SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 150

THE ASSOCIATED PRESS, PETITIONER,

vs.

EDWIN A. WALKER.

INDEX

VOLUME 1

RECORD PRESS, PRINTERS, NEW YORK, N. Y., NOVEMBER 18, 1966

[fol. 2]

IN THE 17TH JUDICIAL DISTRICT COURT

IN AND FOR TARRANT COUNTY, TEXAS

No. 31741-C

EDWIN A. WALKER

v.

AMON G. CARTER, JR.; CARTER PUBLICATIONS, INC.; FORT WORTH STAR TELEGRAM; WBAP RADIO; WBAP TELEVISION; and ASSOCIATED PRESS

PLAINTIFF'S ORIGINAL PETITION—Filed September 27, 1963

To the Honorable Judge of Said Court:

Now comes Edwin A. Walker, Plaintiff in the above styled and numbered cause and files this his Original Petition complaining of Amon G. Carter, Jr., as publisher of the Forth Worth Star Telegram, d/b/a Fort Worth Star Telegram; Carter Publications, Inc., and any other legal entity known as and using the trademarks or assumed name Fort Worth Star Telegram; WBAP Radio; WBAP Television; Fort Worth Star Telegram; WBAP Radio, WBAP Television, and all individually and as members and agents of the association known as Associated Press; the Associated Press, a foreign association organized under the laws of the State of New York and doing business within the State of Texas and as grounds therefor would respectfully show the Honorable Court as follows:

1.

That Plaintiff, Edwin A. Walker, is a resident of the City of Dallas, Dallas County, Texas, and that the Defen-

[File endorsement omitted]

dants Amon G. Carter, Jr.; Carter Publications, Inc.; Fort Worth Star Telegram; WBAP Radio; WBAP Television; and Associated Press all have offices and principal places of business in the City of Fort Worth, Tarrant County, Texas, where service of citation may be had upon each of them.

[fol. 3] 2.

That on the 30th day of September, and the 1st, 2nd, and 3rd days of October, 1962, the following libelous and slanderous statements and statements with like import were uttered, published and communicated in writing and orally by Defendants on and from the premises of Defendants commonly known as Fort Worth Star Telegram, WBAP Radio and WBAP Television in the City of Fort Worth, Tarrant County, Texas, by and through their respective duly authorized agents, servants and employees, the names of whom are unknown to Plaintiff, but well known to Defendants:

October 2, 1962—"Walker, *who Sunday night led a charge of students against federal marshals on the Ole Miss Campus,* was arrested on four counts including insurrection against the United States."

October 3, 1962—"Rioter Asked Walker to Lead Crowd; He Did

"Editor's Note—Former Maj. Gen. Edwin A. Walker, a key figure in week-end battling over admission of a Negro to the University of Mississippi, was eating dinner Sunday night when he says he was told there was a 'scene of considerable disturbance' on the University of Mississippi campus. He went there. Here is the story of Van Savell, 21, Associated Press newsman, who was on the scene and saw what happened.

"By Van Savell

"Oxford, Miss., Oct. 3 (AP)—Utilizing my youth to the fullest extent, I dressed as any college student

would and easily milled among the several thousand rioters on the University of Mississippi campus Sunday night.

"This allowed me to follow the crowd—a few students and many outsiders—as they charged federal marshals surrounding the century-old Lyceum building. It also brought me into direct contact with former Army Maj. Gen. Edwin A. Walker, who is now under arrest on charges of inciting insurrection and seditious conspiracy.

"Walker first appeared in the riot area at 8:45 p.m. Sunday near the University Ave. entrance about 300 yards from the Ole Miss administration building.

[fol. 4] "He was nattily dressed in a black suit, tie and shoes and wore a light tan hat.

"The crowd welcomed Walker, although this was the man who commanded the 101st Airborne Division during the 1957 school integration riots at Little Rock, Ark.

"One unidentified man queried Walker as he approached the group.

" 'General, will you lead us to the steps?'

"I observed Walker as he loosened his tie and shirt and nodded 'Yes' without speaking. He then conferred with a group of about 15 persons who appeared to be the riot leaders.

"The crowd took full advantage of the near-by construction work. They broke new bricks into several pieces, took survey sticks and broken soft drink bottles.

"Walker assumed command of the crowd, which I estimated at 1,000, but was delayed for several minutes when a neatly dressed, portly man of about 45 approached the group. He conferred with Walker for several minutes and then joined a group near the front.

"Two men took Walker by the arms and they headed for the Lyceum and the federal marshals. Throughout this time, I was less than six feet from Walker.

"This march toward tear gas and some 200 marshals was more effective than the previous attempts. Although Walker was unarmed, the crowd said this was the moral support they needed.

"We were met with a heavy barrage of tear gas about 75 yards from the Lyceum steps and went a few feet further when we had to turn back.

"BEFORE DOING so, many of the rioters hurled their weapons—the bricks, the bottles, rocks and wooden stakes—toward the clustered marshals.

"We fled the tear gas and the charging marshals—the crowd racing back to a Confederate soldier's statute near the grove entrance below the Lyceum.

"I went to a telephone. A few minutes later I returned and found Walker talking with several students. Shortly thereafter, Walker climbed halfway up the Confederate monument and addressed the crowd.

"I heard Walker say that Gov. Barnett had betrayed the people of Mississippi.

[fol. 5] " 'BUT DON'T let up now,' he said, 'You may lose this battle but you will have been heard.'

"He continued:

" 'This is a dangerous situation. You must be prepared for possible death. If you are not, go home now.'

"There were cheers. It was apparent that Walker had complete command over the group.

"By this time, it was nearly 11 p.m. and I raced to the telephone again. Upon my return, Walker was calmly explaining the 'New Frontier' government to several bystanders. He remained away from the rioting throughout the next few hours, but advised on several tactics.

"One Ole Miss student queried the former general, 'What can we use to make the tear gas bombs ineffective? Do you know of any way that we can attack and do some damage to those damn marshals?'

"Walker suggested the use of sand to snuff out the tear gas.

" 'This stuff works real well, but where can you get it?' he asked.

"At this time the rioters were using a university fire truck and five portable fire extinguishers in an attempt to make the tear gas bombs ineffective.

"I left Walker and walked about 100 yards away where Molotov cocktails—gasoline, in bottles with a fuse—were being made.

"Again I left the area for a telephone. As I walked toward a dormitory with George Bartsch of the Little Rock Associated Press bureau, we were attacked by marshals who mistook us for students. We were deluged by tear gas, manhandled, handcuffed and beaten with clubs during a 200-yard walk back to the Lyceum building.

"Thanks to recognition from Chief Marshal James P. McShane, we were quickly released and given freedom in the marshals' headquarters.

"Within minutes rifle and shotgun fire erupted from the rioting crowd and two men—one a French newsman—were killed. We considered ourselves lucky to have been arrested and glad to be behind closed, heavily guarded doors."

[fol. 6] 3.

That prior to the occasion of so publishing, uttering, and communicating, causing to be published, uttered and communicated, the statements in question, the Defendants and each of them by and through their duly authorized agents, servants and employees, were put on notice of the likelihood that the above described statements were untrue by receipt of the following communication:

"Lights on the campus were smashed, leaving it in almost total darkness. A number of non-rioting students left. Girls streamed out of dormitories, some half dressed, got in cars and fled the campus.

"During a lull in the rioting, General Edwin Walker mounted a confederate statue on the campus and begged the students to cease their violence. He said: 'This is not the proper route to Cuba.' His plea was greeted with one massive jeer.

"Walker, who commanded federal troops which were sent to Little Rock five years ago, was seen striding toward the demonstration wearing a big Texas hat. He had several aides surrounding him.

"As he concluded his speech, three adults were seen walking onto the campus with their arms loaded with whole bricks and triangular pieces of stone. One marshal was struck on the leg by a two-foot iron pipe welded by a student.

"A magazine reporter was slugged and kicked and knocked to the ground. He had an ugly gash over his left temple and was dragged to safety by two students.

"Jagged pieces of soft drink bottles and pieces of metal littered the ground.

"One youth set off a fire extinguisher and aimed it into the face of one of the drivers of trucks used to bring in the marshals.

"A state patrol officer was asked by a young man: 'Do you plan to move this crowd back out of here?' He replied, 'What crowd—you mean these bystanders?'

"Demonstrators carried confederate flags on staffs. Many appeared not to be students."

[fol. 7] 4.

That despite receipt of the notice described in the preceding paragraph, the statements in question were wilfully, and recklessly published, uttered and communicated to the general public in Tarrant County and surrounding areas by Defendants in heedless disregard of Plaintiff's rights and reputation. The above statements constitute and are reckless, false, wilful and malicious accusations that Edwin A. Walker wilfully committed infamous crimes all to the detri-

ment of Edwin A. Walker's reputation and in violation of his rights.

5.

That even though the Defendants and each of them have had ample and daily opportunity to retract such statements for almost a year, the Defendants have failed and refused to so do.

6.

That Edwin A. Walker is an upright and honorable citizen of the United States of America and the State of Texas. His service to his country throughout his life have been well beyond the call of duty and that prior to the publishing, uttering and communicating of the above malicious statements, he had an untarnished reputation as a patriotic, law abiding, peace loving and God fearing citizen with unbounding love and sense of duty to his country and fellow citizens. In this connection, it should be remembered that Edwin A. Walker gave his career to the honorable service of his country rising through the ranks of the United States Army from the status of a cadet at the United States Military Academy to the rank of Major General. That during this [fol. 8] time our country as well as our country's allies were so appreciative of his conduct, ability and reputation that he received the following awards and commendations, among others:

The Silver Star
The Bronze Star with Oak Leaf Cluster
Combat Infantryman's Badge (Second award)
Senior Paratroopers Badge (47 jumps)
Legion of Merit with Cluster
Commendation Ribbon
Korean Unit Citation
French Croix de Guerre (1943)
Norwegian Order of St. Olav (1946)
Order of the British Empire (1945)

Korean Ulchi Medals with Gold and Silver Star (1951-1953)

8.

That as a result of Edwin A. Walker's conduct, ability and reputation he was assigned the following sensitive, vital and responsible duties, among others, all of which duties were performed with distinction:

Commanding Officer, 1st Special Service Force (airborne, amphibious, mountain and ski troops) in Italy, France and Germany
Commanding Officer, Task Force "A", Oslo, Norway
Senior Advisor, First Republic of Korea Corps
Chief Army Section Military Assistance and Advisory Group, Taipai, Taiwan and Advisor to Commander in Chief, Chinese Nationalist Army
Commanding General, 25th Division Artillery
Chief, U. S. Army Military District, Little Rock, Arkansas, and Commander, IX U. S. Army Corps (Reserve)
[fol. 9] Commanding General, 24th Infantry Division
Assistant Deputy Chief of Staff Operations, Headquarters U. S. Army Europe
Chief of Staff for Training and Operations, Headquarters, U. S. Army Pacific

9.

Subsequently, the said Edwin A. Walker determined that the course and conduct of the political affairs of our nation were taking a turn detrimental to the best interests of his fellow Americans to the extent that he could not in good conscience remain silent. Having due recognition and respect of his position as a Major General in the United States Army, he then determined that the only proper, lawful and honorable way that he could speak out was after he resigned said commission, so that he could speak out as a private citizen. This he did.

10.

That as reflected above Edwin A. Walker has always conducted himself as a peaceful, law-abiding citizen who not only respects and obeys, but upholds, the laws of the United States. That Edwin A. Walker is not guilty of the criminal acts which Defendants maliciously and viciously accused him, but on the contrary, did attempt to restore peace and prevent violence on the occasion in question. That despite this, and as a direct result of the above described statements Edwin A. Walker no longer has the untarnished reputation to which he is entitled.

11.

That as a direct and proximate result of Defendants' wilfully and maliciously publishing, uttering and communicat-
[fol. 10] ing the above described accusations, Edwin A. Walker has been exposed to the public hatred, contempt and ridicule, and his reputation as above described has been severely injured and damaged and the said Edwin A. Walker has been caused to suffer pain and anguish as a result therefrom, all to his actual damages in the amount of not less than One Million Dollars ($1,000,000.00) for which amount suit is brought.

12.

That the above described statements of Defendants were published, uttered and communicated both orally and in writing maliciously and wilfully with full realization of the damages Plaintiff would suffer for two apparent purposes:

1. To sell newspapers thereby increasing Defendants' profits at the expense of Edwin A. Walker.
2. To discredit and ruin Edwin A. Walker's reputation.

That therefore Plaintiff is entitled to recover punitive damages in an amount of not less than One Million Dollars ($1,000,000.00) for which amount this suit is brought.

Wherefore, Premises Considered, Edwin A. Walker prays that Defendants and each of them be cited in terms of law, that they appear in answer herein and upon final trial and hearing hereof, Defendants and each of them, jointly and severally, be ordered to pay Two Million Dollars ($2,000,000.00) and that Edwin A. Walker further prays for such other and further relief, both at law and in equity to which he may be justly entitled.

Matthews & Weaver, By Joe W. Matthews, 812 Fidelity Union Life Building, Dallas 1, Texas, Ri 8-8347, Attorneys for Plaintiff.

[fol. 11]

IN THE SEVENTEENTH JUDICIAL DISTRICT COURT

IN AND FOR TARRANT COUNTY, TEXAS

No. 31741-C

[Title omitted]

PLAINTIFF'S SECOND AMENDED PETITION—Filed June 2, 1964

To the Honorable Judge of Said Court:

Comes now Edwin A. Walker, plaintiff in the above styled and numbered cause and filed this his Second Amended Petition complaining of The Associated Press, a foreign association organized under the laws of the State of New York and doing business within the State of Texas and as grounds therefor would respectfully show the Honorable Court as follows:

I

That plaintiff, Edwin A. Walker, is a resident of the City of Dallas, Dallas County, Texas and that the defendant, Associated Press has an office and principal place of

[File endorsement omitted]

business in the City of Fort Worth, Tarrant County, Texas, where service of citation may be had upon it.

II

That on the 2nd and 3rd days of October, 1962, defendant falsely, maliciously, knowingly and in reckless disregard of the truth uttered, published and communicated in writing on and from the premises of the Fort Worth Star Telegram, for monetary consideration, the following libelous and defamatory statements in the form of wire service reports, falsely accusing plaintiff of crimes in violation of the penal code of the United States of America which publications are as follows:

1) October 2, 1962 "Walker, *who Sunday night led a charge of students against federal marshals on the Ole Miss Campus,* was arrested on four counts including insurrection against the United States."

2) October 3, 1962 "RIOTER ASKED WALKER TO LEAD CROWD; HE DID"

[fol. 12]

3) (Editors Note: Former Maj. Gen. *Edwin A. Walker, a key figure in the week-end battling* over admission of a Negro to the University of Mississippi, was eating dinner Sunday night when he says he was told there was a 'scene of considerable disturbance' on the University of Mississippi Campus. He went there. Here is the story of Van Savell, 21, Associated Press newsman, who was on the scene and saw what happened.)

   By Van Savell: Oxford, Miss., October 3, 1962 (AP) "Utilizing my youth to the fullest extent, I dressed as any college student would and easily milled among the several thousand rioters on the University of Mississippi Campus Sunday night.

4) *"This allowed me to follow the crowd—a few students and many outsiders—as they charged federal mar-*

shals surrounding the century old *Lyceum Building. It also brought me into direct contact with former Army Maj. Gen. Edwin A. Walker,* who is now under arrest on charges of inciting insurrection and seditious conspiracy.

"Walker first appeared in the riot area at 8:45 p.m., Sunday near the University Avenue entrance about 300 yds. from the Ole Miss Administration Building.

"He was nattily dressed in a black suit, tie and shoes and wore a light tan hat.

5) *"The crowd welcomed Walker,* although this was the man who commanded the 101st Airborne Division during the 1957 school integration riots at Little Rock, Arkansas.

6) *"One unidentified man queried Walker as he approached the group.* 'General, will you lead us to the steps?'

7) *"I observed Walker as he loosened his tie and shirt and nodded 'Yes' without speaking. He then conferred with a group of about 15 persons who appeared to be the riot leaders.*

"The crowd took full advantage of the near-by construction work. They broke new bricks into several pieces, took survey sticks and broken soft drink bottles.

8) *"Walker assumed command of the crowd, which I estimated at 1,000 but was delayed for several minutes* when a neatly dressed, portly man of about 45 approached the group. *He conferred with Walker for several minutes and then joined a group near the front.*

9) *"Two men took Walker by the arms and they headed for the Lyceum and the federal marshals. Throughout this time, I was less than six feet from Walker.*

10) *"This march toward tear gas and some 200 marshals was more effective than the previous attempts.* Al-[fol. 13] though Walker was unarmed, the *crowd said this was the moral support they needed.*

11) *"We were met with a heavy barrage of tear gas about 75 yards from the Lyceum steps and went a few feet further when we had to turn back.*

12) *"Before doing so, many of the rioters hurled their weapons—the bricks, the bottles, rocks and wooden stakes—toward the clustered marshals.*

13) *"We fled the tear gas and the charging marshals—the crowd racing back to a Confederate soldier's statue near the grove entrance below the Lyceum.*

14) *"I went to a telephone. A few minutes later I returned and found Walker talking with several students.* Shortly thereafter, Walker climbed halfway up the Confederate monument and addressed the crowd.

15)-

16) *"I heard Walker say that Gov. Barnett had betrayed the People of Mississippi. 'But don't let up now,'* he said, *'You may lose this battle, but you will have been heard.'*

17) "He continued: 'This is a dangerous situation. *You must be prepared for possible death. If you are not, go home now.'*

18) "There were cheers. *It was apparent that Walker had complete command over the group.*

19) "By this time, it was nearly 11:00 p.m. and *I raced to the telephone again. Upon my return,* Walker was calmly explaining the 'New Frontier Government' to several bystanders. He remained away from the rioting throughout the next few hours, but advised on several tactics.

20) "One Ole Miss student queried the former General, 'What can we use to make the tear gas bombs ineffective? *Do you know of any way that we can attack and do some damage to those damn Marshals?*'

20) "Walker suggested the use of sand to snuff out the tear gas.

21) " 'This stuff works real well, but where can you get it?', he asked.

22) "At this time the rioters were using a University fire truck and fire extinguishers in an attempt to make the tear gas bombs ineffective.

23) "I left Walker and walked about 100 yards away where Molotov cocktails—gasoline, in bottles with a fuse—were being made.

24) "Again I left the area for a telephone. As I walked toward a Dormitory with George Bartsch of the Little Rock Associated Press Bureau, we were attacked by Marshals who mistook us for students. [fol. 14] We were deluged by tear gas, manhandled, handcuffed and beaten with clubs during a 200 yard walk back to the Lyceum Building.

24) "Thanks to recognition from Chief Marshal James P. McShane, we were quickly released and given freedom in the Marshals' Headquarters.

25) "Within minutes rifle and shotgun fire erupted from the rioting crowd and two men—one a French newsman—were killed. We considered ourselves lucky to have been arrested and glad to be behind closed, heavily guarded doors."

Plaintiff states that such part of defendant's news releases, as italicized above, are false, malicious, and in reckless disregard of the truth as to the respective numbered paragraphs as follows:

1) Plaintiff led no charge against Federal Marshals on the Ole Miss Campus; and this statement of fact in plaintiff's news release is a completely fabricated falsehood.

2) Although plaintiff was asked to lead a charge on several occasions, he refused to do so; and, at no time, participated in the rioting.

3) Plaintiff was not a "key figure in week-end battling", except for the false news reports issued by defendant.

4) Insofar as this paragraph infers that the author, Van H. Savell, was in "direct contact" with plaintiff, during a charge against Federal Marshals surrounding the Lyceum Building, it is false.

5) The statement that, "the crowd welcomed Walker" is false. Although separate individuals, at various times, greeted plaintiff, there was no concerted action by the crowd.

6) The statement that an unidentified man queried Walker, *as he approached the group,* "General, will you lead us in a charge?" is false. Although various individuals, from time to time requested plaintiff to lead a charge, which he always refused, there was no such request when plaintiff first entered the Campus; and plaintiff, at no time, "approached a group".

7) This paragraph is completely false.

8) The statement that, "Walker assumed command of the crowd" is completely false, and particularly so, when taken in context with the remainder of the report that, "Walker first appeared in the riot area at 8:45 * * * the crowd welcomed Walker * * * unidentified man queried Walker, 'General, will you lead us to the steps' * * * Walker assumed command of the crowd." The true facts are that, when plaintiff first arrived on the Campus, he had no contact with any crowd of

[fol. 15] people, and only walked around in the area near the Confederate Monument and to the east of the flagpole in the center of the Circle; and had neither the inclination nor the capability of "assuming command of the crowd." The statement of an estimated 1,000 people, inferred to be in the immediate presence of plaintiff, is a gross exaggeration. Although there may have been 1,000 people upon the Campus, the entire crowd was never assembled in one group at one time. The statement that plaintiff was "delayed for several minutes when a neatly dressed, portly man of about 45 approached the group" is also false. Although a man fitting this description, one Talmage Witt, was near plaintiff from the time plaintiff first entered the Campus until approximately two hours thereafter, he never "approached a group" of which plaintiff was a part, nor did he confer with plaintiff for several minutes, as falsely stated by the above report.

9) The statement that "Two men took plaintiff by the arms, and they headed for the Lyceum and the Federal Marshals" is completely false. The remainder of this paragraph is also false, in the inference that the author, Van H. Savell, was with plaintiff in an alleged movement toward Federal Marshals, as stated in the first sentence of the paragraph.

10) This paragraph is false. Plaintiff participated in no march "toward tear gas and marshals." Plaintiff was unarmed, as stated; but he gave the crowd no "moral support", nor did "the crowd" make such statement.

11) This paragraph is false in the inference that plaintiff was "met with a barrage of tear gas", while participating in a march against U. S. Marshals.

12) This paragraph is also false in the inference that plaintiff was participating with "the rioters who hurled their weapons".

13) This paragraph is also false, in the inference that plaintiff was participating in the group that was "charging marshals".

14) Plaintiff has no knowledge of the author, Van H. Savell, going to a telephone; but alleges that the Associated Press newsman, Ben Thomas, to whom Van H. Savell made his telephone report has testified under oath, that he received no report from Savell until after the incident when plaintiff addressed students from a Confederate Monument. Plaintiff has no knowledge of the truth or falsity of the statement that the author, Van H. Savell, "returned and found Walker talking with several students. Shortly thereafter, Walker climbed half-way up the Confederate Monument and addressed the crowd."; but alleges that Van H. Savell has testified, under oath, that, when he returned from making his alleged phone call, he found plaintiff "standing on a ledge of the Confederate Statue." Plaintiff does not know which of the statements by Savell, if either, are true. Plaintiff admits that he did address a group of people from the Confederate Statue.

15) This statement is false. Plaintiff, at no time, stated that Gov. Barnett had betrayed the People of Mississippi.

[fol. 16] 16) The statement attributed to plaintiff, "but don't let up now" is false. The remainder of the alleged statement, although taken out of context, is essentially true.

17) This alleged statement, attributed to plaintiff, is false.

18) Although there were some cheers during the course of plaintiff's talk from the monument, there were also boos, when plaintiff remonstrated with the students to avoid violence. The statement that plaintiff had complete command over the group is completely false.

19) The statement, that it was nearly 11:00 p.m. when plaintiff finished talking from the monument is false. Plaintiff has no knowledge as to whether the author, Van H. Savell, "raced to the telephone again", other than the sworn testimony of the Associated Press newsman, Ben Thomas, that Savell made but one report, and that was after plaintiff's talk on the monument. Plaintiff states that the report that plaintiff "advised on several tactics" is false.

20) These statements although taken out of context, are essentially true.

21) This statement is false.

22) This statement is essentially true, although plaintiff has no knowledge as to the use of fire extinguishers.

23) Plaintiff has no knowledge as to this statement.

24) Plaintiff has no knowledge as to these statements.

25) This statement is false as to the timing, "within minutes". Sporadic firing had occurred long prior to this time.

III

Prior to defendants publication of the false charge that plaintiff was violating the law of the United States of America, in commanding and leading a charge against United States Marshals, plaintiff bore a good reputation as an upright, honorable and law abiding citizen of the United States of America and the State of Texas; and, for over 30 years, served his country as a member of the United States Army, both in War and at Peace, with devotion and loyalty. Prior to the above false and malicious statements, plaintiff had never been charged with a crime, and bore a reputation, in accordance with his oath as an officer of the United States Army of being committed to defending and supporting the Constitution of the United States.

[fol. 17]

IV

Plaintiff states that the above false statements of fact are not within the privilege extended to newspapers or periodicals by Article 5432, Vernon's Texas Civil Statutes; and, being statements of fact, do not come within the classification of reasonable and fair comment or criticism protected by the privilege statute. The only statement that could be classed as "comment", "This march toward tear gas and some 200 marshals was more effective than the previous attempts" is not reasonable or fair comment or criticism, since it is based upon a false statement of fact.

V

As a direct and proximate result of the defendants' falsely, wilfully, maliciously and in reckless disregard of the truth, publishing, uttering and communicating the above described written statements, knowing that such statements would be printed, and widely circulated throughout the State of Texas by the Fort Worth Star Telegram, plaintiff has been exposed to the public hatred, contempt and ridicule; and his reputation, as above described, has been severely defamed, injured and damaged, causing mental anguish, humiliation and embarrassment, all to his general damage in the amount of $1,000,000.00, for which plaintiff is entitled to judgment herein.

VI

Plaintiff states that the above described statements, charging plaintiff with the commission of a crime against the law of the United States of America, were published, uttered and communicated by defendant, Associated Press, for monetary consideration, and for the purpose of having the same re-published and circulated throughout the State of Texas by the Fort Worth Star Telegram, maliciously, wilfully and in reckless disregard of the truth. Aside from, and in addition to the malice implicit and inherent in the

defendant's falsely accusing plaintiff of a crime, defendant's entire handling of the news releases concerning plaintiff [fol. 18] between the dates of September 30, 1962 and January 22, 1963 reveal malice and ill will, as well as slanted and distorted reporting, including the following:

1) Between the dates of September 30, 1962 through October 7, 1962, defendant disseminated and published, through its wire service connections with the Fort Worth Star Telegram reports that plaintiff had led a charge against U. S. Marshals, had been arrested, charged with assaulting U. S. Marshals, conspiracy to intimidate and injure U. S. Marshals, insurrection and seditious conspiracy, and that plaintiff had been committed to the U. S. Medical Center, Springfield, Missouri, a place for confinement of criminal insane prisoners.

2) In reporting the incidents involving plaintiff's arrest and commitment, the defendant deliberately refrained from fairly and impartially reporting the true facts that he had been transported from the State of Mississippi, where he had been committed by a judicial officer, and into the State of Missouri, without a Court Order, and that, on the following day, a Court Order was entered by the U. S. District Court at Oxford, Mississippi ordering plaintiff to be transferred and committed to the U. S. Medical Center for Federal Prisoners at Springfield, Missouri, which order had been entered, without notice to plaintiff, without a hearing, at which plaintiff was represented, and without the benefit of counsel for plaintiff. Defendant further refrained from reporting that such Order by the U. S. District Court at Oxford, Mississippi had been entered upon an affidavit by Dr. Charles E. Smith, Medical Director and Chief Psychiatrist of the Federal Bureau of Prisons, who had never seen plaintiff, but had examined news reports.

3) Defendant failed to further report the true facts that, on October 16, 1962, plaintiff filed in the U. S. District Court at Oxford, Mississippi a Motion to Strike the entire proceeding by which plaintiff was committed to the Federal Mental Hospital, upon the ground that such commitment, in violation of the right to make bail, and without counsel, notice or hearing, violated the Constitutional Rights of plaintiff. Plaintiff alleges that the obvious disparity in emphasis placed by defendant's reporting of the alleged violation of the civil rights of the student, James Meredith, which was dramatically and extensively projected by defendant, and the alleged violation of plaintiff's Constitutional Rights which was completely ignored by defendant, reveals the existent malice of defendant toward plaintiff.

4) Plaintiff states that defendants malice toward plaintiff is further revealed by defendants reporting of two Court hearings before the U. S. District Court at Oxford, Mississippi, involving plaintiff, as follows:

a) On November 21, 1962, in covering a sanity hearing before the U. S. District Court at Oxford, Mississippi on November 21, 1962 defendant deliberately slanted its news report by emphasizing that a Government witness, Dr. Guttmacher testi- [fol. 19] fied that a study of plaintiff's records disclosed confusion and examples of defective judgment, with possibility that there had been a deterioration in the mental processes of plaintiff in the last year or two. Despite the fact that defendant had given extensive publicity upon its major wire trunk report to the Fort Worth Star Telegram of such testimony by Government witnesses questioning plaintiff's mental capacity, defendant failed to issue a wire service report to the same paper that a Court appointed Psychiatrist, Dr. Robert L. Stubblefield had reported that plaintiff was "currently functioning under the superior level of intelligence". Defen-

dant's report of Judge Clayton's comments was also slanted, in reporting that the Court appointed Psychiatrist, Dr. Robert L. Stubblefield, had expressed no opinion on the sanity of Walker, when the Court, in reality, had stated that the Stubblefield report was "essentially negative; that is to say, there is no opinion expressed that Edwin A. Walker is presently insane or incompetent." Such reporting further reveals malice and bias on the part of defendant.

b) On January 22, 1963, after the Mississippi Federal Grand Jury had failed to indict plaintiff, and the charges against plaintiff had been dismissed by the Government, defendant reported that such charges had been dismissed by U. S. District Judge Clayton, "without prejudice", and added an interpretive statement, not made by the Court as follows: "This means that the Federal Government may reconsider them before the Statute of Limitation expires in Five Years", which reporting further reveals malice and bias on the part of defendant toward plaintiff.

5) Because of the malicious and defamatory report by defendant, as above set forth in Paragraph II, falsely accusing plaintiff of a crime, to the discredit and defamation of plaintiff's reputation, and in reckless disregard of the truth, plaintiff is entitled to recover punitive damages against the defendant in the sum of $1,000,000.00.

6) The malice, bias and prejudice of defendant toward plaintiff is further demonstrated by the failure of defendant to further investigate and correct the false report by their reporter, Van H. Savell, as above set forth, after defendant had noticed from news report of United Press International, on October 1, 1964, that the report of Savell was untrue, which United Press news report included the following:

"During a lull in the rioting, General Edwin A. Walker mounted a confederate statue on the campus and begged the students to cease their violence. He said: 'This is not the proper way to Cuba.' His plea was greeted with one massive jeer.

"Walker, who commanded federal troops which were sent to Little Rock five years ago, was seen striding toward the demonstration wearing a big Texas hat. He had several aides surrounding him."

[fol. 20] Wherefore, Premises Considered, plaintiff prays judgment against the defendant, Associated Press, in the sum of $1,000,000.00 general damages and $1,000,000.00 punitive or exemplary damages, and the costs of this action.

Andress, Woodgate, Richards & Condos, Fidelity Union Life Building, Dallas, Texas, By: William Andress, Jr.;

Looney, Watts, Looney, Nichols & Johnson, 219 Couch Drive, Oklahoma City, Oklahoma, By: C. J. Watts;

Attorneys for Plaintiff.

[fol. 21]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31741-C

[Title omitted]

SECOND AMENDED ORIGINAL ANSWER OF DEFENDANT, THE ASSOCIATED PRESS—Filed June 5, 1964

Now comes defendant, The Associated Press, and makes and files this its Second Amended Original Answer directed to Plaintiff's Second Amended Petition, and says:

1.

Defendant specially excepts to the allegations contained in Paragraph II for the following reasons:

(a) same are so vague, general, indefinite, immaterial and prejudicial that defendant is not apprised of the kind and character of proof it will be required to meet in that the way and manner of the alleged publication and communication in writing on and from the premises of the Fort Worth Star-Telegram is not set forth; in that the question of monetary consideration is immaterial, prejudicial and inflammatory, and such allegation does not apprise the defendant of the proof that will be offered in connection therewith; in that said allegations do not apprise the defendant of what crime in violation of the penal code of the United States of America the plaintiff is complaining of, nor do the allegations of said Paragraph II apprise the defendant of what part of the same plaintiff is contending constitutes an accusation of crime.

(b) said allegations are mere conclusions of the pleader without adequate facts to support.

(c) While there are some allegations of falsity, there are no sufficient allegations of what plaintiff is contending is libelous or libelous per se;

[fol. 22] (d) by such pleading the defendant is not apprised of which of said allegations plaintiff is contending is a headline or a caption and what is the body of an alleged wire service report;

(e) As directed to that portion of Paragraph II appearing on page 4 and immediately following the allegation "Plaintiff states that such part of defendant's news releases, as underlined above, are false, malicious, and in reckless disregard of the truth" is argumentative, redundant, prejudicial, inflammatory, evidentiary and do not allege any ultimate issue in the case; the allegations that the same were malicious and in reckless disregard of the truth is a con-

clusion on the part of the pleader without allegation of facts, is an attempt to advise the jury that malice can be inferred from the publication of the article itself, and all of the remaining portion of said Paragraph II after the above quotation should be stricken;

(f) the allegations in subparagraph 14 on page 5 and subparagraph 19 on page 6, a part of Paragraph II of plaintiff's second amended petition, should be stricken for the reason that the testimony of two of the witnesses is arrayed one against the other and then inaccurately and improperly so, which is highly prejudicial and inflammatory, is argumentative, and does not allege any ultimate fact issue, and, in the alternative and without waiving the foregoing exceptions, such allegations should be stricken.

2.

Defendant specially excepts to the allegations in Paragraph III for the reason that the same are so vague, general and indefinite that this defendant is not apprised of the kind and character of proof that it will be required to meet, and in particular does not allege what law or laws plaintiff was claiming that defendant charged him with or what portions of the articles alleged to be false constituted a charge of such crime.

[fol. 23] 3.

Defendant specially excepts to the allegations contained in Paragraph IV for the following reasons:

(a) the same are mere legal conclusions of the pleader;

(b) do not allege any ultimate fact issue;

(c) invades the province of the court and jury as to what is reasonable or fair comment;

(d) is prejudicial and inflammatory and argumentative also as to the facts.

4.

Defendant specially excepts to Paragraph V for the following reasons:

(a) in the allegations "wilfully, maliciously and in reckless disregard of the truth," the same are general and indefinite, and this defendant is not apprised of the kind and character of proof that it will be required to meet;

(b) the same are mere conclusions of the pleader without facts;

(c) does not differentiate between those parts of the written statements claimed to be false and those admitted to be true as to any claimed damages suffered therefrom, and the same are prejudicial and inflammatory.

5.

Defendant specially excepts to the allegations in the opening paragraph of Paragraph VI for the following reasons:

(a) as to the statements made in the opening paragraph of said Paragraph VI, the same are so vague, general and indefinite that this defendant is not apprised of the kind and character of proof it will be required to meet, especially in connection with what crimes plaintiff is alleging that he was charged with;

(b) that the allegation "for monetary consideration" is immaterial, prejudicial and inflammatory;

[fol. 24] (c) that as to the allegation "for the purpose having the same republished and circulated throughout the State of Texas by the Forth Worth Star Telegram," it is highly prejudicial, inflammatory and immaterial and seeks to impose on this defendant a greater burden or duty than that imposed by law;

(d) with reference to the allegation "maliciously, wilfully and in reckless disregard of the truth" for the reason

that such allegations are conclusions of the pleader, not based on any fact, and do not allege any ultimate fact issue;

(e) with reference to the allegation "in addition to the malice implicit and inherent in the defendant's falsely accusing plaintiff of a crime," same is highly prejudicial and inflammatory and is an attempt to inform or influence the jury that the publication of the article itself infers malice, all of which is contrary to law.

6.

Defendant further specially excepts to the allegations in Paragraph VI beginning with the allegation "defendant's entire handling of the news releases concerning plaintiff between the dates of September 30, 1962 and January 22, 1963 reveal malice and ill will, as well as slanted and distorted reporting, including the following:" and continuing to the end of said paragraph VI, for each and all of the following reasons:

(a) the same are so vague, general and indefinite that this defendant is not apprised of the kind and character of proof it will be required to meet;

(b) the same constitutes an effort on the part of the plaintiff to inject into this case matters that are barred by limitation;

(c) same are immaterial and irrelevant to any issue in the case and are highly inflammatory and prejudicial;

(d) the allegations with respect to defendant's failure to report various matters are completely immaterial because defendant is under no duty to plaintiff to report any of [fol. 25] such matters, and, further, because there is no allegation that defendant had knowledge of the matters it is charged with having failed to report;

(e) such allegations are too remote in time and in their complete lack of relation to or connection with the events

occurring on the campus of the University of Mississippi as set forth in the alleged article upon which plaintiff sues;

(f) the phrase "slanted and distorted reporting" is mere conclusion of the pleader, and is highly prejudicial and inflammatory and is irrelevant and immaterial.

(g) with particular reference to the allegations in subparagraph 5 of Paragraph VI, defendant says that the allegations "because of the malicious and defamatory report by defendant, as above set forth, falsely accusing plaintiff of a crime," the same are insufficient to apprise defendant of what report plaintiff is referring to, plaintiff having alleged two reports in Paragraph II and several other reports in Paragraph VI; and insofar as said allegations may refer to reports described in said Paragraph VI, same appear on their face to be barred by limitations, and constitute an attempt on the part of the plaintiff to inject into this suit alleged publications and reports published more than one year prior to the filing of plaintiff's second amended petition;

(h) with particular reference to the allegations in subparagraph 6 of Paragraph VI, defendant says that same are completely immaterial and should be stricken in that any alleged notice that defendant purportedly received from United Press International would be hearsay, and defendant was under no duty to believe the same or take any action based thereon, and such allegations are too vague and indefinite to apprise defendant of when, where and how it is alleged to have received such notice, and such allegations show on their face that the alleged notice is not set forth in full in said pleading.

[fol. 26] Wherefore, defendant, The Associated Press, prays that each and all of said special exceptions be sustained.

I.

This defendant, The Associated Press, denies each and every, all and singular, the allegations in plaintiff's said

amended petition contained and demands strict proof thereof.

II.

By way of further answer herein, and without waiving any of the foregoing pleas, defendant, The Associated Press, would respectfully show to the court and the jury that the plaintiff is not entitled to recover in this cause for the reason that the statements made in the publications complained of as to statements of fact were and are true in fact and in substance.

III.

By way of further answer herein, and without waiving any of the foregoing pleas, defendant, The Associated Press, would respectfully show to the Court and the jury that the plaintiff is not entitled to recover damages in this cause of any nature for each and all of the following reasons considering all the material facts and circumstances surrounding the plaintiff's alleged claim of damage:

(1)

Plaintiff by his own statements in pleadings filed in this cause has alleged that he resigned his Army Commission in order to speak out and install himself as a leader and public figure. Plaintiff, Edwin A. Walker, voluntarily injected himself into a situation of turmoil, resentment and excitement in Mississippi and of great national publicity and interest everywhere at the time he uttered certain public statements, more fully hereinafter alleged, on television, radio and to newsmen and by his subsequent trip to Jackson, Mississippi, and Oxford, Mississippi, at the very height [fol. 27] of such tension and turmoil between September 10 and October 1, 1962.

(2)

The publications complained of in this action insofar as the same consist of comments were and are fair comments

made in good faith upon facts which related to matters that were and are affairs of public interest, importance and concern and related to acts and utterances of plaintiff, a public figure, in public places and at public meetings.

(a) The background and events into which Walker injected himself are set forth in the following paragraphs.

(b) On or about May 31, 1961, one James H. Meredith, a colored person, filed a complaint in the United States District Court, Southern District of Mississippi, and on behalf of himself and all other colored students in the State of Mississippi similarly situated, against Charles D. Fair, President of the Board of Trustees of the State Institutions of Higher Learning in the State of Mississippi, and others connected with the University of Mississippi, seeking admission to said University. Thereafter, and on or about February 3, 1962, the United States District Court for the Southern District of Mississippi rendered a decision reported in 202 F. Supp. 224, denying Meredith rights of admission to the University of Mississippi.

Thereupon Meredith appealed to the United States Court of Appeals for the 5th Circuit, at New Orleans, and on or about June 25, 1962, said Court rendered a decision (*305 F.2d 343*) in which said Court reversed the decision of the United States District Court, thereupon remanding said action, with directions to the United States District Court for the Southern District of Mississippi to grant forthwith the relief prayed for by Meredith and to issue a permanent injunction against each and all of the defendants in said suit and all persons acting in concert with them, as well as all persons having knowledge of said decree, and directing and compelling admission of the said Meredith to the [fol. 28] University of Mississippi as a student.

(c) Thereafter, and on or about July 26, 1962, the United States Court of Appeals, 5th Circuit, at New Orleans, vacated certain stay orders signed by Federal Judge Ben F. Cameron, and further directed the U. S. District Court for

the Southern District of Mississippi to enter the judgment and the injunction as theretofore ordered (306 F.2d 374). On July 28, 1962, the said United States Court of Appeals for the 5th Circuit, at New Orleans, also entered a certain interim order to the same effect.

(d) Subsequently Judge Ben F. Cameron issued three other successive stays of execution of the mandate of the United States Court of Appeals, 5th Circuit, which ordered the admission of Meredith to the University of Mississippi, said stays to operate pending an appeal to the Supreme Court of the United States. On or about September 10, 1962, Mr. Justice Black of the U. S. Supreme Court entered an order (1) to vacate the orders of Judge Ben F. Cameron, and (2) that the judgment and mandate of the Court of Appeals for the 5th Circuit at New Orleans should be obeyed and immediately carried out, and (3) that pending any appeal, the parties were enjoined from taking any steps to prevent enforcement of the Court of Appeals, 5th Circuit, judgment and mandate.

(e) On or about September 13, 1962, the United States Court for the Southern District of Mississippi as directed by the U. S. Court of Appeals, 5th Circuit, at New Orleans, issued an injunction and ordered that the said Meredith be admitted to the University of Mississippi forthwith.

(f) On or about September 20, 1962, the said Meredith appeared on the campus of the University of Mississippi accompanied by U. S. Marshals for the purpose of registering as a student pursuant to the orders of the United States Courts above set forth, but the Governor of Mis- [fol. 29] sissippi, the Honorable Ross Barnett, then and there rejected the application of the said Meredith to the University of Mississippi.

(g) Again, and on or about September 25, 1962, the said Meredith appeared at the offices of the Board of Trustees of State Institutions of Higher Learning, at Jackson, Mississippi, for the purpose of registering as a student pur-

suant to the prior orders of the United States Courts. When Meredith sought to enter the offices, as aforesaid, the Honorable Ross Barnett, Governor of the State of Mississippi, and certain officers acting under his direction, again barred the said Meredith and denied him admission to the University of Mississippi. On or about September 26, 1962, the said Meredith sought to enter the campus of the University of Mississippi where he was barred from so entering by the Honorable Paul B. Johnson, Jr., Lieutenant Governor of the State of Mississippi, and certain state police acting under his orders, thereby denying the aforesaid Meredith admission to the University of Mississippi. On September 25, 1962, the United States Court of Appeals for the 5th Circuit, at New Orleans, entered another restraining order against the Honorable Ross Barnett, Governor of the State of Mississippi, and other named officials in said State, and all persons in active concert or in participation therewith, from interfering with or obstructing in any manner the admission of the said Meredith to the University of Mississippi.

(h) Thereafter, on the same day, the United States Court of Appeals for the 5th Circuit issued its orders requiring the aforesaid Ross Barnett, Governor of the State of Mississippi, and the Honorable Paul B. Johnson, Jr., Lieutenant Governor of the State of Mississippi, to appear before said Court and show cause why they should not be held in civil contempt for willfully disobeying the orders of the United States Courts and barring the admission of Meredith to the University of Mississippi, and on or about [fol. 30] September 28 the said Court entered its judgment and order adjudging the said Ross Barnett and Paul B. Johnson, Jr. guilty of civil contempt and levied fines to continue on a daily basis unless on or before October 2, the said Governor and Lt. Governor should show to the Court that they had fully complied with all restraining orders of all the United States Courts, and that they had notified enforcement officers in the State of Mississippi to cease and

desist from interfering with the orders of the aforesaid Courts and to cooperate with the officers and agents of the United States in the execution of all orders and injunctions to the end that Meredith would be permitted to register as a student at the University of Mississippi.

(i) That the attempts of the said James H. Meredith to enter the University of Mississippi and the actions of the authorities in Mississippi preventing his entry, and the actions of the various United States Courts in making and entering said injunctions and mandates, as above set forth in the preceding paragraphs, had all been given wide publicity throughout the United States by newspapers, radio and television, and were matters of general knowledge and affairs of great public interest and concern prior to September 30, 1962. The plaintiff in this cause knew, or reasonably should have know of the court orders, injunctions and mandates herein pleaded based on knowledge acquired from an ordinary reading of the newspapers and reports from other news media and he also knew of the defiance of Governor Ross Barnett, Governor of the State of Mississippi, and of the Lt. Governor towards the fulfillment of the court orders of the United States Courts above set forth.

[fol. 31] (3)

The plaintiff, the former Major General of the Army of the United States, following his resignation therefrom for the stated purpose of speaking out in protest as a private citizen, had made frequent public statements and had made an unsuccessful venture into politics as a candidate for Governor of the State of Texas.

Plaintiff was a well known public figure because of his long military career, his commands and duties with the Army of the United States, his role as Commanding General of the troops in the Little Rock, Arkansas, integration crisis in 1957, his resignation from the Army of the United States with the rank of Major General with the avowed

statement and purpose of being able to protest and take a stand and position in matters of public interest and affairs, and his candidacy for Governor of the State of Texas in 1962. With such background as a public figure, the plaintiff, during the critical times involved herein, between September 10, 1962 and October 1, 1962, injected himself into the Mississippi crisis with the request and/or notice for frequent press releases or conferences, from Dallas, Texas, Jackson and Oxford, Mississippi, and thereby invited comment as to his activities. His public utterances and statements were all in protest and opposition to duly constituted governmental and judicial authority and relating to the admission of Meredith to the University of Mississippi, and were in violation of the injunctive decrees issued by the United States Courts, as herein set forth, and in favor of the positions then being taken by Governor Ross Barnett and other officials in Mississippi who were seeking to obstruct Meredith's entry as a student at the University of Mississippi.

Notwithstanding such knowledge, the plaintiff by radio and other news media, beginning on or about September 27, 1962, and thereafter, called for Americans 10,000 strong from every State in the Union to go to Mississippi and [fol. 32] rally behind Governor Barnett in his stand against admitting Meredith, saying, among other things, "It is now or never. Bring your flag, your tent and your skillet."

The plaintiff, Edwin A. Walker, further injected himself into the crisis in Mississippi by proceeding to Jackson, Mississippi, on or about September 29, 1962, when he made further press releases and statements, and by then proceeding to Oxford, Miss., where he held a further press conference on September 30, 1962, at all of which he reiterated his previous position.

At about 4:30 P. M. on the afternoon of September 30, 1962, the U. S. Marshals under orders to enforce the judgments, injunctions and mandates of the United States Courts for the enrollment of Meredith as a student at the University of Mississippi, proceeded on to the campus at

Oxford, setting up a ring substantially around or in front of the Lyceum Building on the campus. At about the same time, Meredith was escorted to another part of the campus. Immediately after the arrival of the Marshals, students and others began to congregate in the Circle and in the streets adjacent to the Lyceum Building, facing the Marshals, at first taunting them with jeers and remarks, subsequently throwing lighted cigarettes and missiles at the Marshals and at the vehicles in which they arrived. The temper of the crowd became worse and more unruly, and at about 8:00 o'clock P. M. tear gas was fired. Thereafter, the rioting increased by the hour as the night progressed, resulting in injuries to many persons and much property damage to personal property, automobiles and to the campus itself.

While the plaintiff was in Oxford, Mississippi, and on or about September 30, 1962, at about 8:00 P. M., a proclamation was made by the then President of the United States to the effect that the Governor of the State of [fol. 33] Mississippi and certain other officials and other persons had been and were willfully opposing and obstructing the enforcement of the injunctions, orders and judgments of the United States Courts and the President thereupon commanded all persons engaged in such obstruction of court orders to cease and desist and to disperse and retire peaceably forthwith. In addition, the President of the United States made a TV and radio appearance on the same date at about 8:00 o'clock P. M. in which he sought in substance the same compliance with court orders. Notwithstanding said proclamation of the President of the United States and the appeal of the President, the said plaintiff immediately thereafter proceeded to the campus of the University of Mississippi, at Oxford, arriving there at approximately 8:45 P. M. on the night of September 30 and stayed on said campus for a period of several hours thereafter. Following the widespread dissemination of plaintiff Walker's statements in the press, TV and radio, not only in Mississippi but elsewhere, the plaintiff's very presence on the campus tended to increase the emotional

excitement, the explosive condition, the courage, fervor and rage of the mob, thereby increasing the dangers and damage from what at first had been a demonstration, to a riot, mob violence, and to more organized and determined attacks upon the U. S. Marshals. At the time of the arrival of the plaintiff on the campus, there had already been violence and injury to persons and property, all of which was known to the plaintiff or should have been known in the exercise of ordinary observation on the campus. On the occasion in question, the plaintiff was welcomed by the crowd as its leader and he then and there made a speech which further excited and enraged the mob and, at least on one occasion, the plaintiff did proceed as a part of a generalized movement towards the Marshals at the Lyceum Building accompanied or followed by a crowd of students [fol. 34] and others shouting and yelling defiance, some of whom when close enough to the Marshals hurled missiles toward them. On many occasions during the night in question, plaintiff would move back and forth through the Circle (an area in the vicinity of and near the front of the Lyceum Building where the Marshals were stationed). He also offered advice on how to make the tear gas bombs ineffective, and otherwise complimented, encouraged and urged on the crowd of rioters to further protest and to keep up what they were doing, all of which resulted in continual opposition to duly constituted governmental and judicial authority including violation of the injunctive decrees heretofore referred to.

Therefore, each and all of the statements complained of by plaintiff herein are fair comment and are privileged.

IV.

By way of further answer, defendant, The Associated Press, respectfully shows to the court and the jury that the dispatch to the effect that plaintiff was arrested on four counts insofar as it relates to his arrest was privileged, and the defendant therefore pleads as a defense that it was

true and that said publication was a fair and honest report of judicial proceedings and as the act or acts of the arresting officers.

V.

By way of further answer herein and adopting all the allegations heretofore made herein, this defendant, The Associated Press, denies that any malice was involved or intended on the part of this defendant in the publication of any one or all of the articles or dispatches complained of, but was occasioned only by an effort in good faith—actuated solely by a sense of duty growing out of the occasion—to report to its members and to the public what this defendant believed to be an accurate report of the plaintiff's activities in the Mississippi crisis, and to make fair [fol. 35] comment thereon, all of which is privileged.

VI.

By way of further answer herein and adopting all of the allegations heretofore made herein, this defendant denies that it was or is guilty of any conduct which would authorize the allowance of any damages, punitive or otherwise, but would further say that the allowance of any damages herein would amount to a restraint and deterrent to the publication of news and the freedom of the press as required by the First and Fourteenth Amendments to the Constitution of the United States. The publications complained of were published and circulated by the defendant among the general public; the information contained therein is true; it concerns the plaintiff, a public figure, and was related to public affairs and matters of great public concern, and the publication was made so that the public should be informed, and the same was made in good faith and without malice, so that the same is privileged. Further, the allowance of any damages under and by virtue of any rule of law as applied by the courts of the State of Texas would be in violation of the foregoing Constitutional safeguards and would be constitutionally deficient for failure to permit freedom of speech and press which are guar-

anteed by the Constitution of the United States. The allowance of any damages herein also would be violative of the Constitution of the State of Texas which prohibits the abridgment of the freedom of the press in Article I, Paragraph 8 thereof.

VII.

By way of further answer and without waiving any of the foregoing defenses this defendant would respectfully show to the Court that the publications complained of were made in good faith under the belief by the defendant they were true in substance and in fact, and in connection therewith this defendant acted in good faith and was actuated [fol. 36] solely to report to the public with respect to plaintiff's activities in the Mississippi crisis, and for these reasons the plaintiff should not recover any sums by way of damages based thereon.

VIII.

By way of further answer and without waiving any of the foregoing pleas and defenses, this defendant would respectfully show to the Court that the cause of action, if any, as to all matters complained of and Paragraph VI of the Plaintiff's Second Amended Petition arose more than one year prior to the filing thereof, and that each and all of said causes of action or complaints, if any, are barred by the one year statute of limitations, being Article 5524 of the Statutes of the State of Texas.

Wherefore, Premises Considered, this defendant, The Associated Press, prays that plaintiff take nothing by reason of this suit, and that it go hence without day and recover its costs.

Cantey, Hanger, Gooch, Cravens & Scarborough,
By J. A. Gooch, 1800 First National Bank Bldg.,
Fort Worth 2, Texas, Attorney for defendant, The Associated Press.

[File endorsement omitted]

[fol. 37]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31741-C

[Title omitted]

PLAINTIFF'S TRIAL AMENDMENT TO PLAINTIFF'S SECOND AMENDED PETITION—Filed June 5, 1964

To the Honorable Judge of Said Court:

Now comes Edwin A. Walker, plaintiff in the above styled and numbered cause, and with leave of Court, files this, his trial amendment to his Second Amended Petition herein.

At page 6, Paragraph II, after subparagraph 25, add the following:

Plaintiff states that, of the above language, when taken in proper context with the entire news releases by the defendant, the following specific words are false, defamatory and libelous per se:

From release of October 2, 1962:

"Walker, who Sunday led a charge of students against federal marshals on the Ole Miss campus."

From news release of October 2, 1962; subparagraph 4:

"* * * the crowd * * * charged federal marshals." * * *

From page 5:

"The crowd welcomed Walker." * * *

From page 6:

"One unidentified man queried Walker as he approached the group 'General, will you lead us to the steps' ".

[File endorsement omitted]

From subparagraph 7:

"I observed Walker as he loosened his tie and shirt and nodded 'Yes' without speaking."

From subparagraph 8:

"Walker assumed command of the crowd, which I estimated at one thousand." * * *

[fol. 38] From subparagraph 9:

"Two men took Walker by the arms and they headed for the Lyceum and the federal marshals." * * *

From subparagraph 10:

"This march toward tear gas and the some two hundred marshals was more effective than the previous attempts." * * *

From subparagraph 11:

"We were met with a heavy barrage of tear gas about 75 yards from the Lyceum steps and went a few feet farther when we had to turn back."

Plaintiff alleges that the above statements of fact in defendant's news releases falsely accused plaintiff of crimes under the criminal statutes of the United States of America, and thus constitute libel per se.

C. J. Watts, Attorney for Plaintiff.

[fol. 39]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31,741-C

[Title omitted]

DEFENDANT'S MOTION AT CLOSE OF PLAINTIFF'S EVIDENCE FOR INSTRUCTED VERDICT AND RULING THEREON—June 15, 1964

To the Honorable Judge of Said Court:

Comes now the defendant, Associated Press, at the close of the plaintiff's evidence and after the plaintiff has announced that he has rested, and moves the Court to instruct a verdict in favor of the defendant and against the plaintiff, and for grounds therefor would show the Court as follows, to-wit:

I.

The alleged libel in this case as set forth under the rulings of the Court with specific certainty and plaintiff's trial amendment to plaintiff's second amended petition is based on excerpts from an article written by Van Savell of the Associated Press on or about October 3, 1962, it being plaintiff's proof that such article was published in the Star-Telegram in Fort Worth, Tarrant County, Texas, on or about such date.

The alleged libelous excerpts from such article are as follows:

> "Walker, who Sunday led a charge of students against Federal marshals on the Ole Miss campus".

With respect to this allegation the defendant would show to the Court that the proof thus far adduced by the plaintiff shows that such a statement is a statement of an occurrence [fol. 40] that occurred on the Ole Miss campus on the night of September 30, 1962. That by plaintiff's own testimony and from the majority of his witnesses there has been abso-

lute testimony to the effect that the plaintiff Walker went towards the Federal Marshals at a stage or stages during the night of September 30, 1962, followed by a considerable number of people varying anywhere from five to one thousand; that therefore the use of the term "charge" as carried in such article and upon which relief is sought is no more than a comment and according to the evidence is a fair comment under the statutes of the state of Texas as to the actions of the plaintiff on that occasion. It is shown by the entire and substantial proof on the part of the plaintiff that an occurrence such as described in said article did occur, and since same is descriptive of the events which occurred on the campus, then same is a comment and not a statement of fact insofar as the word "charge" is concerned, and therefore privileged under the statutes of the state of Texas as a fair comment on the activities of a public figure.

That the evidence shows without any doubt and from all the witnesses who have testified with respect thereto that the plaintiff Walker was a public figure on the occasion in question and enjoyed that title and description on the date and day in question.

II.

That the evidence is without dispute that the subject matter of the riot on the campus of Ole Miss university on September 30, 1962, was in connection with the integration problem which is shown by the evidence to have been a [fol. 41] problem of National import and National interest or perhaps International interest, and therefore the publication as set forth in the Star-Telegram coming from the Associated Press is privileged and is a fair comment on the happenings or actions of a public figure and related to a national problem or a matter of National public interest.

III.

With respect to the allegation number two in plaintiff's trial amendment plaintiff says over United Press wires of October 2, 1962, said paragraph four " * * * * crowd * * * *

charged Federal Marshals." With respect thereto the defendant would show to the Court that the evidence so far adduced by the plaintiff, and from plaintiff's witnesses only, show without doubt that a crowd of some character as to numbers did in fact charge the Marshals or charge in the direction of the Marshals on the night in question, reference being specifically made to plaintiff's witnesses: Talmage Witt, also to plaintiff's witness Richard Sweat, General Walker, David Channell, Cecil Holland, Robert Lee Watkins, Alvis McRhea, Harold Schneider, Henry Edwards, Donald Jackson, and Danny Lee Hunter, all of whom testified a crowd in which Walker was a participant, varying in size, made some character of movement toward the Marshals on the night in question after the entry on to the campus by General Walker and after he had conferred with a number of the students on the campus. As a matter of fact at least 15 of the witnesses have testified thus far that they were in the crowd that went with Walker toward the flag pole even though some of them have testified that only four or five or six were in the group.

[fol. 42] IV.

With respect to the next allegation on the part of the plaintiff as to a libelous article, he has alleged as follows from page 5: "The group welcomed Walker".

This is a comment, a fair comment, based on the testimony of all the witnesses in this case and constitutes an interpolation of the scrivener as to his interpretation of the actions of the crowd in connection with the welcoming of General Walker. It is further shown that on the occasion in question a group of considerable size, varying according to the testimony from 100 to 1,000 or more, crowded around General Walker at the time he entered the campus shouting such things as "Here's General Walker; here comes General Walker; here is our leader, Lead us, lead us; here is our leader", being excerpts from the testimony thus far adduced from plaintiff's witnesses as well as from the plaintiff himself.

V.

Plaintiff alleges as a part of the alleged libel; "One identified man queried Walker as he approached the crowd 'General, will you lead us up the steps'"?

The testimony is undisputed that this crowd—as a matter of fact the plaintiff himself testified that that was said to him at some time shortly after he arrived on the campus, and therefore has been conceded to be true on the part of the plaintiff.

VI.

The plaintiff has pled an excerpt from sub-paragraph 7 as follows: "I observed Walker as he loosened his tie and shirt and nodded 'yes' without speaking".

[fol. 43] With respect thereto defendant would show that the evidence shows that such an incident did occur, perhaps not in that context in which it was used, but could be nothing more than an expression or an opinion or a comment or an interpretation wherein the scrivener said that he nodded "yes" without speaking, such being an interpretation of an event through the eyes of the person who was writing the article.

VII.

The next article claimed to be libelous per se on the part of the plaintiff is from sub-paragraph 8, which reads as follows: "Walker assumed command of the crowd which I estimated at 1,000".

The defendant would show to the Court that this is no more than an estimate or an opinion on the part of the scrivener and has been confirmed by at least four of plaintiff's witnesses with respect to the numbers, and so far as the statement "Walker assumed command of the crowd", same is but a comment and an opinion on the part of the scrivener, privileged under the laws of the state of Texas as being a comment with respect to a public figure concerning a public matter.

VIII.

Plaintiff has alleged as a part of the libel: "Two men took Walker by the Arms and they headed for the Lyceum building and the Federal Marshals".

With respect thereto defendant would show the Court that under no circumstances could any matter such as that be the subject of a libel. It does not charge any act that would be unlawful nor any other matter which could have any effect other than be distasteful to one who does not [fol. 44] wish to be taken by the arms, and for that matter it is shown by at least one of plaintiff's witnesses that Walker at one time was taken by the arms when he was walking in the direction of the Lyceum building.

IX.

The next statement alleged by plaintiff to be libelous is as follows: "This march towards tear gas and the some 200 Marshals was more effective than the previous attempts".

With respect thereto defendant would show to the Court same could not be classed as anything other than a comment and is therefore privileged under the laws and statutes of the state of Texas in that same had to do with a public figure concerning a matter of public interest to the general public.

X.

Plaintiff alleges as a part of the alleged libel: "We were met with a heavy barrage of tear gas about 75 yards from the Lyceum steps and went a few feet farther when we had to turn back".

For the reason that such statement does not constitute any libel with respect to the plaintiff in this case, as being a comment from one who is alleged to have been present, and is a comment and a statement from the writer as to what his view of the situation was at the time in question.

XI.

For the further reason that since it has been shown by the testimony in this case that the article written by Van Savell and upon which this alleged libel is based is privileged under the laws of the state of Texas for the reasons set forth herein, and since no malice has either been shown or attempted to be shown and in fact no evidence whatsoever of malice having been introduced, the Court should [fol. 45] instruct a verdict in favor of the defendant and against the plaintiff.

XIII.

In the alternative the defendant would further show to the Court that the matters complained of here, after the amendment of the Texas statutes, are absolutely privileged and certainly in the absence of actual malice constitute no grounds for a cause of action. Also malice under Texas law cannot be inferred from the articles themselves since they relate to fair comment according to all of the evidence.

Respectfully submitted,

Cantey, Hanger, Gooch, Cravens & Scarborough, By
Sloan B. Blair.

Overruled, 6-15-64. Chas. J. Murray, Judge

[fol. 46]

IN THE 17TH JUDICIAL DISTRICT COURT OF

TARRANT COUNTY, TEXAS

No. 31741-C

[Title omitted]

PLAINTIFF'S REQUESTED DEFINITION AND DENIAL THEREOF—
June 18, 1964

To said Honorable Court:

Plaintiff requests the Court, prior to submission of its charge, to submit the following definition:

By the term "led a charge" as used herein, is meant to conduct, direct and govern, as a chief or commander, implying authority, an act of rushing upon or towards an enemy or opponent with the determination to close with him, in an impetuous onset or attack.

Respectfully submitted,

Wm. Andress, Jr., Of Counsel for Plaintiff.

Denied: June 18, 1964. Chas. J. Murray

[File endorsement omitted]

[fol. 47]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31,741-C

[Title omitted]

DEFENDANT'S MOTION AT CLOSE OF ALL EVIDENCE FOR INSTRUCTED VERDICT AND RULING THEREON—June 18, 1964

To the Honorable Judge of Said Court:

Comes now the defendant, Associated Press, after both the plaintiff and defendant had rested, and moves the Court to instruct a verdict in favor of the defendant and against the plaintiff, and for grounds therefor would show the Court as follows, to-wit:

I.

The alleged libel in this case as set forth under the rulings of the Court with specific certainty and plaintiff's trial amendment to plaintiff's second amended petition is based on excerpts from an article written by Van Savell of the Associated Press on or about October 3, 1962, it being plaintiff's proof that such article was published in the Star-Telegram in Fort Worth, Tarrant County, Texas, on or about such date.

The alleged libelous excerpts from such article are as follows:

> "Walker, who Sunday led a charge of students against Federal Marshals on the Ole Miss campus".

With respect to this allegation the defendant would show to the Court that the proof thus far adduced by the plaintiff shows that such a statement is a statement of an occurrence [fol. 48] that occurred on the Ole Miss campus on the night of September 30, 1962. That by plaintiff's own testimony and from the majority of his witnesses there has been abso-

lute testimony to the effect that the plaintiff Walker went towards the Federal Marshals at a stage or stages during the night of September 30, 1962, followed by a considerable number of people varying anywhere from five to one thousand; that therefore the use of the term "charge" as carried in such article and upon which relief is sought is no more than a comment and according to the evidence is a fair comment under the statutes of the state of Texas as to the actions of the plaintiff on that occasion. It is shown by the entire and substantial proof on the part of the plaintiff that an occurrence such as described in said article did occur, and since same is descriptive of the events which occurred on the campus, then same is a comment and not a statement of fact insofar as the word "charge" is concerned, and therefore privileged under the statutes of the state of Texas as a fair comment on the activities of a public figure.

That the evidence shows without any doubt and from all the witnesses who have testified with respect thereto that the plaintiff Walker was a public figure on the occasion in question and enjoyed that title and description on the date and day in question.

II.

That the evidence is without dispute that the subject matter of the riot on the campus of Ole Miss university on September 30, 1962, was in connection with the integration problem which is shown by the evidence to have been a [fol. 49] problem of National import and National interest or perhaps International interest, and therefore the publication as set forth in the Star-Telegram coming from the Associated Press is privileged and is a fair comment on the happenings or actions of a public figure and related to a national problem or a matter of National public interest.

III.

With respect to the allegation number two in plaintiff's trial amendment plaintiff says over United Press wires of

October 2, 1962, said paragraph four " * * * * crowd * * * * charged Federal Marshals." With respect thereto the defendant would show to the Court that the evidence so far adduced by the plaintiff, and from plaintiff's witnesses only, show without doubt that a crowd of some character as to numbers did in fact charge the Marshals or charge in the direction of the Marshals on the night in question, reference being specifically made to plaintiff's witnesses: Talmage Witt, also to plaintiff's witness Richard Sweat, General Walker, David Channell, Cecil Holland, Robert Lee Watkins, Alvis McRhea, Harold Schneider, Henry Edwards, Donald Jackson, and Danny Lee Hunter, all of whom testified a crowd in which Walker was a participant, varying in size, made some character of movement toward the Marshals on the night in question after the entry on to the campus by General Walker and after he had conferred with a number of the students on the campus. As a matter of fact at least 15 of the witnesses have testified thus far that they were in the crowd that went with Walker toward the flag pole even though some of them have testified that only four or five or six were in the group.

[fol. 50] IV.

With respect to the next allegation on the part of the plaintiff as to a libelous article, he has alleged as follows from page 5: "The group welcomed Walker".

This is a comment, a fair comment, based on the testimony of all the witnesses in this case and constitutes an interpolation of the scrivener as to his interpretation of the actions of the crowd in connection with the welcoming of General Walker. It is further shown that on the occasion in question a group of considerable size, varying according to the testimony from 100 to 1,000 or more, crowded around General Walker at the time he entered the campus shouting such things as "Here's General Walker; here comes General Walker; here is our leader. Lead us, lead us; here is our leader", being excerpts from the testimony thus far adduced

from plaintiff's witnesses as well as from the plaintiff himself.

V.

Plaintiff alleges as a part of the alleged libel: "One identified man queried Walker as he approached the crowd 'General, will you lead us up the steps' "?

The testimony is undisputed that this crowd—as a matter of fact the plaintiff himself testified that that was said to him at some time shortly after he arrived on the campus, and therefore has been conceded to be true on the part of the plaintiff.

VI.

The plaintiff has pled an excerpt from sub-paragraph 7 as follows: "I observed Walker as he loosened his tie and shirt and nodded 'yes' without speaking".

[fol. 51] With respect thereto defendant would show that the evidence shows that such an incident did occur, perhaps not in that context in which it was used, but could be nothing more than an expression or an opinion or a comment or an interpretation wherein the scrivener said that he nodded 'yes' without speaking, such being an interpretation of an event through the eyes of the person who was writing the article.

VII.

The next article claimed to be libelous per se on the part of the plaintiff is from sub-paragraph 8, which reads as follows: "Walker assumed command of the crowd which I estimated at 1,000".

The defendant would show to the Court that this is no more than an estimate or an opinion on the part of the scrivener and has been confirmed by at least four of plaintiff's witnesses with respect to the numbers, and so far as the statement "Walker assumed command of the crowd", same is but a comment and an opinion on the part of the scrivener, privileged under the laws of the state of Texas as

being a comment with respect to a public figure concerning a public matter.

VIII.

Plaintiff has alleged as a part of the libel: "Two men took Walker by the Arms and they headed for the Lyceum building and the Federal Marshals".

With respect thereto defendant would show the Court that under no circumstances could any matter such as that be the subject of a libel. It does not charge any act that would be unlawful nor any other matter which could have any effect other than be distasteful to one who does not wish to be [fol. 52] taken by the arms, and for that matter it is shown by at least one of plaintiff's witnesses that Walker at one time was taken by the arms when he was walking in the direction of the Lyceum building.

IX.

The next statement alleged by plaintiff to be libelous is as follows: "This march towards tear gas and the some 200 Marshals was more effective than the previous attempts".

With respect thereto defendant would show to the Court same could not be classed as anything other than a comment and is therefore privileged under the laws and statutes of the state of Texas in that same had to do with a public figure concerning a matter of public interest to the general public.

X.

Plaintiff alleges as a part of the alleged libel: "We were met with a heavy barrage of tear gas about 75 yards from the Lyceum steps and went a few feet farther when we had to turn back".

For the reason that such statement does not constitute any libel with respect to the plaintiff in this case, as being a comment from one who is alleged to have been present, and is a comment and a statement from the writer as to what his view of the situation was at the time in question.

XI.

For the further reason that since it has been shown by the testimony in this case that the article written by Van Savell and upon which this alleged libel is based is privileged under the laws of the state of Texas for the reasons set forth herein, and since no malice has either been shown or attempted to be shown and in fact no evidence whatsoever of malice having been introduced, the Court [fol. 53] should instruct a verdict in favor of the defendant and against the plaintiff.

XII.

In the alternative the defendant would further show to the Court that the matters complained of here, after the amendment of the Texas statutes, are absolutely privileged and certainly in the absence of actual malice constitute no grounds for a cause of action. Also malice under Texas law cannot be inferred from the articles themselves since they relate to fair comment according to all of the evidence.

Respectfully submitted,

Cantey, Hanger, Gooch, Cravens & Scarborough, By Sloan B. Blair, Attorneys for Defendant.

Overruled 6-18-64, Chas. J. Murray, Judge.

[fol. 54]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31,741-C

[Title omitted]

DEFENDANT'S OBJECTIONS AND EXCEPTIONS TO THE COURT'S MAIN CHARGE AND RULING THEREON—June 18, 1964

To the Honorable Judge of Said Court:

Comes now the defendant, Associated Press, after the preparation of the Court's main charge to the jury, and within a reasonable time prior to the submission of the same to the jury, and makes and takes the following objections and exceptions thereto:

I.

Defendant objects and excepts to the Court's definition of "fair comment" for the reason that same should contain the statutory language "concern published for general information", which said language should be included after the words "General public interest".

II.

Defendant objects and excepts to special issue No. 1 for the reason that the statement inquired about is a comment rather than a fact as a matter of law, and as submitted is a comment on the weight of the evidence and infers that said activity was libelous per se rather than submitting the same to the jury to so determine.

III.

Defendant objects and excepts to special issue No. 4 and the definition thereof for each and all of the following [fol. 55] reasons:

(a) There is no evidence to support the submission of such issue;

(b) There is insufficient evidence to support the submission of such issue;

(c) Neither the issue nor the definition informs the jury that malice cannot be inferred from the publication itself, which is a necessary element of such definition or instruction;

(d) Such issue as submitted does not limit the jury to malice which may have existed at the time of the making of the publications sued upon.

IV.

Defendant objects and excepts to special issue No. 5 for the reason that the statement inquired about is a comment rather than a fact as a matter of law, and as submitted is a comment on the weight of the evidence and infers that said activity was libelous per se rather than submitting the same to the jury to so determine.

V.

Defendant objects and excepts to special issue No. 8 and the definition thereof for each and all of the following reasons:

(a) There is no evidence to support the submission of such issue;

(b) There is insufficient evidence to support the submission of such issue;

(c) Neither the issue nor the definition informs the jury that malice cannot be inferred from the publication itself, [fol. 56] which is a necessary element of such definition or instruction;

(d) Such issue as submitted does not limit the jury to malice which may have existed at the time of the making of the publications sued upon.

VI.

Defendant objects and excepts to special issue No. 9 on damages for the following reasons:

(a) There is no evidence to support the submission of such an issue;

(b) There is insufficient evidence to support the submission of said issue;

(c) The issue as submitted and the instructions in connection therewith would permit the jury to award damages resulting from statements found by the jury to be fair comment and found by the jury to have been made in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public, and said issue should be corrected so as to instruct the jury that no damages can be awarded for statements that are fair comment or made in good faith in reference to a matter in which the defendant has a duty to report to its members and thence to the public.

VII.

Defendant objects and excepts to the submission of special issue No. 10 on exemplary damages because there is no evidence or insufficient evidence to support a finding of exemplary damages.

[fol. 57] VIII.

Defendant specially objects and excepts to the submission of special issue No. 11 on exemplary damages because there is no evidence or insufficient evidence that plaintiff is entitled to exemplary damages.

IX.

Defendant objects and excepts to the Court's charge as a whole because the same is tantamount to instructing the jury that the statements quoted in special issues Nos. 1 and 5 are libelous or are libelous per se, and said charge does not contain any issues with the burden of proof upon the plaintiff inquiring in substance whether either or both of said statements were in fact libelous or libelous per se or would have been understood by an average reader to be libelous, with appropriate definitions and instructions with respect to the meaning of the term libelous.

Respectfully submitted,

Cantey, Hanger, Gooch, Cravens & Scarborough, By Sloan B. Blair.

Overruled 6-18-64, Chas. J. Murray, Judge.

[fol. 58]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17th JUDICIAL DISTRICT

No. 31,741-C

[Title omitted]

CHARGE OF THE COURT—Filed June 18, 1964

Ladies and Gentlemen of the Jury:

This case is submitted to you in the form of questions which are called special issues. You are to answer these questions by unanimous consent.

Do not let bias, prejudice, sympathy, resentment, or any other such emotion play any part in your deliberations.

[File endorsement omitted]

During your deliberations be careful not to mention or discuss any personal knowledge you may have about the facts in the case. *Your duty is to answer these questions from the evidence you have heard in this trial and from that alone.*

Do not speculate on matters not shown by the evidence, and about which you are not asked any questions. Remember that you cannot guess your way to a just and correct verdict.

Do not return a quotient verdict, by adding together figures, dividing by the number of jurors, and agreeing to be bound by the result.

Do not do any trading on your answers—that is, some of you agreeing to answer certain questions one way if others will agree to answer other questions another way.

Do not decide who you think should win and then try to answer the questions accordingly. If you do this your verdict will be worthless.

You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law you must be governed by the instructions in this charge.

The following definitions are given you by the Court. Whenever any of the terms so defined are used in any of the special issues, you will refer to the appropriate definition and be guided thereby in considering your answer:

By the term Preponderance of the Evidence is meant the greater weight and degree of the credible evidence before you.

[fol. 59] Definitions

In answer to Special Issue No. 1 you are instructed that by the term "led" is meant activities by a person who directs, moves to action, or encourages in some action or movement, and that by the term "charge" is meant a movement toward the marshals, or a group or body of people moving toward an objective.

In answering the issues in this charge in which the term "substantially true" is used, you are instructed that in

order for a statement to be "substantially true" it is not necessary that the exact facts or the most minute details of the plaintiff's activities be completely accurate. Mere inaccuracies not affecting the substance of the report of plaintiff's activities are immaterial. You are further instructed that in answering special issues in which the term "substantially true" is used that the publication must be considered as a whole, giving to all the words contained therein (except those hereinabove defined for you) their ordinary meaning as read and understood by the average reader.

In answering the issues in these instructions in which the term "fair comment" is used, you are instructed that the interest of the public requires that all acts and matters of a public nature, and of public concern published for general information may be freely published and discussed with reasonable comments thereon. You are further instructed that by said term is meant a statement which represents the honest opinion of the writer and constitutes reasonable inferences to be drawn from the attendant facts and circumstances whether literally true or not, or whether all reasonable persons would agree with the opinions or conclusions based thereon.

Special Issue No. 1:

Question: Do you find from a preponderance of the evidence that the statement "Walker, who Sunday led a charge of students against Federal marshals on the Ole Miss campus" was substantially true?

Answer "Yes" or "No".

Answer: No

Special Issue No. 2:

Question: Do you find from a preponderance of the evidence that the statement "Walker, who Sunday led a charge of students against Federal marshals on the Ole Miss Campus", complained of by plaintiff, constitutes fair

comment describing the plaintiff's activities on or about September 30, 1962, at the places described in the evidence and under the then attendant circumstances?

Answer "Yes" or "No".

Answer: No

[fol. 60] *Special Issue No. 3*:

Question: Do you find from a preponderance of the evidence that the statement inquired about in special issue No. 1 was made in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public?

Answer "Yes" or "No".

Answer: No

Special Issue No. 4:

Question: Do you find from a preponderance of the evidence that in publishing the statement set forth in special issue No. 1 the defendant, Associated Press, was actuated by malice as that term is hereinafter defined.

In connection with the above issue, you are instructed that by the term "malice" is meant ill will, bad or evil motive, or that entire want of care which would raise the belief that the act or omission complained of was the result of a conscious indifference to the right or welfare of the person to be affected by it.

Answer "Yes" or "No".

Answer: Yes

Special Issue No. 5:

Question: Do you find from a preponderance of the evidence that the statement "Walker assumed command of the crowd" was substantially true?

Answer "Yes" or "No".

Answer: No

Special Issue No. 6:

Question: Do you find from a preponderance of the evidence that the statement "Walker assumed command of the crowd" complained of by plaintiff, constitutes fair comment describing plaintiff's activities on or about September 30, 1962, at the places described in the evidence and under the then attendant circumstances?

Answer "Yes" or "No".

Answer: No

Special Issue No. 7:

Question: Do you find from a preponderance of the evidence that the statement inquired about in special issue No. 5 was made in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public?

Answer "Yes" or "No".

Answer: No

[fol. 61] *Special Issue No. 8*:

Question: Do you find from a preponderance of the evidence that in publishing the statement set forth in special issue No. 5 the defendant, Associated Press, was actuated by malice as that term is hereinafter defined?

In connection with the above issue, you are instructed that by the term "malice" is meant ill will, bad or evil motive, or that entire want of care which would raise the belief that the act or omission complained of was the result of a conscious indifference to the right or welfare of the person to be affected by it.

Answer "Yes" or "No".

Answer: Yes

Special Issue No. 9:

Question: If you have answered either special issue No. 1 or special issue No. 5 "No", then answer:

What sum of money, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate the plaintiff for the damages, if any, sustained by him as a direct and proximate result of the statements inquired about in special issues Nos. 1 and 5?

In connection with this issue you are instructed that you may only award damages, if any, for statements inquired about herein which you have found to be false.

In connection with the foregoing issue you are instructed that you may take into consideration such damages, if any, to the reputation of the plaintiff and such mental anguish, if any, and humiliation, if any, and embarrassment, if any, which plaintiff may have sustained directly and proximately solely as a result of the statements hereinabove set forth, if you have found the same to be false.

Answer in dollars and cents, if any.

Answer: $500,000.00

Special Issue No. 10:

If you have answered either special issue No. 4 or special issue No. 8 "Yes", then answer:

Question: Do you find from a preponderance of the evidence that this is a case in which exemplary damages should be awarded to plaintiff?

In connection with the above issue you are instructed that the term "Exemplary damages" as used herein means a sum of money awarded as a punishment for any malice, if any, you have found to exist in this case. "Exemplary damages", if any are allowed, are to be no part of the damages which may be allowed as compensation (if compensation has been allowed) but only in the nature of a penalty allowed by law at your discretion, and any amount [fol. 62] which you find hereunder, if you see fit to make such a finding, should be reasonably proportionate to the actual damages, if any, you may allow plaintiff herein.

Answer "Yes" or "No".

Answer: Yes

Special Issue No. 11:

If you have answered the above special issue No. 10 "Yes", and only in that event, then answer:

Question: From a preponderance of the evidence, what amount of money, if any, do you find should be awarded to plaintiff as exemplary damages?

Answer in dollars and cents, if any.

Answer: $300,000.00

Chas. J. Murray, Judge presiding.

IN THE DISTRICT COURT OF TARRANT COUNTY

VERDICT OF THE JURY—June 19, 1964

We, the jury, have answered the above and foregoing special issues, as herein indicated, and herewith return same into court as our verdict.

Waverly S. Johnson, Foreman.

[File endorsement omitted]

[fol. 63]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31,741-C

[Title omitted]

DEFENDANT'S MOTION TO DISREGARD THE JURY'S VERDICT AND FOR JUDGMENT NOTWITHSTANDING SAID VERDICT—Filed June 29, 1964

To the Honorable Judge of Said Court:

Now comes the defendant, Associated Press, and moves the Court to set aside and disregard the verdict of the jury and each and every finding therein, and to render judgment for the defendant and against the plaintiff notwithstanding such verdict, and as grounds therefor would respectfully show as follows:

1.

The jury's negative finding in response to Special Issue No. 1 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement "Walker, who Sunday led a charge of students against Federal marshals on the Ole Miss campus" was substantially true.

2.

The jury's negative finding in response to Special Issue No. 2 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement quoted in the preceding paragraph, and in said Special Issue No. 2, constituted a fair comment about a matter of public concern published for general informa-

[File endorsement omitted]

tion concerning the plaintiff's activities at the time and place involved.

[fol. 64]

3.

The jury's negative finding in response to Special Issue No. 3 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement inquired about therein, as quoted in paragraph 1 of this motion, was made by the defendant in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public.

4.

The jury's affirmative answer to Special Issue No. 4 on malice should be set aside and disregarded because there is no evidence of any malice on the part of this defendant in publishing the statement referred to in said Special Issue No. 4.

5.

Since the statement "Walker, who Sunday led a charge of students against Federal marshals on the Ole Miss campus" constituted as a matter of law, under all of the evidence, fair comment about a matter of public concern published for general information, such statement was and is absolutely privileged under the provisions of Article 5432 of the Texas Statutes; or, in the alternative, said statement was qualifiedly privileged under the provisions of said Statute, and, there being no evidence of malice, judgment should be rendered for defendant and against the plaintiff.

6.

Since the statement quoted in the preceding paragraph was as a matter of law, under all of the evidence, made in good faith by the defendant in reference to a matter in which the defendant had a duty to report to its members and thence to the public, such statement was privileged,

and, there being no evidence of malice, judgment should be rendered for defendant and against the plaintiff.

[fol. 65]

7.

The jury's negative finding in response to Special Issue No. 5 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement "Walker assumed command of the crowd" was substantially true.

8.

The jury's negative finding in response to Special Issue No. 6 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement quoted in the preceding paragraph, and in said Special Issue No. 6, constituted a fair comment about a matter of public concern published for general information concerning the plaintiff's activities at the time and place involved.

9.

The jury's negative finding in response to Special Issue No. 7 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement inquired about therein, as quoted in paragraph 7 of this motion, was made by the defendant in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public.

10.

The jury's affirmative answer to Special Issue No. 8 on malice should be set aside and disregarded because there is no evidence of any malice on the part of this defendant in publishing the statement referred to in said Special Issue No. 8.

11.

Since the statement "Walker assumed command of the crowd" constituted as a matter of law, under all of the evidence, fair comment about a matter of public concern published for general information, such statement was and is absolutely privileged under the provisions of Article 5432 of the Texas Statutes; or, in the alternative, said statement was qualifiedly privileged under the provisions [fol. 66] of said Statute, and, there being no evidence of malice, judgment should be rendered for defendant and against the plaintiff.

12.

Since the statement quoted in the preceding paragraph was as a matter of law, under all of the evidence, made in good faith by the defendant in reference to a matter in which the defendant had a duty to report to its members and thence to the public, such statement was privileged, and, there being no evidence of malice, judgment should be rendered for defendant and against the plaintiff.

13.

There is no evidence whatever of damages, and therefore the jury's answer to Special Issue No. 9 has no support in the evidence, and said answer should be set aside and disregarded.

14.

There is no evidence to support the jury's answer to Special Issue No. 10 on exemplary damages, and said answer should therefore be disregarded and set aside.

15.

There is no evidence to support the jury's answer to Special Issue No. 11 on exemplary damages, and said answer should therefore be disregarded.

16.

Notwithstanding the verdict of the jury, the Court should render judgment for the defendant because any judgment awarding money damages to plaintiff against defendant would constitute a restraint and deterrent to the publication of news and a restraint, deterrent and denial of the freedom of the press as guaranteed to defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

[fol. 67] 17.

Notwithstanding the verdict of the jury, the Court should render judgment for the defendant because any judgment awarding money damages to plaintiff against defendant would constitute a restraint and deterrent to the publication of news and a restraint, deterrent and denial of the freedom of the press as guaranteed to defendant by Article 1, Paragraph 8, of the Constitution of the State of Texas.

Wherefore, defendant Associated Press respectfully prays that the Court set aside and disregard the verdict of the jury and each and every finding therein, and that judgment be here rendered notwithstanding said verdict, that plaintiff take nothing by his suit, and that defendant go hence with its costs without day; and defendant prays for such further and additional relief, at law and in equity, to which it may be entitled.

Cantey, Hanger, Gooch, Cravens and Scarborough,
By Sloan B. Blair, 1800 First National Building,
Fort Worth 2, Texas, Attorneys for defendant
Associated Press.

[fol. 67-A]

LETTER DATED JULY 29, 1964 FROM JUDGE MURRAY TO COUNSEL

CHAS. J. MURRAY
DISTRICT JUDGE
17TH JUDICIAL DISTRICT OF TEXAS
CIVIL COURTS BUILDING
FORT WORTH 2, TEXAS

July 29, 1964

Mr. C. J. Watts, Attorney
219 Couch Drive
Oklahoma City, Oklahoma

Mr. William Andress, Jr., Attorney
627 Fidelity Union Life Building
Dallas 1, Texas

Mr. J. A. Gooch, Attorney
1800 First National Bank Building
Fort Worth, Texas

Gentlemen:

I am entering judgment for the plaintiff on the jury verdict as to special issues one, two, three, five, six, seven and nine, and judgment for the defendant as to issues four, eight, ten and eleven.

At the time the charge to the jury was being prepared, you will recall I expressed the opinion that the alleged libelous statements contained in special issues one and five were statements of fact and not opinion, and, at least as to the statement set out in issue number one, was a charge of a commission of a crime. I submitted the defense of truth as to the statements, and the jury found that they were not substantially true. I believe there is evidence to support these findings. I now have some doubt as to whether I should have submitted the statement,

"Walker assumed command of the crowd," because it does not accuse Walker of the commission of a crime. However, in view of my decision as to special issue number one, this is immaterial.

I submitted issues as to fair comment and good faith (despite my then expressed opinion that they did not constitute defenses to a statement of fact charging the plaintiff with commission of a crime) so as to get jury findings and thus avoid a new trial in the event an appellate court disagreed with my conclusions. Since the jury answered issues two, three, six and seven as they did, I concur with these answers as a matter of law.

[fol. 67-B] Turning now to issues four, eight, ten and eleven, I find there is no evidence to support the jury's answers that there was actual malice by Associated Press in publishing the stories of October 2 and 3, 1962. As you will recall, I also expressed doubt when the charge was being prepared as to whether I should even submit malice and did so only to get a jury finding as I did on the defendant's claimed defenses of fair comment and good faith.

Under Texas Law, the news stories complained of are not of themselves evidence of malice without further proof. Plaintiff claims that malice is shown by the failure of the Associated Press to check the story written by its young reporter, Van Savell, because there was a conflict between the story as written, and as related by Savell to Thomas, an AP employee in its Atlanta office. This alleged conflict related only to whether General Walker led a charge against the federal marshals *before* rather than *after* his speech to the students on the Confederate Monument. I fail to ascertain how the failure to check such a minor discrepancy could be construed as that *entire want of care* which would amount to a *conscious indifference* to the rights of plaintiff. Negligence, it may have been; malice, it was not. Moreover, the mere fact that AP permitted a young reporter to cover the story of the riot is not evidence of malice. Wisdom and good judgment do not necessarily come with age, nor are they necessarily denied

youth. In my opinion New York Times vs. Sullivan, 11 L. ed. 2nd 686; Wortham-Carter Publishing Company vs. Littlepage, 223 SW 1043 and Fitzgarrald vs. Panhandle Publishing Company, 228 SW 2nd 499, support these conclusions.

Plaintiff's urge that this case is comparable to United Press International, Inc. vs. Mohs (Eastland Court of Civil Appeals—unreported) decided on June 26, 1964. I do not agree. In the UPI case, Miller, the night editor of UPI, *knew* that another story had been written at and sent from his UPI office the same night as the second story found to be libelous. The first story contained no statement that Mohs had been ordered arrested and handcuffed; that Mohs had been caught lying or that he had been charged with any offense for landing his plane on White Rock Lake in Dallas. Between the time this first story was written and sent from UPI's office, someone in this office called the police headquarters and learned that as far as the police knew, Mohs had not been charged with any [fol. 67-C] offense. Miller himself, nor anyone in his office, made any attempt to verify the facts of the landing on the lake, other than the call to police headquarters, yet Miller then distributed the second story which said that Mohs had been arrested, handcuffed and charged with violation of a city ordinance for landing on the lake. None of this was true. This second story was based on information received from one DeHarrow. Miller knew the story (the first one) previously written in his office was materially different from the story related by DeHarrow (the second story). He had many reasons to question the truth of the story attributed to DeHarrow, but made no attempt to check it. The Eastland Court found that these facts raised jury issues "as to whether there was such a want of care as could raise the belief that his acts (and thus the acts of UPI) were the result of a conscious indifference to the rights of Mohs."

As I have stated above, in the Walker case the only discrepancy was whether Walker led a charge before or after

his speech on the monument, and not whether he did or did not lead a charge at all. This evidence falls short of that set out in the UPI vs. Mohs opinion.

Since I have determined that there is no actual malice in this case, the question arises as to whether the rule of New York Times vs. Sullivan (which prohibits a public official recovering damages for libel when there is no actual malice) should apply to a public figure such as plaintiff. If it does, then the entire jury verdict must be set aside, and judgment entered for defendant.

The evidence is undisputed that General Walker was a public figure at the time of the riot on the Old Miss Campus.

Freedom of the press is perhaps the most important protection against tyranny that we find in a free society. Without it, the public could not know whether one's right to speak, to worship his creator as he chooses or to enjoy a fair trial had been abridged. Americans everywhere depend on news media of all types to provide accurate information on the daily affairs of men and nations. This imposes a great duty and responsibility on the news gathering and distributing agencies of this country, and they should be protected to the extent necessary for them to properly function.

[fol. 67-D] However, I see no compelling reasons of public policy requiring additional defenses to suits for libel. Truth alone should be an adequate defense. The Sullivan case is limited, and I feel it should be limited, in its application to public officials. It does not apply to this case.

Jury findings as to issues four, eight, ten and eleven are set aside, and judgment will be entered for the plaintiff in the amount of $500,000.00 and costs.

Very truly yours,

/s/ CHAS. J. MURRAY
Charles J. Murray, Judge
17th District Court

CJM:oec

[fol. 67-E]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31741-C

[Title omitted]

ORDER DIRECTING SUPPLEMENTAL TRANSCRIPT—
January 25, 1965

On this the 25 day of January, 1965, upon motion and suggestion of the defendant in the above case, and pursuant to the provisions of Rule 428, T.R.C.P., It Is Ordered and Directed by the Court that the Clerk prepare a Supplemental Transcript to be certified and transmitted by the Clerk to the Court of Civil Appeals, same to include this Order and the Court's letter of July 29, 1964, addressed to Mr. C. J. Watts, Mr. William Andress, Jr., and Mr. J. A. Gooch.

Signed and Entered the date first above written.

Chas. J. Murray, Judge presiding.

[fol. 67-F] Clerk's Certificate to Foregoing Papers (omitted in printing).

[fol. 68]

IN THE 17TH JUDICIAL DISTRICT COURT OF

TARRANT COUNTY, TEXAS

No. 31741-C

EDWIN A. WALKER

vs.

THE ASSOCIATED PRESS

JUDGMENT—August 3, 1964

On 8 June 1964 came on regularly to be heard the above numbered and entitled cause, wherein Edwin A. Walker is plaintiff and The Associated Press is defendant, the defendants Amon G. Carter, Jr., and Carter Publications, Inc., having theretofore been dismissed by the plaintiff, and all parties appeared by counsel and announced ready for trial, and thereupon came a jury of twelve good and lawful jurors who, being duly empanelled and sworn, did on 19 June 1964 return the following answers to the issues submitted:

Special Issue No. 1:

Question: Do you find from a preponderance of the evidence that the statement "Walker, who Sunday led a charge of students against Federal marshals on the Ole Miss campus" was substantially true?

Answer "Yes" or "No".

Answer: No

Special Issue No. 2:

Question: Do you find from a preponderance of the evidence that the statement "Walker, who Sunday led a charge of students against Federal marshals on the Ole

Miss Campus", complained of by plaintiff, constitutes fair comment describing the plaintiff's activities on or about September 30, 1962, at the places described in the evidence and under the then attendant circumstances?

Answer "Yes" or "No".

Answer: No

[fol. 69] *Special Issue No. 3*:

Question: Do you find from a preponderance of the evidence that the statement inquired about in special issue No. 1 was made in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public?

Answer "Yes" or "No".

Answer: No

Special Issue No. 4:

Question: Do you find from a preponderance of the evidence that in publishing the statement set forth in special issue No. 1 the defendant, Associated Press, was actuated by malice as that term is hereinafter defined.

In connection with the above issue, you are instructed that by the term "malice" is meant ill will, bad or evil motive, or that entire want of care which would raise the belief that the act or omission complained of was the result of a conscious indifference to the right or welfare of the person to be affected by it.

Answer "Yes" or "No".

Answer: Yes

Special Issue No. 5:

Question: Do you find from a preponderance of the evidence that the statement "Walker assumed command of the crowd" was substantially true?

Answer "Yes" or "No".

Answer: No

Special Issue No. 6:

Question: Do you find from a preponderance of the evidence that the statement "Walker assumed command of the crowd" complained of by plaintiff, constitutes fair comment describing plaintiff's activities on or about September 30, 1962, at the places described in the evidence and under the then attendant circumstances?

Answer "Yes" or "No".

Answer: No

Special Issue No. 7:

Question: Do you find from a preponderance of the evidence that the statement inquired about in special issue No. 5 was made in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public?

Answer "Yes" or "No".

Answer: No

[fol. 70] *Special Issue No. 8*:

Question: Do you find from a preponderance of the evidence that in publishing the statement set forth in special issue No. 5 the defendant, Associated Press, was actuated by malice as that term is hereinafter defined?

In connection with the above issue, you are instructed that by the term "malice" is meant ill will, bad or evil motive, or that entire want of care which would raise the belief that the act or omission complained of was the result of a conscious indifference to the right or welfare of the person to be affected by it.

Answer "Yes" or "No".

Answer: Yes

Special Issue No. 9:

Question: If you have answered either special issue No. 1 or special issue No. 5 "No", then answer:

What sum of money, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate the plaintiff for the damages, if any, sustained by him as a direct and proximate result of the statements inquired about in special issues Nos. 1 and 5?

In connection with this issue you are instructed that you may only award damages, if any, for statements, if any, inquired about herein which you have found to be false.

In connection with the foregoing issue you are instructed that you may take into consideration such damages, if any, to the reputation of the plaintiff and such mental anguish, if any, and humiliation, if any, and embarrassment, if any, which plaintiff may have sustained directly and proximately solely as a result of the statements hereinabove set forth, if you have found the same to be false.

Answer in dollars and cents, if any.

Answer: $500,000.00

Special Issue No. 10:

If you have answered either special issue No. 4 or special issue No. 8 "Yes", then answer:

Question: Do you find from a preponderance of the evidence that this is a case in which exemplary damages should be awarded to plaintiff?

In connection with the above issue you are instructed that the term "Exemplary damages" as used herein means a sum of money awarded as a punishment for any malice, if any, you have found to exist in this case. "Exemplary damages", if any are allowed, are to be no part of the damages which may be allowed as compensation (if compensation has been allowed) but only in the nature of a penalty allowed by law at your discretion, and any amount which [fol. 71] you find hereunder, if you see fit to make such a finding, should be reasonably proportionate to the actual damages, if any, you may allow plaintiff herein.

Answer "Yes" or "No".

Answer: Yes

Special Issue No. 11:

If you have answered the above special issue No. 10 "Yes", and only in that event, then answer:

Question: From a preponderance of the evidence, what amount of money, if any, do you find should be awarded to plaintiff as exemplary damages?

Answer in dollars and cents, if any.

Answer: $300,000.00

which said verdict was duly received by the Court and ordered filed; and the plaintiff filed a motion for judgment upon said verdict, and the defendant filed a motion to disregard the jury's verdict on each issue and for judgment notwithstanding said verdict, and after a hearing upon said motions and after considering the oral and written argument of the parties, the Court is of the opinion that the plaintiff is entitled to judgment upon the verdict of the jury in response to Special Issues Nos. 1, 2, 3, 5, 6, 7, and 9, but that there is no evidence to support the jury's answers to Special Issues Nos. 4, 8, 10, and 11, and that the motions of each of the parties should be granted partially as above set forth;

It is therefore ordered, adjudged, and decreed that the plaintiff Edwin A. Walker do have and recover of and from the defendant The Associated Press the sum of $500,000.00, with interest at the rate of 6% per annum from this date until paid;

It is further ordered, adjudged, and decreed that the original defendants Amon G. Carter, Jr., and Carter Publications, Inc., owner, operator, and licensee of Radio Broad-
[fol. 72] casting Stations WBAP-AM and WBAP-FM, and Television Station WBAP-TV, and The Fort Worth Star Telegram, be and they are hereby dismissed from this cause upon the motion of the plaintiff; and

It is further ordered, adjudged, and decreed that all of the costs hereof be taxed against the defendant The As-

sociated Press, for all of which judgment let all proper process issue.

Both parties excepted to adverse rulings.

Signed August 3, 1964.

Charles J. Murray, Judge.

Approved as to Form: Cantey, Hanger, Gooch, Cravens & Scarborough, By: S. B. Blair, Attorneys for Defendant.

Wm. Andress, Jr.
Of Counsel for Plaintiff.

[fol. 73]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31741-C

[Title omitted]

DEFENDANT'S ORIGINAL MOTION FOR NEW TRIAL—Filed August 12, 1964

To the Honorable Judge of Said Court:

Now comes the defendant Associated Press, after entry of judgment herein on August 3, 1964, and makes and files this its Original Motion for New Trial, and moves the Court to set aside the judgment heretofore rendered against it and to grant a new trial herein, upon the following grounds, to-wit:

1.

The Court erred in overruling the motion for instructed verdict made by defendant after plaintiff had rested.

2.

The Court erred in overruling the motion for instructed verdict made by defendant after both sides had rested.

[File endorsement omitted]

3.

The Court erred in overruling Grounds 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 13, 16 and 17 of defendant's motion to disregard the jury's verdict, and for judgment notwithstanding said verdict.

4.

The Court erred in overruling defendant's exceptions and objections to the Court's main charge.

5.

The Court erred in rendering judgment for plaintiff and against defendant for each and all of the following reasons:

[fol. 74] (a) The jury's negative answer to Special Issue No. 1 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(b) The jury's negative answer to Special Issue No. 2 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(c) The jury's negative answer to Special Issue No. 3 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(d) The jury's negative answer to Special Issue No. 5 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(e) The jury's negative answer to Special Issue No. 6 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(f) The jury's negative answer to Special Issue No. 7 is so against the great weight and preponderance of the evi-

dence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(g) The jury's answer to Special Issue No. 9 on damages is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(h) The amount of damages found by the jury in answer to Special Issue No. 9, to-wit, the sum of $500,000.00, is so grossly excessive as to be manifestly wrong and unjust and to show that the jury disregarded the evidence, and was in-
[fol. 75] fluenced by passion, prejudice, or other improper motive.

Wherefore, defendant Associated Press prays that said judgment be set aside, and that defendant be granted a new trial herein.

Cantey, Hanger, Gooch, Cravens & Scarborough, By Sloan B. Blair, 1800 First National Bldg., Fort Worth 2, Texas;

Attorneys for Defendant.

[fol. 76]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31741-C

[Title omitted]

ORDER GRANTING LEAVE TO FILE AMENDED MOTION FOR NEW TRIAL—August 12, 1964

On this the 12th day of August, 1964, the defendant having moved the Court for leave to file an Amended Motion for New Trial, and the Court being of the opinion that such leave should be granted:

It Is Accordingly Ordered that the defendant, Associated Press, is granted leave to file an Amended Motion for New Trial in this cause within twenty days from this date.

Signed and Entered the day above written.

Chas. J. Murray, Judge Presiding.

[fol. 77]

IN THE 17TH JUDICIAL DISTRICT COURT OF

TARRANT COUNTY, TEXAS

No. 31741-C

[Title omitted]

PLAINTIFF'S MOTION TO CORRECT JUDGMENT—
Filed August 13, 1964

To said Honorable Court:

Plaintiff, Edwin A. Walker, moves the Court to correct the judgment signed herein on 3 August 1964 by sustaining in full the plaintiff's motion for judgment and overruling in full the defendant's motion for judgment notwithstanding the verdict and the answers to each issue, and thereupon to correct the judgment by making the plaintiff's recovery against the defendant the sum of $800,000.00.

Wherefore plaintiff moves the Court to correct the judgment accordingly.

Looney, Watts, Looney, Nichols & Johnson, 219 Couch Drive, Oklahoma City, Oklahoma;

Andress, Woodgate, Richards & Condos, By: Wm. Andress, Jr., 627 Fidelity Union Life Building, Dallas 1, Texas;

Attorneys for Plaintiff.

[File endorsement omitted]

[fol. 78]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31741-C

[Title omitted]

DEFENDANT'S AMENDED MOTION FOR NEW TRIAL—
Filed August 31, 1964

To the Honorable Judge of Said Court:

Now comes defendant, The Associated Press, and with leave of the Court first had and obtained makes and files this its Amended Motion for New Trial, and would respectfully show as follows:

I.

The Court erred in overruling Grounds 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 13, 16 and 17 of Defendant's Motion to Disregard the Jury's Verdict and for Judgment Notwithstanding such Verdict, for each and all of the reasons therein set forth, which said Grounds read as follows:

> (1) The jury's negative finding in response to Special Issue No. 1 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement "Walker, who Sunday led a charge of students against Federal marshals on the Ole Miss campus" was substantially true.
>
> (2) The jury's negative finding in response to Special Issue No. 2 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement quoted in the preceding paragraph, and in said Special Issue No. 2, con-

[File endorsement omitted]

stituted a fair comment about a matter of public concern published for general information concerning the plaintiff's activities at the time and place involved.

(3) The jury's negative finding in response to Special Issue No. 3 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement inquired about therein, as quoted in paragraph 1 of this motion, was made by the defendant in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public.

[fol. 79] (5) Since the statement "Walker, who Sunday led a charge of students against Federal marshals on the Ole Miss campus" constituted as a matter of law, under all of the evidence, fair comment about a matter of public concern published for general information, such statement was and is absolutely privileged under the provisions of Article 5432 of the Texas Statutes; or, in the alternative, said statement was qualifiedly privileged under the provisions of said Statute, and, there being no evidence of malice, judgment should be rendered for defendant and against the plaintiff.

(6) Since the statement quoted in the preceding paragraph was as a matter of law, under all of the evidence, made in good faith by the defendant in reference to a matter in which the defendant had a duty to report to its members and thence to the public, such statement was privileged, and, there being no evidence of malice, judgment should be rendered for defendant and against the plaintiff.

(7) The jury's negative finding in response to Special Issue No. 5 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement "Walker assumed command of the crowd" was substantially true.

(8) The jury's negative finding in response to Special Issue No. 6 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement quoted in the preceding paragraph, and in said Special Issue No. 6, constituted a fair comment about a matter of public concern published for general information concerning the plaintiff's activities at the time and place involved.

(9) The jury's negative finding in response to Special Issue No. 7 should be set aside and disregarded because the evidence conclusively established as a matter of law that the statement inquired about therein, as quoted in paragraph 7 of this motion, was made by the defendant in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public.

(11) Since the statement "Walker assumed command of the crowd" constituted as a matter of law, under all of the evidence, fair comment about a matter of public concern published for general information, such statement was and is absolutely privileged under the provisions of Article 5432 of the Texas Statutes; or, in the alternative, said statement was qualifiedly privileged under the provisions of said Statute, and, there being no evidence of malice, judgment should be rendered for defendant and against the plaintiff.

(12) Since the statement quoted in the preceding paragraph was as a matter of law, under all of the evidence, made in good faith by the defendant in reference to a matter in which the defendant had a duty to report to its members and thence to the public, such [fol. 80] statement was privileged, and, there being no evidence of malice, judgment should be rendered for defendant and against the plaintiff.

(13) There is no evidence whatever of damages, and therefore the jury's answer to Special Issue No. 9 has

no support in the evidence, and said answer should be set aside and disregarded.

(16) Notwithstanding the verdict of the jury, the Court should render judgment for the defendant because any judgment awarding money damages to plaintiff against defendant would constitute a restraint and deterrent to the publication of news and a restraint, deterrent and denial of the freedom of the press as guaranteed to defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

(17) Notwithstanding the verdict of the jury, the Court should render judgment for the defendant because any judgment awarding money damages to plaintiff against defendant would constitute a restraint and deterrent to the publication of news and a restraint, deterrent and denial of the freedom of the press as guaranteed to defendant by Article 1, Paragraph 8, of the Constitution of the State of Texas.

And defendant here renews and again urges each of the foregoing Grounds.

II.

The Court erred in overruling Defendant's Second Objection to the Court's Charge and each and every ground thereof, which reads as follows:

Defendant objects and excepts to special issue No. 1 for the reason that the statement inquired about is a comment rather than a fact as a matter of law, and as submitted is a comment on the weight of the evidence and infers that said activity was libelous per se rather than submitting the same to the jury to so determine.