean has described here and which required somatic treatment, that is, electric shock therapy, that is, to help eliminate it and improve it.

In my opinion, this kind of incident, this kind of sudden relighting up of an experience to which a patient has adjusted by repression and by using all of her resources so adequately, served as the precipitating cause of her depression. It really was a breakdown, very similar perhaps to what one might describe as "the straw that broke the camel's back." Had that not happened, in a sense, this patient could have remained a well adjusted woman without going into such a psychotic depression.

Mr. Garment: Thank you, Doctor.

[fol. 611] Cross examination.

By Mr. Malino:

Q. I just want to ask you one question, and that is to some extent—I think I heard you say that to some extent you based your opinion on a statement that Dr. Dean or his nurse or someone made to you that Mrs. Hill had a fear of being identified before the Life article came out.

A. Not that it was a statement made by the patient, but just an observation to which I agreed, made by her physician.

Q. In other words, Dr. Dean told you that Mrs. Hill had this fear?

A. Well, it was his interpretation that this was a lurking apprehension about identification with the incident.

Q. That's what I mean.

A. Yes.

Q. And to some extent your answer to Mr. Garment's hypothetical question is based on the assumption that that is a fact?

A. Well, I included that as a fact in terms of it being Dr. Dean's interpretation of what went on, yes.

Q. Let me put it the other way. I'm getting beyond my one question. Let me put it the other way, and that is that if it were not a fact, that is, if Mrs. Hill up to the time of the Life article had no fear of being identified, if Dr. Dean is wrong about that, would your opinion still be the same, that that Life article would have precipitated her condition?

A. I assume what you mean is if she had not expressed such fear, would my opinion be the same. Is that what you mean?

Q. No, if she didn't have the fear. I don't care if she expressed it or not.

[fol. 612] The Court: The question, as I understand it, is if Dr. Dean was wrong in coming to that conclusion, would that change the opinion that you now have?

Mr. Malino: Yes.

The Witness: It would not change the opinion, because the opinion and its relationship to the fear and apprehension that she had is simply a psychodynamic explanation as to why she had a psychotic depression related to this publicity. In fact, she had it related to the publicity, and we are trying to explain it so that treatment is possible on that basis.

Q. You are making an assumption now, I think, aren't you, Doctor, when you say in fact she had it due to this publicity?

A. Only on the basis of the information which I have, of course.

Mr. Malino: That's all.

Cross examination.

By Mr. Medina:

Q. If I understand your testimony correctly, the article in Life revived the experience which had taken place in 1952 and she was unable to cope with that experience at that time.

A. I don't say that it revived it. I think it did revive the memory of it. But it disturbed her because it was a falsification of this memory.

Q. Would it make any difference to you, Doctor, whether the Life article was true or false insofar as its effect upon her?

[fol. 613] A. I think it probably would make some difference. I wouldn't say that the patient would not have had a depression even if the publicity were true with a reliving of this experience. She may very well have had. But I think the fact that it was not true and that there was the constant apprehension that false things would be attributed to her family and herself made it that much worse.

Q. You have testified before in court, haven't you, Doctor?

A. I have been in a courtroom before, yes.

Q. Quite frequently, haven't you?

A. I don't know what you mean by frequently. I get to court approximately 20 to 25 times in a year.

Mr. Medina: Thank you.

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[fol. 614]					April 16, 1962	
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SUMMATION FOR DEFENDANT TIME, INC.

Mr. Medina: Ladies and gentlemen. I don't know of a more severe test for a jury than the one to which you are about to be put, because your job is to decide this case and mete out justice in a calm, dispassionate, logical way, looking at the facts, and not to decide this case on the basis of slamming books on the table or clenching the fist or the raising of the voice.

You have in this case a very strong emotional appeal of a man who comes in and says, "I know I am newsworthy, [fol. 615] but I have been hurt by that, and please for that reason make an exception in my case and make me not newsworthy."

It's clear of course, that any publication has not only the right, but the duty, to report newsworthy events. And that is just what we did here. And while Mr. Hill says, "I would like not to be newsworthy," the fact remains that for the rest of time, because of the fact that convicts entered his home back in September 1952, he will be newsworthy, and he is newsworthy today.

I judge that Mrs. Richard Burton will always be known as the woman whose husband was enticed by Elizabeth Taylor. But whether she likes it or not that is the fact. The young man who ran the wrong way in the Rose Bowl football game years ago will always be known for that fact. Mr. Roger Blough of U. S. Steel will always be known as the fellow who tried to raise the price of steel, whether he likes it or not. Yesterday was the 50th Anniversary of the sink-

ing of the Titanic. Some incidents there were heroic. Others were not. But the record is writ and what happened to the Titanic is obviously newsworthy. And that's the very simple issue that you have here.

Now, first let me tell you what you are not deciding, because so much has been thrown in here that it is sort of difficult to figure out just what it is. This is not a libel suit or a defamation suit. You know if we said something bad about somebody and wrong they are entitled to sue us because we did say something bad about them. But this [fol. 616] isn't that suit, and get that out of your mind, because this is not a defamation suit.

Nor is it a negligence suit. There isn't any claim here, nor can there be, as to whether we were careless or non-careless or what a reasonable man should have done.

This is a right of privacy suit, and that's all it is. And this family comes to you and says, "We are private people and you are not entitled to talk about us."

And as I said at the start, there are precisely three issues for you to pass upon in that connection.

First, was there any real connection, not a tenuous one, but a real connection, between the September 1952 incident with this family and the novel and play and motion picture *The Desperate Hours*? I don't mean by that it has to be inspired, although I think it clearly was; but was there a connection? And if there was a connection between those two newsworthy events, that's the end of this case, because we, as a publication going throughout this country, are entitled to report upon newsworthy events. That is a right guaranteed to us by the Constitution of the United States.

People tend to sneer at rights these days, you know; but the fact remains if we are going to have a press that reports correctly events which occur and newsworthy happenings, that that right should be observed.

So that your first question is: Was there a connection between the event and the play? And if there was, that's [fol. 617] just the end of this case. It is just as simple as

that. And that's why I want to keep emphasizing that, because at that point we have reported something or two events which are newsworthy. If we just made this up, if there was not any connection, we just dreamt it up, obviously at that point we are not reporting any newsworthy event. But if there was a connection that's end of this case.

Now, the second problem we have to deal with, even if there were not a connection, if we truly believed that there was a connection, that's the end of this case. If Mr. Prideaux, when he wrote, and Miss Ecker, or Mrs. Ludwig, when she checked, truly believed that there was a connection between the two and they weren't making up a phony out of whole cloth and throwing it to the American people, that also is the end of this case.

Mr. Garment: Your Honor, with great diffidence, I rise at this point to object to these statements. The law will be given to the jury by your Honor, and I think that shouldn't be part of the summation.

The Court: Yes. I might indicate to you, members of this jury, that anything that the lawyers say, as I have indicated to you earlier, is just their argument. It is not evidence. Any matters of law will be given to you by the Court and not by the lawyers.

Mr. Medina: I certainly concur in that, and I want you to pay attention to his Honor's charge. What I want to make sure of is that you listen to the charge carefully [fol. 618] and apply the law, and do it in a calm and dispassionate way. And that is going to be a difficult thing in this case.

So I say to you, first: Was there a connection; secondly, did we believe there was a connection? And, thirdly, even if you find that we didn't believe it—which I believe is unlikely—were we trying to report upon a newsworthy event in the entertainment field or were we trying to sell tickets to the play *The Desperate Hours*? And if we honestly were trying to report an event, a newsworthy event in the entertainment field, we are entitled to do that, and you should find for us.

Now, those are the three issues.

I think the best way to attack that initially is to point out there are two ways you can decide those three issues. One is a very short answer, short and simple, and the other is very long, involved.

For the short way you only need four exhibits. You need this picture of Mr. Hill giving his statement to the press, Exhibit A, you need the New York Times of September 13, 1952 with the headline down here and the picture of the children inside, Exhibit B, you need the play, which you all have and read, Exhibit 15, and you need Exhibit H, the three sworn complaints by these two plaintiffs before they put their present complaint in this court.

And what do you find when you look at those four exhibits? You find that the story of the incident emanated from Mr. Hill himself. He didn't have to go out there with [fol. 619] a microphone and tell everybody all these things; but he did. And you find, as Mr. Hill has testified, that the substance of that interview appeared in the New York Times of the next day, September 13, 1952.

And you find, when you look at the play, that everything that's in the New York Times is in this play other than the actual events in the house. The story in the Times opens with the state and local police and F. B. I. on the case. So does the play. The story is set in a suburb and home in the fall. So is the play—if we don't quibble as to whether September 12th is the fall or not. There is an average American family, a man and his wife in their forties, a teen-aged daughter, who's 17, a boy either 10 or 11; it doesn't make any difference. Obviously the children were pictured right in the New York Times. Obviously also, if you were going to limit your cast of characters, you can't put all the children in. But he had the two central ones, the teen-aged daughter and the young man.

It was 8:30 in the morning, 8:30 precisely by the New York Times, which said the convicts left at 3:30. It was 19 hours. That's 8:30 in the morning. And if you look at

the play, the play opens with a scene in the house with the wife saying it's 8:30—precisely at 8:30—and the husband and the daughter leave, just as they did in the New York Times and in the actual incident. And three convicts appear—three, not four or five or six,—and two of them are brothers, and they enter the house and they capture the [fol. 620] father and the daughter when they return, and the family ends up unharmed.

They just cannot be coincidence, as Mrs. Hill herself testified. Obviously Mr. Hayes, who said he had the New York Times, read it, and when he left for Florida in December 1952—and, mind you, that was just one month after the Hills moved to Greenwich—he went down to Florida and wrote his novel. And if that novel was not inspired by this story coming from Mr. Hill himself, I just don't know what I am talking about.

And you have corroboration of that, because Mr. and Mrs. Hill swore to three complaints—Mr. Hill swore to two of them and Mrs. Hill swore to a third—saying that the novel and play were based on their incident and that they were portrayed in the novel and play—right in black and white. So that they agreed with us.

Now I say that's the short simple way. You take these four exhibits and you satisfy yourself as to the truth of what I am telling you about, and that's the end of this case, despite the fact we have been here almost two weeks.

Now there is a longer way also.

I feel sorry for Mr. Hill, because he is in court today simply because of three very bad errors of judgment, and it was his own bad judgment that has brought everything upon him.

Now, first, he made the statement. That was his initial error of judgment. I suppose he should be pardoned at the time he gave it, although Mrs. Hill gave two statements, [fol. 621] one to the local papers and then she gave another statement, if you recall, mentioning how the twins would unpack as fast as she packed when they moved to Greenwich. So she didn't seem to have much difficulty about

statements to the press at that time. But that was his initial error of judgment.

Secondly, he came to the conclusion that he was going to put the thing away, put it out of his mind, he was not newsworthy, the family should forget it, no one was ever going to mention this again, they were not the family that had the convicts. So he thought that he could retire from his newsworthy position. And he should have known that, of course, he never could, any more than a person on the Titanic could or the man who ran the wrong way in the Rose Bowl.

So he made that basic error of judgment. And that led to all sorts of things. When the novel first appeared and Mrs. Hill was shown it by Miss MacKenzie and she said, "Well, it is not our story," well, that was a silly way to handle it. Of course they should have come out and rolled with the punches and said, "Gee, certainly the details are different and they have made a hero out of us. But it has got a lot of essential details of that." Of course that's what they thought when they made their first complaint. But it was handled, I say, at that point in a very poor way.

And the last error of judgment occurred when the novel came out. And, if you recall, Mr. Hill said that "The novel [fol. 622] invaded our privacy with utter disregard of our family's rights." I would have expected when the novel came out in 1954 that he would have done something about it. They had at that point the Philadelphia Inquirer in February 1954 reviewing the book and they were sent a copy of this saying: "In this tense, compactly built tale of terror Philadelphia readers will recognize a slice of real life out of the fairly recent past." And then it goes on to refer to Whitemarsh.

Obviously at that point he should have done something. But not a word from Mr. Hill to anyone, to Mr. Hayes, with the novel, Random House and the Literary Guild with the novel Pocketbooks, the motion picture, *Colliers*, all down the line, not a word to anybody until this suit was started on October 28, 1955.

All Mr. Hill had to do when that novel came out was lift up the phone or write a letter to Mr. Hayes and say, "Gee, this is awfully close to our story. I wish you would make sure that you don't have any mention made of us, because we think it may hurt us." He didn't do it. And that was his third error of judgment.

So I say to you if he hadn't had the initial announcement and story given over the microphone, if he hadn't made the wrong decision to try to creep back to a non-newsworthy status, and if he just opened his mouth and told somebody about this, that none of these things would have happened to him.

Now, there are other ways that he had an error of judgment that are a little more subtle but I think add to this [fol. 623] picture. After all, he is two-thirds a lawyer, two years at Harvard Law School, but he still certainly had some bad judgment on the stand.

You will recall that he testified on his direct examination that Mrs. Hill went to Dr. Brock in the fall of 1954. Well, of course, you can't always remember dates. But then I asked him on cross, "Well, wasn't that in July?"—a perfectly simple question, and I gave him a check that he had drawn in July and said, "Look at this." Well, he fenced around with me. He didn't want to put it from the fall of 1954 back to July. He thought those two or three months were bad. Of course, it made no real difference, but it is an endeavor to push things a little bit.

I asked him whether it wasn't a fact that his wife's condition had been diagnosed by Dr. Brock as the menopause, and he said no. So then I had to read to him from his examination before trial where he had stated precisely that: that her condition was diagnosed as menopause. Again, that's bad error of judgment. He knew perfectly well that he had testified that way before, but he thought he could get away with it.

Then there was the business where he was trying to make out that these back-door scenes in *Life*, where it says, "Three crises at a back door," was really the front door,

and he was asked on direct examination, "How about the doors in your house?" And he said, "Well, that was the door we always used," leaving the impression that it was the front door.

[fol. 624] And then I asked him on cross-examination, "Well, how about these doors?" And he fenced around and kept saying, "This was the door we always used," and I finally had to ask him the direct question, "Wasn't that the back door?" And he said yes. But, again, why did he have to fence about something like that? He was trying to push things a bit too far.

I think he had other mistakes in judgment: people talking to him. And he said, "I read into the questions the insinuations that were present."

There is nothing wrong with this play, nothing lurid about it. The family are unharmed. They are heroes in it. But he keeps thinking things are much worse than they really are and dressing them up. And all you have to do is to read the play to know that.

He knew his wife was having trouble, yet he cuts out a clipping of an ad from a Chicago paper, back in February of 1956, and carefully brings it home to show it to her, and he said, "When anything came up like that, I showed it to her."

He seems to be obsessed with the idea of trying to bring things to his wife's attention, such as having her go down with him—if she was really ill—and I will come to that in a minute—down with him to Whitemarsh in the fall of 1955 to check on the house. He didn't tell Dr. Dean that he was doing these things.

He knew his wife was having the menopause, and yet he was away 65 per cent of the time in 1954 and 60 per cent of the time in 1955. And I suggest to you when Mr. Hill [fol. 625] said he saw the Life article and got madder and madder, he was madder and madder at himself, for he realized the effect of his own bad judgment. And I think that was also the reason that Mrs. Hill testified, when we read from the deposition, when she saw the Life article, she

got angry. Of course, she was angry, because she realized that her husband's bad judgment had led up to these things. And, of course, neither of them told this state of affairs to Dr. Dean.

Now, lastly, with Mr. Hill, he starts a suit and he has Paramount Pictures, Random House, Literary Guild, Crowell-Collier Publishing Company, Pocket Books, Reader's Digest, and what does he do? He voluntarily discontinued as against all those named defendants other than Mr. Hayes and the theatrical defendants and ourselves. That was his action, not ours.

But I suggest to you that if any harm has come to Mr. Hill—and I very strongly doubt it has—it is because of the novel and the play and the motion picture, and not the Life article.

Now, what about Mrs. Hill? I think it is perfectly obvious, as was outlined originally by Dr. Dean, when he made his report back in January of 1957, that she was hurt by the novel when it came out because she was disturbed by it and her friends all drew it to her attention. This was no mystery to their friends. They had put two and two together. Any fool could two and two together. We weren't different from anybody else when we wrote the Life article. The friends came to her and said, "Why, [fol. 626] goodness, isn't this your story? You are in a novel." And she certainly was disturbed by that.

In fact, she was so disturbed that, as Dr. Dean wrote in 1957—not when he was on the stand last week—that "Towards the latter part of 1954 her nervousness and anxiety and depression had become so severe that she consulted a local physician, who treated her for several months."

And these other things that became before that all were before the latter part of 1954, when she went to the doctor. That was Dr. Dean's story back in 1957, when he first examined her.

So I suggest to you that with Mrs. Hill, what happened to her really was because of remarks of her friends. And they had already come to her. So that anything that hap-

pened, to my mind, after the initial publication of the novel would not have hurt her more because she was confined to her friends, unlike Mr. Hill, who was out in the business world and talking to others and may have had people mention things. So far as Mrs. Hill was concerned, the damage was done by the novel—if damage there be—and by putting two and two together.

Now, with her story of her illness I can only suggest that I approach it with some doubt in my mind. She went to Dr. Brock starting in July of 1954 for treatment of menopause and she had hormones prescribed for her. She didn't go to a psychiatrist until she went to Dr. Stephens for four times in the summer of 1955. Nothing more happened until [fol. 627] August 1956, when she went to Dr. Dean and, of course, the outcome of that series was a report, with the original going to Mr. Garment, obviously meant for this lawsuit. And her four visits to Dr. Stephens in the summer of 1955 were in the interim, between the drawing of the summons on June 27, 1955 and service of the summons and complaint on October 28, 1955. So that at that point you start off and you say she is going to one psychologist in 1955 and before she serves the complaint and another one in 1956 in order that Mr. Garment may have a basis for his complaint. And at that point, I have some doubt.

Where was Dr. Brock? We don't have Dr. Brock on the stand, the man who examined her and was treating her for menopause. We have Dr. Kaplan, who is obviously a professional witness and never saw her and whose testimony is practically worthless. And we have Dr. Dean.

The significant thing about this report of his on January 22, 1957 is that there is no mention of menopause anywhere within this four corners, and he said, "Well, I didn't think she had menopause. She had none of the signs." And yet I read him some medical statements with which he agreed, that with the menopause, which generally starts at age 47—and, incidentally, he said she was 45 in 1955 and then he changed that, she was 46 in 1955, when he first saw her—I think she was really 47, I don't think it makes any differ-

ence—but he certainly wasn't paying any attention to a [fol. 628] most important fact, which any doctor worth his salt should have paid attention to.

And then I read him some statements as to menopause and some of the psychological effects you might expect from it: Depression, extreme melancholia may become a most serious manifestation. There is little interest in life. There may even be suicidal tendencies.

And then I read him about classically involutinal melancholia is an anxious, agitated, delusional, depressional menopause, and anxious anticipation, restlessness, insomnia, fatigability, and irritability are common. The mood varies from pessimism to frank depression. These symptoms blossom into a severe agitated delusional depression. No more profound depression is seen psychiatrically and attempts at suicide are common.

What more evidence did Dr. Dean need that the menopause might have something to do with it—if he was a competent psychiatrist? I suggest to you that the worst mistake the Hill family ever made was to leave Dr. Brock and go to Dr. Dean, and maybe that was because Mrs. Hill, as you will observe in this report, majored in psychology when she went to college. But when she stopped taking the hormones that Dr. Brock told her to take and she put herself in the hands of Dr. Dean, that's where there was a grave error.

And Dr. Dean, back in 1957, said that she was going to be cured in a year, and also Dr. Dean, in 1957, said: "Her content of thought centered chiefly about the invasion of [fol. 629] privacy of herself and her family as a result of the book, magazine article, stage play and movie, and she traced back the onset of her symptoms directly to those events." And he said that she had severe reactive depression "caused in my opinion by her reaction to the publicity described previously."

Obviously he was referring to the novel and the book and the motion picture and the magazine article, and if she was having trouble because of being disturbed as to

that, the magazine article would be one element amongst many of them, and I suggest to you that when he comes on the stand, as he did last week, and says it's solely the magazine article, and in view of this report back in 1957, it just doesn't make sense.

Moreover, we examined her and took her deposition at the end of 1958 and the early part of 1959, and you heard the questions and answers. She hadn't been having any more of these signs; she felt fine; she was resuming her normal activities. That's the last we heard until we walk into court. She is here when we are choosing you ladies and gentlemen as members of the jury, and then disappears.

Now, all I can say that at that point I just have some suspicion as to the testimony as to Mrs. Hill. I think the so-called medical testimony that was put before you was worthless—you can draw your own conclusion on the very matters that I have told you about—and that at most the Life article was a contributing factor after the novel and play had done whatever was harmful, if anything harmful there be in that.

[fol. 630] So may I suggest with Mrs. Hill it is not quite the desperate case which has been pictured here, and that perhaps if there was a little less of bad judgment on the part of her husband, she would be a better woman today.

Now I turn to Mr. Hayes. He had interest in the hostage theme. He had that New York Times article before him. Within six months the story of *The Desperate Hours* was written with all the coincidences we have outlined. And the first time that he had to tell the outside world about the inspiration of *The Desperate Hours* was Exhibit J, this little publication "Wings," which comes out from the Literary Guild. And he said there that he read some front-page stories, and he referred to two cases, in New York State and one in Philadelphia.

Of course the New York State case, you recall, was the Snyder case with the wife and the little girl, and the little girl was killed. So that obviously apart from the fact that those two had been held prisoner by one convict, there is

no inspiration flowing from that. And if you look at his Wings article, written December 1953 which came out in 1954, the only other case is the Hill case in Philadelphia. That's what Mr. Hayes had to say before we came on the scene.

He next had to say something in January of 1955, where he wrote this little article for the New York Times, Hayes Exhibit G, entitled "Fiction out of Fact" and "Transforming Fact into Fiction," and he said that the novel and the play [fol. 631] version of it was based on various news stories. So he is perfectly clear on that. And he mentions New York again—and we have already seen that New York has nothing to do with The Desperate Hours—and he mentions Philadelphia and he also mentions California and Detroit.

Detroit, as he explained on the stand, was merely an incident of a girl being driven around in an automobile. So that could hardly be something which would inspire him. With California he said, "Well, I have lost my file, but that was a story of three convicts who picked up a man in a car on the desert, drove to his home, and were later captured when they tried to leave the home."

But he had no clippings, he had nothing to show it.

I don't blame him for not having his files. It is quite normal that he might lose it. But files can be reconstructed, and I am sure that if that story ever appeared in any newspaper anywhere Mr. Garment would have had it for his cross examination for Mr. Hayes—and he didn't. So I suggest to you that there was not any true story based on a California incident.

When he came to testify before trial here, he added another incident and he said there was a like incident in Ohio, where a family of three were shot and killed by three convicts. But again he had no clippings. For all I know, there was some fictional story that he read. But suffice it to say, there was nothing in the newspapers.

[fol. 632] And then Mr. Garment produced some other newspapers and said, "Well, here are four more instances which you have read, and maybe those inspired." And those

are Exhibit 19, and three of the clippings relate to a Pittsburgh incident, where eight convicts started out but then five of them ended up holding a woman, a 20-month-old baby and six-month-old boy hostage for a time. And then there was a second instance in Wisconsin, when two convicts killed a man and violated a girl. And then there was a Nebraska incident, where two prisoners escaped from jail, went through a series of cars, ended up with four hostages in the car, came to a farmhouse, sat there until the family arrived, at which point they took the family's car and off they went, leaving all their hostages behind.

And the fourth instance, also in Nebraska, where three wanted criminals—not convicts—and two of them happened to be brothers in that instance—went to a farmhouse, and stayed until dark, with the farmer's wife and ten-month-old baby. Obviously none of those instances in the hostage theme are like the New York Times December 13, 1952 with the Hill family becoming Hilliard, and the rest of it.

And, of course, Mr. Garment produced the Bradenton telephone directory, with Mr. Hilliard in the automobile business down there, and the only inference you can draw from that is that if he is so assiduous he certainly would have found the clippings on the California and Ohio instances that Mr. Hayes thought he had heard about.

[fol. 633] So I say to you that there is no real-life incident other than the Hill story which could possibly have been the inspiration for *The Desperate Hours*.

And, mind you, at the time that Mr. Hayes testified in this case in 1957, he was trying to backtrack a bit on this inspiration business, frankly. The only complaints in the case were these three that said that Mr. Hayes had based his story on the Hill family and that he was portraying the Hill family.

So that Mr. Hayes had every motive in the world at that point thinking they were after him, to try and backtrack as much as he could, and yet it is perfectly obvious that either the Hill story inspired *The Desperate Hours* or Mr. Hayes deliberately created that fiction—which I don't think

is a fiction—by his publication in *Wings* and his publication of “Fiction Out of Fact.”

Certain it is that when Bradley Smith saw him on the train and asked him wasn’t there a similar case in Philadelphia, Mr. Hayes certainly admitted and said yes, one of the cases occurred in Philadelphia. So that was the start of the train. And that’s how we got the final information.

And then Mr. Prideaux called him and said was not there a case in Philadelphia, said that on the telephone, and he said yes. And what did Mr. Hayes think Mr. Prideaux and Mrs. Ludwig were coming down to Philadelphia for and asking to check on the Hill home?

[fol. 634] He and his manager located the Hill home. Of course, they knew the Hill name at the point. They couldn’t have found the house otherwise. They all went around and looked around and Mr. Prideaux and Mrs. Ludwig went and saw the play. And then we sent another team down, Capa, the photograph, and Miss Shevlin, and they talked with him, and all this time Mr. Hayes obviously if it were not a fact that the incident inspired the play was perfectly free to state so. He knew perfectly well that our interest in the Hill home was basically predicated on the fact of the connection between the actual occurrence and the play, and if it were not so, it was Mr. Hayes’ responsibility to have said so. And, of course, he didn’t, because there was a connection, and a real connection, between the two.

He was also silent when the *Inquirer* in 1954 said, “You see a slice out of real life,” and referred to Whitemarsh and the *Inquirer* in 1955, Exhibit K, when it was reviewing the play said it is based on an actual incident. So that at that point he was letting things take their normal way.

He made no protest to us when our article came out to say, “Well, gee, this is incorrect.” In fact he said the headline “TRUE CRIME INSPIRES TENSE PLAY” was correct. I think there is no doubt that even in Mr. Hayes’ mind, as he testified, the Hill incident triggered the novel. And I don’t really think it important in that respect whether

you go into these little details that I have been mentioning [fol. 635] or whether you go into—as Mr. Prideaux expressed—the heart and soul of the play and the Hill incident. The heart and soul really were a normal, respectable middle class American family with their children suddenly faced with the appalling fact that three convicts were in their home holding them hostage. And that was the theme and the mood and the heart and soul of the Hill incident and of the play. And that's what Mr. Prideaux relied on in addition to the specific details.

Now I come to Mr. Prideaux. I would suppose that if he's supposed to be so venal and putting out a phony article to fool the American people, at least someone would have paid him something for it. But certainly he wasn't being paid by anyone other than Life to do the job of reporting on newsworthy events in the entertainment field. And that's precisely what he did here. He was told by Bradley Smith of the connection. He verified it with Mr. Hayes.

Incidentally, it was Mr. Hayes who said that. Mr. Prideaux couldn't remember what he said to Mr. Hayes. And if he is out here to lie to you, the easiest thing for him to do is to say, "Sure, I remember that." But he couldn't remember it. And I had to ask Mr. Hayes, "Well, do you remember the call from Mr. Prideaux?" And he said, "Sure, I do, and he asked me about the Philadelphia incident, and the play, and I said yes, there was one." But Mr. Prideaux, couldn't remember that.

[fol. 636] Now, Miss Ecker could remember that they had gone down and that was very clear in her recollection there was a connection between the two. She had the Philadelphia newspaper clippings—I don't think it's of any importance whether they had them or didn't, because they certainly had the time, but her recollection is she had them, and that's Mr. Prideaux's recollection, and of course they went through these news clippings, put together the obvious, as the Hill friends had done, and came up with the story.

And certainly if anything was newsworthy it was this play. You have a best selling novel made into a motion picture that's being held up and a Broadway play about to open. If that isn't a newsworthy event in the entertainment field, I will eat my hat.

And certainly if you talk about the Hill family being newsworthy, you can go through these headlines. Goodness, they were all around; they were newsworthy. They had hit the headlines and been treated extensively.

So you had two newsworthy events and you had a very real connection between the two. And of course putting the two newsworthy events together was a matter of interest. It's not a crime to make things interesting—that I know of—and I suppose that any newspaper or magazine wants to present interesting facts. That is what you are supposed to do. And that is what you want to read about. And that is the reason for having these media.

[fol. 637] This was no publicity stunt. Miss Shevlin said sure, it was a gimmick. Well, it's a device to bring in interest, and of course you are trying to make things interesting. But you are putting together two events with a very newsworthy character and a very real connection.

And at this point, if you remember, keeping your eye on the ball, once you have got that, that's the end of this case.

Now, we have a lot of talk about the text and the changes in it and big blow-ups so that you think here is something mysterious about this text and something we have done wrong.

The only changes made in the text were to avoid redundancy. The screaming headline on the article talks of inspiration, "True Crime Inspires Tense Play." That's the theme; that's what we are talking about. You get to the body of the article. It says again it was inspired.

Sure, in the process of writing it two other mentions of "sparks off" and "moves" were deleted, obviously, because you are saying four times what you have just said twice. And that's all there is to that hullabaloo about any change in this article.

Another change was in the sentence "Directed by Robert Montgomery and expertly acted, Hayes' play is a somewhat fictionalized by heart-stopping account of how one family rose to heroism in a crisis," and a great hullabaloo because that was changed to read "The play, directed by Robert Montgomery, and expertly acted, is a heart-stopping account of how an average family rose to heroism in a crisis." [fol. 638] Obviously the two sentences are talking about different things. The first sentence, as originally written, saying the play is a somewhat fictionalized but heart-stopping account of how one family rose to heroism in a crisis, is talking of the Hill family, that it was a fictionalized version. The second sentence, as it finally came out, didn't need the word "fictionalized" any more because it is referring to the family in the play. It just says "is a heart-stopping account of how an average family rose to heroism in a crisis." So the change in the sentence dealing with the Hill family and the sentence dealing with the family in the play is supposed to be something horrible. And it is perfectly simple.

Again I warn you, as I did in my opening, of this business of the big lie technique of assertion when there is nothing to base the assertion on, and the plain fact of the matter is that this article was perfectly well written. Incidentally, when it came to Mrs. Ludwig and her testimony there was an attempt there to throw you off. She checked for accuracy, and we had two exhibits, 22 and 22-A. Originally it was all just lumped together. And of course 22-A was the actual checking copy of the final article as it appeared, and you can see the careful checking process that was gone through. She is sitting down there, going through the whole article, checking out as to what's there, making sure it's accurate. That was her job.

These three pages of a draft were lumped in with that when they were put in evidence originally, and of course [fol. 639] she had started her checking on these three pages and she couldn't check out some of the business as to the

motion picture. So she hadn't put check marks on that and she put a question mark on it, as is perfectly normal, to remind herself to check something.

So the whole thing as originally put in was put in to one lump so that you would think that the final article as checked by Miss Ecker, she left a lot of question marks and hadn't checked part. Of course, that's not the fact.

The article itself, which is 22, is carefully checked, every single word. And, of course, it's accurate.

There was no possible motive for Mrs. Ludwig or Tom Prideaux to have tried to mislead anybody with respect to this or to try to sell tickets to *The Desperate Hours*, as these plaintiffs would have you believe. Obviously their sole motive was to write a newsworthy story concerning the entertainment field. Obviously they believed in what they wrote.

So on the second part of this case, as to whether what they wrote was accurate or not, they certainly believed what they wrote was accurate and certainly had the motive of trying to report a newsworthy event in the entertainment field. So that on the second part of this case and in the third part of the case I say to you that you must inevitably find for us on that basis—if you don't get misled by a lot of assertions where there aren't any facts.

[fol. 640] Now, let's review.

Three events caused the final results with respect to the Hill family, and none of those events had anything to do with us. First, the convicts came into the Hill home. We have nothing to do with that. And once the convicts came into the Hill home, they were newsworthy and it was a very unusual event.

Secondly, Mr. Hayes put that story in a play, in a novel and a motion picture, and we had nothing to do with that. It certainly was that story, inspired by it. Last, Mr. Hill did not protest, he gave it initial publicity in the newspapers, he tried to stick his head in the sand, he had three errors of judgment, and it was his errors of judgment that led to these things.

Is Tom Prideaux to be convicted of a crime based on that? I know Mr. Prideaux is not a defendant in this case. But any finding against Life—and we feel responsible for what we publish and Mr. Prideaux says he is responsible for what he does—any finding for the plaintiffs in this case inevitably will have convicted Mr. Prideaux of a crime, the crime of having falsely published something he knew was wrong intentionally to help the sale of *The Desperate Hours*. And I suggest to you there is no possible basis in the facts of this case, no matter how much people may raise their voices, upon which any such finding can be predicated.

In that regard they are even making a claim for punitive damages in this case. Frankly, I think it's plain silly. They [fol. 641] say, "We want you to punish Life because they did something with very bad intent."

And if there is anything that isn't in this case, that is a basis for a claim for punitive damages. I will let you people handle that.

I want to thank you for the very close attention that you have given to this case. I certainly appreciate it. I want you to keep in mind that this is the last time I can talk. Inevitably there are some matters I haven't covered, something that can be pointed out, and I am just going to have to rely on you and your good sense to handle those as these things are thrown at you, because you have got a tough case if you are going to do your duty and do it in a calm, dispassionate way.

I come back to the easy, simple technique: Mr. Hill, the Times, the play, the complaints. There is a simple answer to this.

I don't think that when you get all through you will have any trouble in following that simple answer.

Thank you very much.

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SUMMATION FOR PLAINTIFFS

Mr. Garment: Your Honor, ladies and gentlemen of the jury, in some ways this has been a painful case for my [fol. 643] clients, for myself and for my associates. The injuries that we have spoken about are painful to describe and call evidence about in the courtroom. And yet I think at the end of it all there will be a purpose that has been served by the work that we have done and by the prosecution of this claim.

I think, too, that you jurors must have shared with me, as this case went along, a growing feeling of amazement at some of the things that you heard and saw in this courtroom, and some of the claims that were presented, and some of the evidence that was given, the extent to which common sense was ignored.

But the theme for what I have to say was furnished by Mr. Medina in his closing statement, when he said that this is not a libel case and that there is no claim being made here that this is a libel case.

Mr. Medina certainly is right; this is not a libel case. A libel case involves a frontal attack on somebody. It involves something that can be dealt with in this same manner. It involves a false charge that is generally not believed by people in the community. It involves injury to reputation, if anything is injured.

What we are talking about in this case, what we have tried to present to you in a common sense fashion, is the right of privacy. And we have tried in this case to make that right meaningful, if it ever can be made meaningful in a lawsuit.

When a human being's privacy is violated, as that right is defined and limited by law, in most cases there is nothing [fol. 644] that he or she could do about it. When a great publication takes it upon itself to twist the news, to distort the facts, to drag private individuals into their pages for their own commercial purposes, in almost every case there is nothing that can be done about it.

In this case the defendant Time, Incorporated is charged with something of enormous gravity. We charged Time, Incorporated with having published a false article, falsely dragging the plaintiffs into the news, falsely linking them with a violent, melodramatic work of fiction for commercial purposes pure and simple.

We charged this most powerful of all news publications in the world with having done this deliberately, with knowledge of falsity, and we charged them with having brought about the permanent disability of a human being by reason of their action.

And to these charges, ladies and gentlemen, I say there has been no defense. There has been no defense that any reasonable person can say represents a defense.

What have you heard? Seven years ago this claim was made, and in that period of time, in the seven years that have elapsed, every effort has been made by this defendant to avoid having this case come to light in a courtroom before a jury of twelve ordinary citizens. The freedom of the press was their defense from the beginning to the end. But, ladies and gentlemen, once we got over that wall, once [fol. 645] we came here into this courtroom, before the twelve of you, common sense, I say, has to rule the day. And you twelve can tell better than lawyers, better than specialists, what the truth is. You can see it in the manner of a witness. You can see it in the trembling of a cheek. You can see it and hear it in ridiculous arrogant nonsense that is thrown at you hour after hour.

For seven years, ladies and gentlemen, this greatest of all news institutions has persisted in claiming that what they did was legally justified by the freedom of the press. And they have persisted in that claim through the ten days of this trial to this jury.

Now, what have they said in this courtroom to furnish words, to furnish some kind of skeleton, to furnish anything on which the freedom of the press can hang? Similarities—that's all you have heard from the beginning of the case to the end, from the mouths of the lawyers for Time, Inc. and their witnesses.

I think the short answer to all of that, in a sense, is what you have seen and read and heard. You saw the movie. You had available to you, as some of you may have read, the play. You heard Jim Hill tell what happened in his home. You heard the contemporary news accounts. What more does anybody need to reach the conclusion that the Hill incident was not *The Desperate Hours* and that the Hill incident did not inspire *The Desperate Hours*? What more did Time, Inc. need?

[fol. 646] But you also heard the author of *The Desperate Hours*. He sat on the witness stand and said *The Desperate Hours* was not the story of the Hill incident, it was not specifically inspired by the Hill incident, "I never told anybody it was inspired by the Hill incident; I never told anybody that it was the story of the Hill family."

You heard Mr. Prideaux sit on the stand and admit that he had never asked the author.

Ladies and gentlemen, the amazing thing is what you did hear from the witnesses. I know that I myself, close as my involvement is in this case, at times drew back in disbelief—and you must have—when Tom Prideaux said it was obligatory to connect the Hill family with *The Desperate Hours*, when Tom Prideaux said that the author doesn't necessarily know what inspires his work and that it would be a waste of time to ask him when they are proposing to do a news article saying that a work of fiction was the story of a family, when an exhibit is placed in evidence about Jim Hill being in an automobile accident and the theory of that offer is that it makes him newsworthy.

These similarities, ladies and gentlemen, simply did not exist. There were no news clippings when Life went down to do this article. They did no research. They asked nobody. They had no news clippings to produce in court for the simple reason that there had never been any. Everyone knew, everyone connected with this article knew from the start that *The Desperate Hours* was not connected with the Hill family or their incident and certainly was not their story.

[fol. 647] But the entire case of Time, Inc. has been built about this idea of similarities. And I say to you, ladies and gentlemen, that it was an attempt to hoodwink you.

Let me go back to Mr. Medina's opening statement at the beginning of this case. Mr. Medina started out by saying, "One of the most difficult things to contend with, both here in court and outside, is the big lie technique. And that is precisely what you are faced with here, because a charge is made that we published a false article, that we knew it was false and that we were trying to sell tickets to the play rather than to report a newsworthy event in the entertainment field. 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 guilty of a criminal offense and he certainly shouldn't be in our employ any more."

Then Mr. Medina went on to say that he wanted you to keep your eye on the ball when you have this big lie technique thrown at you, and then he proposed to show you and tell you about the similarities.

Now, he made a careful effort in that opening to draw every last bit of similarity, these trifles, these coincidences, these superficial details. He made every effort to fit those into some kind of theory of similarities—whether or not anybody had known about them. And here is what he did. They are small parts, but it was all done to create an [fol. 648] impression in your mind that there were similarities here.

You recall that *The Desperate Hours* involved a father, a mother, a 'teen-age daughter and one boy, who is aged ten. In his opening statement, talking about the Hill incident, Mr. Medina, after seven-years' preparation of this case, told you that "In September 1952 Mr. Hill and his wife, in their mid-forties, with a 'teen-age daughter and a son, aged ten, and two young children, lived in a suburban home in Philadelphia."

He left out one daughter and he stated the age of the boy as ten, when the boy's age was in fact eleven. Of

course, there was only one daughter in *The Desperate Hours* and the boy in *The Desperate Hours* was aged ten and he was appealing to your mind at that point, the creation of similarities. It was a direct misstatement of the facts.

He proceeded: "Mr. Hill and the daughter left for work." Mr. Medina knew, every newspaper account that he put in evidence made it clear, that Mr. Hill took his two daughters, not the daughter, and he dropped them off at school. But in *The Desperate Hours* the father and the daughter left for work. Making every effort to push this case and the Hill incident into the framework of *The Desperate Hours*, he misstated the facts here in the opening.

He continued:

"Two of the convicts were brothers. They came into the house, and as Mr. Hill and the daughter returned later that day, they were captured."

[fol. 649] Again one daughter. Where is the other daughter? Again the attempt to create in your mind the idea that there was this similarity: One daughter in the Hill incident, one daughter in *The Desperate Hours*.

Then, later on, in talking about the writing of the novel, he has Mr. Hayes taking the clipping from the *New York Times*, going off, writing *The Desperate Hours* about a family in their midforties with a seventeen-year-old daughter. He told you there was a seventeen-year-old daughter in *The Desperate Hours*.

Well, the Hills had a seventeen-year-old daughter; but the daughter in *The Desperate Hours* was nineteen years old in the book and twenty years in the play. Another misstatement.

Do you think that these were accidental, or was there an attempt to create in your mind an impression, right at the beginning of the case, that there were these similarities?

He proceeded: "And at 8:30 in the morning"—talking about the novel—"the precise hour that the convicts had arrived in the Hill incident"—8:30 in the morning. Ladies

and gentlemen, the novel, which is what he was talking about, which was what was inspired if anything was inspired by the Hill incident, has the convicts arriving at one o'clock in the afternoon. And I say to you Mr. Medina must have known that when he prepared this statement in advance and calculated to create in your minds an impression about similarities that did not exist.

[fol. 650] He went on, talking about *The Desperate Hours*, two brothers, convicts, and they arrived after the father and daughter had left the house, the father and the daughter had left the house just as in the real-life incident, when he knew in the real-life incident the father and his two daughters went off and the girls were dropped off at school and they stayed in the home, the convicts, and they captured the father and the daughters as they came back in the afternoon.

Was he telling you the truth in the opening statement of this case? Was he speaking for Time, Incorporated right at the beginning of this case with anything but contempt?

And the family was unharmed—talking about the novel—and the convicts left in the middle of the night, switching back to the Hill incident. But nobody would know it unless you studied these pages with the same care that we studied that *Life* article through these years.

And then he said to this jury: "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."

Ladies and gentlemen, there has been no more ridiculous statement ever made in any courtroom to any jury—"every single item in *The Desperate Hours* except for the actual incidents in the house came from the *New York Times*."

Well, almost all of *The Desperate Hours* takes place in the house, and everything that took place outside of the house in *The Desperate Hours* had nothing at all to do [fol. 651] with the Hill incident. So that statement of Mr. Medina's adds up to precisely zero. But it has that sound to it of some kind of similarity. It is the most meaningless statement that any man has ever made in a lawsuit.

And it was followed by the statement to you, after all these pieces and parts had been so carefully assembled: "And I say to you that when you put those together it is an inescapable conclusion that the true crime did inspire the play, and there is no other conclusion possible. Certain it is that 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."

Now, ladies and gentlemen, Mr. Hayes was examined before trial. Mr. Prideaux is in the employ of Time, Incorporated. You heard their testimony here. Their testimony coincided with their testimony before trial.

There was no testimony by either Mr. Hayes or Mr. Prideaux that Mr. Hayes had ever told anyone that it was based upon an incident. In every publication relating to *The Desperate Hours* Mr. Hayes said, time and time again, that there were many incidents, and Mr. Prideaux could not get on that witness stand and say that Mr. Hayes told him any such thing. He said he assumed the connection between *The Desperate Hours* and he thought it was inappropriate and unnecessary to ask the author what that relationship was.

[fol. 652] Well, now, that's the way this case started, ladies and gentlemen. That's the kind of statement that was made to you right at the outset. That's the frame upon which Time, Incorporated rests its entire case, these similarities, these non-existent similarities, these false, contrived similarities. This case is a lie from beginning to end.

And when Mr. Medina says that Mr. Garment gets worked up and shouts and throws books, I admit to you that I do all of that, and I do it because I am human and I have feelings, and in the face of that kind of contempt and arrogance you are not human unless you have feelings of anger and throw books.

How did this article come about? Is it Mr. Prideaux's sole responsibility? Is it something that just happened? Are we here in this courtroom after seven years simply because there was something inadvertent?

I assure you, ladies and gentlemen, that is not the case. There has been a great effort made to put this all on Mr. Prideaux's shoulders, to make you feel that your verdict here is a verdict against Mr. Prideaux. And after a quarter century of devoted service to Life Magazine out he goes if you find against Time, Incorporated. It's hard for me to summon up words to tell you how despicable I think that is.

I will tell you where this article came from. It came from the established editorial policy of the magazine.

Now please understand me. I read the publications of Time, Incorporated, my partners read them: Time, Life, [fol. 653] Fortune. Life is an entertainment magazine. But there is a difference between entertainment and cruelty.

You remember I offered in evidence, and at the time it may have been puzzling why I offered in evidence, a foreword to a book called "How Life Gets The Story," written by Mr. Edward K. Thompson, the managing editor of Life Magazine at the time this article was published. The book was published in 1955, the year that this article was published. It is sub-titled, "Behind The Scenes In Photo-Journalism." And it is an amazingly candid statement about the editorial policy that the men who work on the magazine carry out.

Mr. Thompson outlined the basic qualities and techniques which produce—and I quote—"Life's week-to-week surprises and underlie its character." And there are four points in this list that I want to draw to your attention because they explain this article involving the Hill family. The first is the "ability to share with the reader a sense of participation." The second is "luck, which means being like a good ball team that forces its own breaks." The third is "ability to use camera equipment, reportorial skills and every imaginable production device to convey exact meanings." And the fourth is "knowing when to be bold and when to tread softly—that is, being psychologically hep."

Those are quotations.

True life stories. I put in a whole list of them. There have been many, many true life reviews of movies and [fol. 654] plays in Life Magazine. The men that man the various departments, the editor-writers, have to find stories, find an interesting approach, a newsy approach, something that will share with the reader a sense of participation. It's another word for identification, to give the reader a sense that this is more than just make-believe, that this involves human beings, flesh and blood, and so forth.

Well, that's what Tom Prideaux was on the lookout for in the fall and winter of 1954, when he heard about The Desperate Hours and when, somehow or other, word about Philadelphia and an incident involving a hostage family in Philadelphia came to his attention. And there is the second element, "luck".

And Mr. Prideaux followed that up. And being like a good ball team that forces its own breaks, he got down to Philadelphia, he saw the author, he made the arrangements for the use of the house. He didn't bother with news clippings. He didn't bother asking the author what the relationship was between this book and this incident because he knew very well after 25 years of being in the theatre and in writing that there would be no such relationship as they have been talking about here in court. And the article was arranged.

They arranged for a headline to be used in the article. They arranged to have that headline sent up to New York. And then Mr. Prideaux sat down with the managing editor and the art director and they laid out the story. There were just photographs, and he explained then what he was going to do.

[fol. 655] And bear that in mind, ladies and gentlemen, in the light of the attempt to make Tom Prideaux the goat for this whole operation, to bring him down here and make this thing a personal charge against Tom Prideaux and not against Time, Inc., that the managing editor, the man who wrote that foreward that I just read to you, was the

one who gave his approval to this article after the substance of it was explained to him.

And then Mr. Prideaux sat down to write the article, and in his first draft he was vague. He didn't even mention the Hill family in the body of the article. He made reference to a suburban Philadelphia family. He had them up in a caption. He talked mostly about the author, in the first paragraph. He referred to the fact that *The Desperate Hours* was a "somewhat fictionalized" account of the Hill incident.

And then it went to Mr. Kastner. Mr. Kastner for a quarter of a century has been the copy editor for *Life Magazine*, carrying out the editorial policy of the magazine. And if you have an opportunity to do it, ladies and gentlemen, take those exhibits, ask for them, look at them, and you will see that the first part of that first sentence is almost physically ripped through with a pencil, and "somewhat fictionalized" is stricken.

What was happening at this point? The next rule: Be specific, convey exact meanings, don't be vague—"We are involving the Hills in this."

You remember I said in my opening they might as well be hung for a sheep as well as for a lamb. "We are getting [fol. 656] the Hills into the article. We might as well do it completely." That's precisely what they did from draft to draft. What started out as a story about the author wound up as the story of the Hill family. *The Desperate Hours* became the story of the Hill family inspired by their experience. You can go to the theatre and see an account of how this family "rose to heroism in a crisis."

They didn't have the vaguest idea what happened to the Hill family and they couldn't have cared less.

You remember that I pointed out that the final draft of the article, with all of the changes, was initialed by Joseph Kastner and by Edward K. Thompson. It had gone through various editorial channels, everyone had participated in it, and I asked Mr. Prideaux to take all the time

he wanted and to point out one instance in which that article indicated the slightest difference to the ordinary reader between the Hill incident and *The Desperate Hours*. And he said that would be a waste of time.

Well, I assure you, ladies and gentlemen, that it would have been a waste of time for Mr. Prideaux, because he couldn't have done it, because that article was prepared with such care and with such accuracy in terms of the manipulation of words to avoid any ambiguity at all about the relationship between these two that you can't find a single word or phrase or picture that even suggests remotely there was a difference between the Hill incident and *The Desperate Hours*.

[fol. 657] Nineteen hours was dropped out of the draft because it clashed with the forty-eight hours of the actual Hill incident. "*The Desperate Hours*" as the running head was dropped out and "*True Crime*" was substituted. The size of the actual real-life family was not mentioned because it would have clashed with the four members of the family that was shown in the article.

"Somewhat fictionalized" was stricken, so that the reader of the article wouldn't be confused about this. It's the story of the Hill family.

As a matter of fact, ladies and gentlemen, "Somewhat fictionalized" was stricken and the Hills were drawn into this completely for the simple reason that the magazine felt that in this case they could be bold, and that was the last of the rules stated by Mr. Thompson, knowing when to "be bold" and when to "tread softly". They were dealing with private individuals. They were dealing with people who didn't count. They were dealing with people who were not celebrities. They were dealing with people who they felt would do nothing about this and therefore they went the whole hog and drew them completely into this nightmarish work of fiction.

I don't think that there can be any question at this point—and if there is, then more words on my part certainly won't help—in establishing that *The Desperate Hours* was

not the story of this family or of what happened to them or of what they did. And so we say to you that the liability of Time, Incorporated for this article has been established without any defense. They haven't even shown that any [fol. 658] one of their people read any news accounts. They have no news clippings. The files are gone. The original headline is gone. The source material is gone. The story article is gone. Every thing is gone.

Their responsibility, I say to you, is established without any defense for having published what they knew to be a basically distorted article in which the Hill family name was used essentially for purposes of trade in order to provide themselves with an interesting, dramatic article without any thought as to the consequences to the people whose name they were using.

Now what about the other people? Prideaux was one of the people who worked on the article. And I wonder whether you remember how promptly he answered my question, my last question to him, "Do you consider that you are solely responsible for this article?"—to which he said, "Yes."

Well, that's a shameful thing to have made this man do, to have him sent down here by pre-arrangement to take the responsibility for everybody else who tinkered around with the Hill name, moving it from a caption down to the body, striking out "somewhat fictionalized," without any thought whatever of the people who were involved, without any thought at all of what they had been through to begin with and what it would mean to bring them back into this again.

It is so plain that as they were manipulating the name of this family there was nothing before them but a four-[fol. 659] letter word, Hill, H-I-L-L, that in their minds was not attached to any human beings; the Hill family did not have any real existence; they couldn't think of them as people who lived in a community, who had friends, who had children, who might be offended, might be degraded, might be shocked and upset by this kind of involvement of

them in a magazine of this kind of reputation, prestige, standing and circulation.

Now, where were these men who run the magazine, who have been charged in this courtroom, as they have never been charged anywhere else before, with having published falsely and with knowledge of falsity an article of this sort? They sent Mr. Prideaux down. They brought in Laura Ecker—Mrs. Ludwig—a former employee.

Mr. Kastner was sitting there, the red-haired man, the copy editor for a quarter of a century. Mr. Medina said, "We want to be vindicated of this serious charge against our integrity." Did one of them get on the stand to say anything about this? Did Mr. Kastner get on the stand to say, "This is what I did" or "this is what I didn't do"? Did Mr. Thompson—did either of these men have the courage or dignity to come down before a jury of their peers and say what happened to defend the name of this great institution?

I say to you, ladies and gentlemen, that it was beneath them; that they are removed from the reality of life by the power of the printing presses that they hold in their hands; that they have taken the freedom of the press and [fol. 660] degraded that great amendment to our Constitution; that they consider themselves immune from legal process; that they consider themselves above logic and common sense; that they consider themselves detached from the community.

What about the other defendants? Well, I think that in a way it is tragic that an institution like this can mash up all kinds of creative people, including an author, who for the sake of publicity a quite understandable motivation, participates, doesn't know what they are doing and perhaps doesn't feel that it would be right to ask. I certainly don't know. And I imagine that's very much the case, that you do not ask Life Magazine what they are doing or why they are doing it, but they tell you, and they do it if they please.

Mr. Malino, his counsel, in effect said, "We wash our hands of them." Mr. Hayes and his associate, Mr. Erskine, testified, I would say in all fairness, frankly and honestly.

I do not think it is appropriate for me to take this question away from the jury. I will not argue for their liability or against their liability. I believe that that along with other questions is something for you to determine.

The consequences of publicity. I doubt very much that any case has shown the way human beings can be ground up by publicity and how thoughtless or indifferent or purposeful falsities, widely published, can destroy a human being.

You heard the testimony of people who knew Mrs. Hill before and after the Life article, of the changes that took [fol. 661] place in her personality, her habits her behavior. You heard the testimony of two outstandingly qualified psychiatrists, one the treating physician, the other a physician of equal standing in this state. Both testified that in their judgment, without qualification and without refutation, the collapse of this woman, the straw that broke her back was being drawn into The Desperate Hours through this false identification in Life Magazine, with the aftermath of questioning and speculation and the degrading comment that followed it.

There wasn't a word of contradiction of that testimony by any qualified expert. I put Dr. Kaplan on the stand. I prepared in advance for any contingency of an attack upon these experts. Dr. Kaplan did not examine Mrs. Hill. Dr. Kaplan is a man of outstanding reputation in this state. He gave us his opinion on a hypothetical question. They could have examined Mrs. Hill under the law of this state. They could have called an expert to testify, to raise some question. Certainly they have the resources to do that.

What did they do? They came in here and talked about menopause.

Now let me tell you something about that. This case was started in 1955 and from that time on the defendants

in this case had the legal right to conduct a medical examination of Mrs. Hill. They deliberately waived that right. They could have found out whether or not she was in the menopause by an examination through a physician of their [fol. 662] own choice. They chose, rather, to leave it to questions here in the courtroom. Insinuations. No evidence. No defense.

Dr. Dean said she wasn't in the menopause when she came to him. They say why didn't we call Dr. Brock. It makes no difference what Dr. Brock would say. We will assume that she was in the menopause, even though there is no evidence to establish that. Did that mean that she would fall apart, become permanently, completely disabled, have to go into shock treatment, submit herself to that kind of a procedure through the years?

Is there any sense to the suggestions that were made by these lawyers that Mrs. Hill underwent treatment in order to somehow give some kind of strength to this case? Can anybody here give a moment's credence to the idea that a woman would undergo shock treatments, 30 shock treatments, in order to help her lawyers in a lawsuit?

They asked why was she not here to testify during this case, but they forgot the testimony that she has undergone a series of 15 shock treatments within recent months. They raised questions about Dr. Waxberg, Mrs. Hill having said something about Dr. Waxberg. They know that shock treatment destroys the memory, that it results in the impairment of memory and that when she testified it was after she had been in treatment. She was a sick woman. Instead of having a doctor, a qualified psychiatrist examine her, they submitted her to an ordeal of two days of questioning. They rest their case on this kind of argument [fol. 663] without calling any witnesses, any responsible person, any qualified physician.

This is Time, Incorporated, ladies and gentlemen. They sponsibility. And if that power is not discharged with a hold in their hands an enormous power, an enormous sense of responsibility then all of us are lost.

What damages do we claim? Ladies and gentlemen, we served our last complaint some four years ago, and at that time we claimed compensatory damages for Mrs. Hill of \$100,000 and \$50,000 for Mr. Hill. We have not changed that. I cannot talk to you about any other figures. That claim was made before we knew of the permanency of her illness. I consider that the claim is modest to a point that defies description.

I want to turn now to what is the special function of this jury in this case.

You will remember that when the case began and when you were impaneled I made certain statements about punitive damages and asked you certain questions as to how you felt about a matter of that sort. I want to speak in a little bit more detail about punitive damages now.

In certain cases, the law says that a jury shall have a special function, a special power; that from the community shall be drawn 12 citizens, who will then act for the community, who will be its representatives and will have the power not only to compensate for injury, but to punish for wrongdoing so as to deter the wrongdoer and others similarly situated.

[fol. 664] Now that is a grave responsibility. The amount of punitive damages that a jury awards is in the sound discretion of the jury.

I want to state what we believe to be the basic objective of this case in terms of punitive damages and what there is about this case that justifies the work and the agony of seven years of digging through, pulling together the jigsaw puzzle of journalism to try to bring out in the light of day in a courtroom what can happen, what is done, and what should be prevented.

The law says that punitive damages—and I believe his Honor will charge you in this way, or substantially in this way—that punitive damages may be awarded by the jury when they feel that there has been legal malice.

Now, legal malice may be a number of things. I am sure you are all familiar with actual malice; spite, ill will. That's what you hear about in connection with libel suits, where prominent people hurl invective at each other, lies at each other, then come into a public place and everybody screams at each other, and it is all reported and printed, and there is a great noise around, and at the end everything remains the same, because actual malice is a human emotion. Spite and ill will are something that come from an individual beyond his control.

What we are talking about in this case, ladies and gentlemen, is something that is infinitely more wicked than anger and spite and ill will. We are talking about indifference. And if there is anything that destroys human beings, if [fol. 665] there is anything that all of us are familiar with, it is indifference and the agony that it produces. It is the sense of being nothing and nobody, of having your rights disregarded, of existing only in your own mind or your family's mind but in nobody else's mind.

And that, ladies and gentlemen, is what this case is about. Here is the most powerful of news media, proceeding with the most arrogant and complete indifference to a family of seven human beings and dragging them into the dirt and filth of *The Desperate Hours* for their own selfish commercial purposes.

Now, there are not many people who have the stamina or the will or the energy to fight indifference, to fight this kind of wrong when it appears in the public press. These people have done it.

This case will lose its meaning if this jury is indifferent to the possibilities that it presents. Speaking as the community, the 12 of you have, what I believe to be, an unparalleled opportunity to speak out against this kind of indifference, to speak out against falsification, to speak out against crassness, against hypocrisy, against arrogance, and against contempt for the rights of human beings.

You will have to measure what it is that can deter this kind of wrongdoer, this particular defendant. You will have to determine under all of the facts in the case what is adequate punishment and what will deter.

[fol. 666] But I say to you, ladies and gentlemen, that in order for this case to have any meaning, in order for the action of this jury to be heard, you must render a verdict in the only terms that this defendant understands, and that is in terms of a substantial award of punitive damages. And it must be an award of punitive damages that is heard not only in this courtroom but in every editorial room throughout the country. You must award punitive damages in an amount that shocks the newspaper industry.

The Court: Members of the jury, you have worked hard on this case and so I am not going to charge you at this hour and expect you to come back with a verdict sometime today. So we are going over until tomorrow morning. At that time I will give you my charge with regards to the law and then you will be able to retire to deliberate in this case.

For the last time in this trial, I am going to caution you once more, even though this trial is over to all intents and purposes, do not make up your mind as to what your verdict will be or who is responsible, if at all, until after you have heard my charge with regard to the law. And be here promptly at five minutes to ten tomorrow morning.

* * * * *

[fol. 667]

April 17, 1962

CHARGE OF THE COURT TO JURY

* * * * *

Now, if you find a verdict for compensatory damages in any amount against one or more of the defendants, you may also award what are known as exemplary or punitive damages; that is, damages in such an amount as you believe will serve as a deterrent to such defendant or defendants

from committing a similar act in the future, or to deter others from committing such an act, or as a punishment of such defendant or defendants.

You may only award exemplary or punitive damages against such defendant or defendants if you find from the evidence that such defendant or defendants knowingly referred to the plaintiffs without first obtaining their consent, and falsely connected plaintiffs with The Desperate Hours, and that this was done knowingly or through failure to make a reasonable investigation.

You do not need to find that there was any actual ill will or personal malice toward the plaintiffs if you find a reckless or wanton disregard of the plaintiffs' rights.

* * * * *

[fol. 668]

DEFENDANTS' EXHIBIT M

STANLEY R. DEAN, M.D.

122 FOREST STREET
STAMFORD, CONN.

DAVIS 3-3354

January 22, 1957

Francis A. Read, M.D.
292 Sound Beach Avenue
Old Greenwich, Connecticut

Re: Mrs. Elizabeth Hill

Dear Doctor Read:

The following is a summary of my psychiatric examinations, observation, and treatment of the above patient from August 16, 1956 to the present time:

Mrs. Hill's past history indicates that she was essentially a normal, average housewife, mother, and member of the

community until her present illness. She graduated from the University of Colorado where she majored in psychology. After graduation she traveled abroad, took additional training at the Boston School of Occupational Therapy and returned to Denver, her home town, where she worked in that field and later on was an occupational therapist at the Boston State Hospital.

She was married to James Hill at the age of 25 and has a fine family consisting of two daughters and three sons. [fol. 669] Her husband is general sales manager for a hosiery company and has always provided a very comfortable income for his family. Because her husband's work required considerable change of location, they moved frequently and the patient was always able to make an excellent adjustment to her new environment and to take an active part in the community. For example, at various times she has been a troop leader in the Girl Scouts; a member of PEO, a service organization; she was very active in the PTA, and often took a leading role in the many organizations of which she was a member. She is an attractive woman, highly intelligent, and has always carried on a normal and active social life with her friends in addition to her participation in community activities.

Then on September 11, 1952 she became a principal in a harrowing adventure which she managed with such calmness and presence of mind as very few women would have exhibited under similar circumstances and from which, it seems to me, she would have emerged unscathed were it not for the later repercussions which I shall describe below.

The adventure to which I refer occurred when on the above date three desperadoes, escaped convicts, broke into her home in White Marsh Township, Pennsylvania, and held her and her family hostage for 27 hours. I shall not go into the details of the incident which was adequately described in the newspapers at the time. Suffice it to say [fol. 670] that Mrs. Hill was alone with her three young boys when the convicts broke into her home and that upon her rested the greatest portion of the burden of level-

headedness, self-control, and common sense that may well have saved the lives of herself and her family.

It was Mrs. Hill's one desire after they left to leave the matter to the police, to forget her ordeal as soon as possible, and to resume the normal tenor of her life. To that end, they moved from Pennsylvania in November of the same year and established a new home in Old Greenwich, Connecticut. She wanted at all costs to avoid any further publicity about the matter and, as a matter of fact, she and her husband rejected several remunerative offers for magazine articles, television, and radio appearances. She was enthusiastic about coming to Old Greenwich where she would be relatively unknown and she looked forward to resuming her social activities and her community interests. She joined the PTA, taught Sunday School, belonged to a bridge club and was able to manage her household efficiently and well during the remainder of 1952 and throughout 1953.

In March 1954 she was shocked and dismayed when she heard from a close friend that a book called "The Desperate Hours" had been published and was apparently a fictionized account of her experience with the convicts in 1952. In February 1955 a play of the same title opened on Broadway and later that same month an article about the play appeared in Life Magazine profusely illustrated with scenes [fol. 671] which the actors enacted in the Hill's former home in Pennsylvania and where the Hilliards of the book and play were actually identified with the family of my patient, Mrs. Hill. This barrage of publicity came to a peak with the appearance of a movie based upon the book in the fall of 1955. In the book, the play, and the movie there were repeated suggestions of violence towards the parents and children as well as sexual innuendoes toward the daughter. Mr. and Mrs. Hill were constantly confronted by friends, acquaintances, and even strangers with embarrassing questions pertaining to those and other probabilities.

As a matter of fact, from the time the book first appeared, and increasing to a crescendo through the appear-

ance of the movie, Mrs. Hill states that her life was no longer her own. All kinds of people began asking prying questions and making suggestive remarks at gatherings and parties as well as in the community, and while shopping she was constantly put on the spot and bombarded with questions. Her daughters would come home from school, extremely upset, and tell Mrs. Hill that the other children had called them "gun molls".

Mrs. Hill began to feel that she was discussed and whispered about wherever she went. She gradually became more and more self-conscious and withdrawn. She became anxious and depressed at the prospect of having to leave the house and of being exposed to questioning. She developed muscular tension in her shoulders, at times so severe [fol. 672] that she had difficulty in raising a cup of coffee to her mouth. She felt a peculiar generalized inward quivering, became more and more fatigued, and finally became incapable even of performing her household duties. Towards the latter part of 1954 her nervousness, anxiety, and depression had become so severe that she consulted a local physician who treated her for several months and who, when she failed to improve, referred her to a psychiatrist in Greenwich in the summer of 1955. However, therapy was unsuccessful and, feeling discouraged, she discontinued treatment. She continued to be extremely depressed, felt completely unable to cope with her household duties and family problems to such an extent that she had to hire a full-time maid for the first time in her life.

Her symptoms, unfortunately, became progressively worse as the months went by. She was confused, agitated, depressed, and unable to concentrate. Life became an intolerable burden and she stated that if she had had the courage, she would have killed herself. She developed various physical symptoms of tension such as tightness in her head, spasm in the pit of her stomach, and a habit of digging her nails into her arms until she actually excoriated her skin and developed black and blue marks. In her own words, "I couldn't face any problem no matter how small,

I felt swamped, too agitated to live, felt everything was hopeless". She stopped visiting her friends, refused to accompany her husband or children to the theatre or sporting events, withdrew from people, lost interest in her appearance, would wear the same outfit several days in a row, [fol. 673] felt drained of all initiative, was unable to make decisions, cried frequently, considered herself a dismal failure, felt that she was in the way and was holding everybody back. Her sleep was disturbed, her appetite poor, and she lost about 15 pounds in weight. She regarded herself as a useless burden and believed that her condition was entirely hopeless. Again in her own words "I couldn't bear to look at myself in the mirror, I looked horrible, frowning and depressed; sometimes I was so touchy and irritable that I felt as though I would jump out of my skin; I would have to pinch my arms and dig my nails into my flesh in order to control myself; I was dead tired mentally and physically, could hardly drag one foot after the other, and found it hard to even pick up my arm to write a letter; even when I ate, I had to rest my arm on the table between bites to get strength enough to raise the fork to my lips; even my head would sag and I would have to hold my chin up in the cup or my hand; it was even an effort to breathe".

She was referred to me August 16, 1956 at which time a psychiatric examination amply corroborated all the above symptoms. She was a picture of severe depression, cried frequently, spoke in a low voice and in general exhibited extreme psychomotor retardation. A Minnesota Multiphasic Personality Inventory revealed an abnormal degree of melancholia and obsessive-compulsive-phobic features. There was no evidence of intellectual impairment. A Wechsler-Bellevue intelligence test gave her an I. Q. of 121 [fol. 674] and she revealed no hallucinations, delusions, or signs of mental deterioration. Her content of thought centered chiefly about the invasion of privacy of herself and her family as a result of the book, magazine article, stage play, and movie and she traced back the onset of her symptoms directly to those events. This seemed to be corrob-

orated, not only by her history, but by the fact that at no time in her life did she require psychiatric treatment until then.

[fol. 675]

DIAGNOSTIC IMPRESSION

Severe reactive depression, caused, in my opinion, by her reaction to the publicity described previously.

Because her depression was so severe that it was felt she might be a suicidal risk, she was immediately started on electro-convulsive therapy. Fortunately, she responded favorably to that treatment and after six convulsions she had improved to the point where it was felt that intensive psychotherapy could be instituted. She is still receiving such therapy at the rate of three sessions per week and has exhibited extremely gratifying improvement. In my opinion she ought to go on to complete recovery provided that her present treatment is continued for an adequate period of time, which I estimate to be approximately another year.

Permit me to thank you for referring this very interesting case to me.

Very truly yours,

STANLEY R. DEAN M.D.
Stanley R. Dean, M.D.

SRD:at

Orig: Leonard Garment, Esq.
CC: Francis A. Read, M. D.

[fol. 676]

Certificate No. 129

IN THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
New York County Clerk's Index No. 8139 Year 1955

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

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

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 986 and I to V 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 31st day of December, 1965.

JAMES MCGURRIN
County Clerk and Clerk of the Supreme Court,
New York County