Clarence Jones
K; 9-7864

CONFIDENTIAL

MEMORANDUM IN RE ALABAMA
LIBEL SUITS

Subject: Outline Supporting Rationale of Motion for a New Trial in Action Brought by Commissioner Sullivan.

Title 7, Section 276 enumerates the causes for which a new trial, i.e., a motion for a new trial, may be granted under Alabama practice and procedure. The statutory categories of causes are as follows:

1. Irregularity in the proceedings of the

(a) Court
(b) Jury
(c) Or the prevailing party
(d) Or any order of the Court,

or abuse of discretion, by which the party was prevented from having a fair trial.

2. Misconduct of the jury or the prevailing party.

3. Accident or surprise which ordinary prudence could not have guarded against.

4. Excessive or inadequate damages.

5. ———

6. That the verdict or decision is not sustained by the great preponderance of evidence, or is contrary to law.

7. Newly discovered evidence, which a party could not with reasonable diligence have discovered and produced at the trial. (Neal v. Weiman, 266 Ala. 634, 98 So. 2d 611)

8. Error of law occurring at the trial and excepted to by the party making the motion.

The statutory causes, i.e., class of, specified in Section 276, do not exclude from consideration a motion for a new trial made on common law grounds. (State v. Loftin,

FRANK W. PARKS	)	
PLAINTIFF	)	IN THE CIRCUIT COURT
VS.	)	OF
THE NEW YORK TIMES COMPANY, A Corporation, Et. Al.,	)	MONTGOMERY COUNTY, ALABAMA
	)	CASE NO._____
DEFENDANT	)	

MOTION TO DESEGREGATE THE COURT ROOM

Come now the defendants, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery, and respectfully move this Honorable Court to make and enter an order and decree prohibiting enforced segregation based on race or color within the court room of the Montgomery County Court house during the course of this trial and for grounds for said motion set out and assign both separately and severally the following:

1. That defendants, Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr., and Fred Shuttlesworth belong to that class of persons commonly designated and referred to as Negroes.

2. That there is enforced pursued in Montgomery County, a practice, custom, and usage of requiring and compelling separation of the races in the court rooms of the Court House of Montgomery County, Alabama.

3. That pursuant to said practice custom and usage enforced and pursued, the Court room wherein the above said cause is to be tried is segregated by reason or color.

4. That to require the above said defendants to submit to trial before said racially segregated tribunal deprives defendants of the due process of the laws and equal protection of the laws guaranteed by the 14th Amendment to the Constitution of the United States of America.

Wherefore, defendants respectfully pray that this Honorable Court take cognizance of this their motion to desegregate the Court Room of the Montgomery County Court house during the cour of this trial, and after careful consideration of the evidence and proof which the defendants offer to make, grant said motion.

FRANK W. PARKS PLAINTIFF	)	IN THE CIRCUIT COURT
VS.	)	OF
THE NEW YORK TIMES COMPANY, A Corporation, Et. Al., DEFENDANT	)	MONTGOMERY COUNTY, ALABAMA CASE NO._____

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PLAINTIFF	)	IN THE CIRCUIT COURT
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FRANK W. PARKS
~~EARL D. JAMES~~ *

PLAINTIFF (IN THE CIRCUIT COURT OF

VS.) MONTGOMERY COUNTY, ALABAMA

THE NEW YORK TIMES CO., A Corporation, RALPH D. ABERNATHY, FRED L. SHUTTLESWORTH, S. S. SEAY, SR. and J. E. LOWERY * CASE NO. ~~27417~~

( )

DEFENDANTS *

To The Honorable Judges of Said Court:

Now come the defendants Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery, individually and separately, and respectfully move this Honorable Court to Quash the Venire or the list of jurors (regular and special, if any) drawn to decide the issue of facts in cases set for hearing in this Court for the week beginning ~~January 30, 1961~~ and to hold the same for naught, and in support of said motion alleges the following:

1. That under the laws of the State of Alabama, either the plaintiff or the defendant may elect to have this cause tried by a jury, and that the plaintiff, at the time of filing this action, demanded a trial by jury in this cause.

2. That the names which appear on said venire was not selected in accordance with the laws and the Constitution of the State of Alabama, and more particularly Title 30, Sections 20 and 21, Code of Alabama, 1940, as amended, and Act No. 118 of March 8, 1939, and Article 1, Section 6, Constitution of Alabama of 1901, and the Constitution and laws of the United States, and more particularly the Fourteenth Amendment thereof.

In support of said ground, the defendant alleges the following:

(a) In violation of the laws of Alabama, the jury roll and jury box of this County from which the venire or jurors were selected to try cases set for trial during the week of January 30, 1961, did not contain the names of all male citizens of the County who are generally reputed to be honest and intelligent men and who are esteemed in the community for their integrity, good character and sound judgment.

(b) Likewise, in violation of the laws of Alabama, a large number of citizens who posses the requisite qualifications required by law of jurors, were intentionally omitted from the said jury box and jury roll.

(c) Defendant is a citizen of the State of Alabama, and a native-born citizen of the United States, and was such at the time this action was commenced and at the time the said venire was drawn. Defendant is also one of the group of American citizens commonly designated as Negroes.

(d) The last available decennial census of the United States published by the United States Department of Commerce, Bureau of Census, taken in 1950, reported that of the population of this County, 25,021 were white males over the age of 21 years, and 15,123 were non-white males or Negroes over the age of 21 years.

(e) Few Negroes have served on the venires and petit juries in this County. The names of only a token few of the eligible Negro male citizens of this County have been placed in the jury box and on the jury roll of this County. For many years, and at the present, there is an exclusion of qualified Negro males, on account of race and color, from the jury service in this County in violation of the laws and Constitution of the State of Alabama, and the laws and Constitution of the United States and more particularly the Fourteenth Amendment thereof.

(f) Few, if any, Negroes names appear on the venire drawn to try cases set for the week of January 30, 1961, and that said venire was drawn from the jury roll and jury box of this County, and as such, said venire was drawn in violation of the laws and Constitution of the State of Alabama, and in violation of the laws and Constitution of the United States and particularly the Fourteenth Amendment thereof.

3. That the names appearing on the venire drawn to try cases set for trial during the week of January 30, 1961 were

selected from the jury box and jury roll of this County, and that said jury box and said jury roll were allegedly compiled pursuant to Act No. 118 of March 8, 1939, which act provides for, among other things, the creation of a Board of Jury Supervisors in Montgomery County, Alabama, and that if said jury roll and box were compiled pursuant to said act, then said act is unconstitutional in that defendant will be prevented from having a fair trial in that the Court is a member of the Board of Jury Supervisors of Montgomery, Alabama; and that said Board selected jurors pursuant to Act No. 118 of March 8, 1939, said Act being unconstitutional, said selection of jurors thereunder by the Court being in violation of Article 1, Section 11 of Alabama Code of 1901 and the Code of Alabama (1940), Title 7, Section 260, in that the Court as a member of the Board by so selecting those persons who are to decide the case decided both the facts and the law.

Wherefore, defendant prays that this Court will take notice of this his Motion to Quash the Venire drawn to try this case, and that your Honor will, after consideration of the evidence and proof which the defendant offers to make, grant said motion.

Respectfully made this _____day of ~~January~~, 1961.

_____

_____

_____

_____

STATE OF ALABAMA
MONTGOMERY COUNTY

Personally appeared before me the undersigned authority for and in the said County and State, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J.E. Lowery, individually and separately, who being by me first duly sworn, deposes and says that he is one of the defendants in this cause, and that he has read the foregoing motion, and that the facts and matters therein averred are true and correct to his best knowledge, information and belief.

_____

Defendant

_____

Defendant

_____

Defendant

_____

Defendant

Sworn to and subscribed before me this____day of ~~January,~~ 1961.

_____

Notary Public

_____

Attorney for Defendants

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

FILED

JUL 29 1961

H. C. DOBSON
Clerk
By ..... Dep

FRANK W. PARKS,

Plaintiff,

vs.

CIVIL ACTION NO. 1706-N

THE NEW YORK TIMES COMPANY, A CORPORATION, RALPH D. ABERNATHY, FRED L. SHUTTLESWORTH, S. S. SEAY, SR., and J. E. LOWERY,

Defendants.

JOHN PATTERSON,

Plaintiff,

vs.

CIVIL ACTION NO. 1707-N

THE NEW YORK TIMES COMPANY, A CORPORATION, MARTIN LUTHER KING, JR., FRED L. SHUTTLESWORTH, J. E. LOWERY, RALPH D. ABERNATHY, and S. S. SEAY, SR.,

Defendants.

AMENDMENT TO ORDER

This cause is now submitted upon the motions of Frank W. Parks and John Patterson made pursuant to the provisions of Title 28, § 1292(b), United States Code Annotated, wherein said plaintiffs seek an order of this Court amending its order made and entered in each of these cases on June 26, 1961, so as to provide in such order the necessary and appropriate certification that would allow an immediate appeal from the order of this Court of June 26, 1961.

Upon consideration of said motions, this Court is of the opinion that same should be granted. This Court, therefore, now certifies that it is of the opinion that the order of this Court filed and entered in each of these cases on June 26, 1961, involves controlling questions of law, as to which there is substantial ground for difference of opinion, and further certifies that an immediate appeal from the order of this Court of June 26, 1961, may materially advance the ultimate determination of this litigation.

Upon consideration of the foregoing and for good cause shown, it is the ORDER, JUDGMENT and DECREE of this Court that the order of this Court entered in each of these cases on June 26, 1961, be and same is hereby amended to include the

above certification.

It is the further ORDER, JUDGMENT and DECREE of this Court that each of these proceedings be and each is hereby stayed, pending a determination and action by the United States Court of Appeals for the Fifth Circuit upon plaintiffs' application.

Done, this, the 29th day of June, 1961.

FRANK M. JOHNSON, JR.
UNITED STATES DISTRICT JUDGE

FRANK W. PARKS, PLAINTIFF, VS. THE NEW YORK TIMES COMPANY, CORPORATION, ET. AL., DEFENDANTS.	) * (*) * (	IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA CASE NO. _____

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Wherefore, defendants respectfully pray that this Honorable Court take cognizance of this their motion to desegregate the Court Room of the Montgomery County Court house during the course of this trial, and after careful consideration of the evidence and proof which the defendants offer to make, grant said Motion.

Charles S. Caley

FRANK W. PARKS,	*	IN THE CIRCUIT COURT
	)	
Plaintiff	*	OF
	)	
Vs.	*	MONTGOMERY COUNTY,
	)	
THE NEW YORK TIMES COMPANY, A Corporation, Et Al,	*	ALABAMA
	)	
	*	
Defendants	)	CASE NO._____

MOTION TO HAVE TRIAL JUDGE RECUSE HIMSELF

Come now the defendants, Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr., and Fred L. Shuttlesworth, and move this Honorable Court to recuse himself from sitting as trial Judge in the trial of this cause, and for grounds for said motion set out and assign the following:

1. That pursuant to Act No. 118 of March 8, 1939, the Court is a member of the Board of Jury Supervisors of Montgomery County, Alabama.

2. That as such member of the Board of Jury Supervisors, the Court participated in selecting and determining those male citizens of Montgomery County, Alabama whose names were into the jury box from which the venire was drawn to try this cause.

3. That the Court, by so selecting and determining the persons whose names went into the jury box from which the venire was drawn to try this cause determines both the law and facts in this cause thus depriving defendants of the right to a fair and impartial trial by jury guaranteed to them by the Constitution of Alabama, 1901, Article 1, Section 11; Code of Alabama, Title 7, Section 260 and the Fourteenth Amendment to the Constitution of the United States of America.

4. That on February 1, 1961, during the trial of a companion case to the one at bar, wherein Earl James, Mayor of Montgomery, Alabama, was plaintiff against the said defendants here, and the Honorable Judge now presiding, while then presiding in the said companion case stated, as a matter of record, out of the presence of the jury, that the Fourteenth Amendment to the Constitution of the United States is a "pariah" and "an outcast", if it forbidded him, as an officer of the State, to segregate members of the audience on the basis of their race or color, as well as the defendants themselves.

5. That the said Judge acting under the color and guise of State office, and in behalf of the State of Alabama, ordered all members of the defendants' race to be seated in a strict pattern of racial segregation, on the basis of race or color, in the following words, to-wit:

> From this hour forward, in keeping with the common law of Alabama, and observing the wise, time-honored customs and usuages of our people, both white and black, which have done so much for the good of both races and the peace of the State, there will be no integrated seating in this courtroom. Spectators will be seated in this courtroom according to their race, and this for the orderly administration of justice and the good of all people coming here lawfully.

and ending in the following words, to-wit:

> We will now continue with the trial of this case under the laws of the State of Alabama, and not under the XIV Amendment, and in the belief and knowledge that the white man's justice, a justice born long centuries ago in England, brought over to this country by the Anglo-Saxon Race, and brought today to its full flower here, a justice which has blessed countless generations of whites and blacks will give the parties at the Bar of this Court, regardless of race or color, equal justice under law.

6. That the Honorable Judge presiding, having stated in unequivocal language that courtroom spectators, as well as the defendants themselves, in attendance at proceedings wherein he resides will be seated in a pattern of strict racial or color segregation, the defendants will thus be denied the equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section VI, Constitution of Alabama, 1901, for the reason that such racial or color segregation will cause the jurors to concieve, believe and assign a status of inferiority to the defendants. (See exhibit "A" annex hereto).

7. That the equal protection of a law is denied by a state court when it is apparent that the same law, as a matter of course, and procedure, would not and could not lawfully be applied to any other person in the state under similiar circumstances.

> Ex parte Stricker, C. C. Ky. 1901, 109 F. 145. See. also Lynn v. Flanders, 1914, 81 S. E. 205, 141 Ga. 500, Art. 1 Sec. 6 Alabama Constitution, 1901.

8. That the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and the said Article 1, Section 6, of the Alabama Constitution, 1901, were not intended to control or regulate mere matters of practice in the state courts

but were intended to secure the same--an equal--protection to every person or company in a class that is accorded to every other person or company in the same class.

Andrus v. Fidelity Mut. L. Ins. Assoc., 1902, 67 S. W. 582, 168 Mo. 151.

9. That settled state practice cannot supplant constitutional guarantees, but it can establish what is state "law" within the Fourteenth Amendment to the Constitution of the United States.

Nashville, C. and St. L. Ky. v. Browning, Tenn. 1940, 60 S. Ct. 968, 310 U. S. 362, 84 L. Ed. 1254.

10. That as far back as Sweatt v. Painter, 339 U. S. 629, 70 S. Ct. 850, the Supreme Court of the United States in finding that state segregated facilities were an abuse of the state's police power turned its decree on "those qualities which are incapable of objective measurements...,".

11. That the fact of the separation and/or segregation of members of defendants' race, as well as the racial segregation of the defendants themselves, in the courtroom during the trial of this cause will cause the empaneled jurors to conceive, believe and assign a status of inferiority to the defendants, thus denying them equal protection of the law.

WHEREFORE, defendants respectfully pray that this Honorable Court take cognizance of this their Motion to have the Trial Judge Recuse Himself and after consideration of the evidence and proof defendants offer to make, grant said motion.

Respectfully submitted,

Charles S. Conley
503-A South Union Street
Montgomery, Alabama

Vernon Z. Crawford
570 Davis Avenue
Mobile, Alabama

Solomon S. Seay, Jr.
29 North McDonough Street
Montgomery, Alabama

By_____

6. In each of the above styled cases, the defendant New York Times Company, a corporation, has filed special appearances expressly objecting to the jurisdiction of the Circuit Court of Montgomery County, Alabama over its person. By entering into this agreement, this defendant does not in any wise waive its said limited or special appearance, or consent to the jurisdiction of that court over its person, but maintains its express objections thereto. And the plaintiff, by entering into this agreement, does not waive the finding and judgment of the Circuit Court of Montgomery County, Alabma on August 5, 1960 in the Sullivan case that this said defendant has made a general appearance in that case.

WITNESS our hands and seals this 21st day of November, 1960.

L. B. SULLIVAN, EARL D. JAMES and FRANK W. PARKS, Parties Plaintiff, by their respective attorneys of record:

/s/ Steiner, Crum & Baker
Steiner, Crum & Baker

By: /s/ M. R. Nachman, Jr.

THE NEW YORK TIMES COMPANY, A Corporation, Party Defendant appearing specially for the purpose of objecting to the jurisdiction of the Circuit Court of Montgomery County, Alabama, by its Attorneys:

/s/ Beddow, Embry & Beddow

By: T. Eric Embry

(FILED IN OFFICE NOV. 23RD, 1960
JOHN H. MATHEWS, Clerk.)

FRANK W. PARKS, Plaintiff VS. THE NEW YORK TIMES COMPANY, A Corporation, RALPH D. ABERNATHY, FRED L. SHUTTLESWORTH, S. S. SEAY, SR., AND J. E. LOWERY, Defendants	: * : * : * : * : * : *	IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA NO._____

AMENDED DEMURRERS

Come the defendants, Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr., and Fred L. Shuttlesworth, in the above styled cause and amend their Demurrers to the complaint heretofore filed in the above styled cause, and that the following amended Demurrers be substituted for the Demurrers heretofore filed and separately and severally demur to each count, and as grounds assign the following, separately and severally:

1. That it does not state a cause of action.
2. That no facts alleged upon which relief is sought can be granted.
3. That there is a misjoinder of party defendants.
4. That there is a misjoinder of causes of actions.
5. No facts are alleged to show that the defendants published, in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint.
6. No facts are alleged to show that the defendants caused to be published, in the City of New York, State of New York or any other place, the advertisement referred to in said Complaint.
7. For aught that appears from the Complaint, the defendants did not publish, or cause to be published, in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.
8. There is no allegation in said Complaint that the individual defendants published, or caused to be published, the advertisement referred to and attached to the Complaint.
9. For that it affirmatively appears from said Complaint, and from Exhibit "A" attached thereto, that the defendants in

fact did not publish, or cause to be published, the advertisement referred to in said Complaint.

10. The allegations that the defendants falsely and maliciously published, in the City of New York, State of New York, and in the City of Montgomery, Alabama, of and concerning the plaintiff, in a publication entitled, "The New York Times", in the issue of March 29, 1960, on page 25 in an advertisement entitled, "Heed Their Rising Voices" is a conclusion of the pleader with no facts alleged in support thereof.

11. For that no facts are alleged to show that the defendants did any act or acts which could be reasonably interpreted as imputing improper conduct to the plaintiff and subjecting plaintiff to public contempt, ridicule and shame.

12. For that the allegations that the defendants did any act or acts which would be reasonbly interpreted as imputing improper conduct to the plaintiff is a conclusion of the pleader and unsupported by any facts.

13. That said Complaint, and no count thereof, connects the plaintiff in any way with the alleged libelous matter stated in the Complaint.

14. That the said alleged libelous matter does not designate, by innuendo or otherwise, that the matter complained of applied to the plaintiff in this cause.

15. That the allegations that the defendants published, in the City of New York State of New York, and in the City of Montgomery, Alabama and throughout the State of Alabama, false and defamatory matters reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama is a conclusion of the pleader and no facts are alleged to substantiate said allegations.

16. That there is no causal connection between these defendants and the alleged libelous matter stated in the Complaint.

17. That there is no causal connection between these defendants, the alleged libelous matter stated in the Complaint and the plaintiff.

18. That the allegations of the Complaint, and each count thereof, are the mere conclusions of the pleader without facts alleged in support thereof.

19. That it affirmatively appears from the allegations of the Complaint that the defendants had no connection with the publication of the alleged libelous matter.

20. That the alleged libelous matter as set out in each count of the Complaint, in paragraph form, is taken out of the context in which it appears in the paid advertisement, and that said paragraphs are not successive paragraphs, but that several paragraphs intervene and there are no facts alleged in the count showing any connection between the first paragraph which is alleged to be libelous and the second paragraph which is alleged to be libelous, as appears on the face of Exhibit "A" attached to the Complaint.

21. Said count avers no facts entitling the plaintiff to recover of the defendants.

22. The allegation of damage as contained in said count is a mere conclusion of the pleader, not supported by the facts alleged.

23. The allegations of said count do not, in and of themselves, entitle the plaintiff to recover.

24. Said count does not aver sufficient facts entitling the plaintiff to recover of the defendants the damages alleged.

25. Said count is vague, indefinite and uncertain as to what publication the plaintiff alleges is libelous.

26. Said count does not sufficiently allege facts to inform the defendants of the alleged libelous publication which they are called upon to defend.

27. For aught appearing from said count, the alleged libelous publication did not refer to the plaintiff.

28. For aught appearing from said count, the alleged libelous publication was a fair comment as to the matters contained therein.

29. It affirmatively appears from said count that the alleged libelous publication was a fair comment on the matters and things contained therein and the allegations in said count that the alleged publication was made with malice is a mere

conclusion of the pleader, not supported by the facts alleged therein.

30. The allegations of said count do not aver a libel per se.

31. For aught that appears from said count, the matter published was not libelous per se.

32. It affirmatively appears that the alleged matter was not libelous per se.

33. The alleged publication not being libelous per se, said count fails to aver sufficient facts showing wherein the plaintiff was injured by said alleged publication.

34. It affirmatively appears from said count that the plaintiff was not named in the publication of which Complaint is made.

35. Because it does not appear that the alleged publication was understood to refer to the plaintiff by any reader of such publication.

36. Because the alleged publication does not, upon its face, appear to haveebeen said of the plaintiff, nor does it appear from said count that any reader of such publication understood that it referred to the plaintiff in his individual capacity or as a public official of the City of Montgomery.

37. Because colloquium, inducements and innuendoes cannot be considered in determining whether or not the alleged publication is libelous per se.

38. Because the plaintiff's interpretation of the alleged publication is contrary to the tenor and effect thereof.

39. Because the allegations with respect to the meaning of the alleged publication are mere conclusions of the pleader.

40. Because the alleged publication affirmatively shows that colloquium, inducements and innuendoes, or one or more of them, are required and, hence, said publication is not libelous per se.

41. Because specific damages are not alleged.

42. Because the allegations with respect to the publication are mere conclusions of the pleader.

43. Because there is no allegation that the alleged libelous publication was, in fact, maliciously done.

44. Because said count does not specifically aver wherein the alleged publication was maliciously done.

45. Because the allegation of the count to the effect that the defendants maliciously libeled the plaintiff is but a mere conclusion of the pleader not supported by the facts alleged.

46. Because any recovery by the plaintiff in this case would be violative of Article I, Section IV of the Constitution of the State of Alabama of 1901 as a curtailment or restraint of the liberty of the press in the writing and publishing of the defendants sentiments on the subject therein stated.

47. Because any recovery by the plaintiff in this case would be violative of the First and Fourteenth Amendments to the Constitution of the United States, as an abridgement of the freedom of the press and freedom of speech.

48. Because any recovery by the plaintiff in this case would be violative of the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendants of their property without due porcess of law, deny the defendants the equal protection of the laws, and abridge the privileges and immunities of the defendants.

49. No facts are alleged to show that the above named defendants published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendants of their property without due process of law, deny the defendants the equal protection of the laws and abridge the privileges, and immunities secured to the defendants by said Amendment.

50. No facts are alleged to show that the defendants caused to be published, in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendants of their property without due process of law, deny the defendants the equal protection of the laws and abridge the privileges and

immunities secured to the defendants by said Amendment.

51. For aught that appears from the Complaint, the defendants did not publish, or cause to be published, in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendants of their property without due process of alaw, deny the defendants the equal protection of the laws and abridge the privileges and immunities secured to the defendants by said Amendment.

52. There is no allegation in said Complaint that the individual defendants published or caused to be published the advertisement referred to and attached to the Complaint, and any recovery in this cause whuld violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendants of their property without due process of law, deny the defendants the equal protection of the laws and abridge the privileges and immunities secured to the defendants by said Amendment.

53. For that it affirmatively appears from said Complaint and from Exhibit "A" attached hereto, that the above named defendants, in fact, did not publish or cause to be published the advertisement referred to in sb d complaint and any recovery in this case would violate the Fourteenth Amendment to the United States in that it would deprive the defendants the equal protection of the laws and abridge the privileges and immunities secured to the defendants by said Amendment.

54. That the said Complaint and no count thereof connects the plaintiff in any way with the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendants of their property without due process of law, deny the defendants the equal protection of the laws and abridge the privileges and immunities secured to the defendants by said Amendment.

55. That there is no causal connection between the above named defendants, the alleged libelous matter stated in the Complaint, and the plaintiff; and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendants of their property without due process of law, deny the defendants the equal protection of the laws and abridge the privileges and immunities secured to the defendants by said Amendment.

56. That there is no casual connection between the defendants and the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendants the equal protection of the laws and abridge the privileges and immunities secured to the defendants by said Amendment.

57. That the Complaint, and each count thereof affirmatively shows that the matter complained of appeared in a paid advertisement in the New York Times and that said advertisement shows on its fact that the defendants did not cause or were not responsible for said advertisement appearing in said newspaper.

58. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a paid advertisement in the New York Times and that said advertisement shows on its face that the defendants did not cause and were not responsible for said paid advertisement appearing in said newspaper; and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendants of their property without due process of law, deny the defendants the equal protection of the laws and abridge the privileges and immunities secured to the defendants by said Amendment.

59. The averments of the complaint are conflicting and repugnant.

60. The Complaint is vague and uncertain in that it does not allege how the defendants published the alleged libelous matter.

Respectfully submitted:

Charles S. Conley
530 South Union Street, Suite A
Montgomery, Alabama

Vernon Z. Crawford
570 Davis Avenue
Mobile, Alabama

Solomon S. Seay, Jr.
29 North McDonough Street
Montgomery, Alabama

BY Charles S. Conley

FRANK M. PARKS,	*	IN THE CIRCUIT COURT
Plaintiff	*	OF
VS.	*	MONTGOMERY COUNTY,
THE NEW YORK TIMES COMPANY, A Corporation, Et Al,	*	ALABAMA
Defendants	*	CASE NO._____

MOTION TO HAVE TRIAL JUDGE RECUSE HIMSELF

Come now the defendants, Ralph D. Abernathy, J. E. Lowery, . . Seay, Sr., and Fred L. Shuttlesworth, and move this Honorable Court to recuse himself from sitting as trial Judge in the trial of this cause, and for grounds for said motion set out and assign the following:

1. That pursuant to Act No. 118 of March 8, 1939, the Court is a member of the Board of Jury Supervisors of Montgomery County, Alabama.

2. That as such member of the Board of Jury Supervisors, the Court participated in selecting and determining those male citizens of Montgomery County, Alabama whose names were into the jury box from which the venire was drawn to try this cause.

3. That the Court, by so selecting and determining the persons whose names went into the jury box from which the venire was drawn to try this cause determines both the law and facts in this cause thus depriving defendants of the right to a fair and impartial trial by jury guaranteed to them by the Constitution of Alabama, 1901, Article 1, Section 11; Code of Alabama, Title 7, Section 260 and the Fourteenth Amendment to the Constitution of the United States of America.

4. That on February 1, 1961, during the trial of a companion case to the one at bar, wherein Earl James, Mayor of Montgomery, Alabama, was plaintiff against the said defendants here; and the Honorable Judge now presiding, while then presiding in the said companion case stated, as a matter of record, out of the presence of the jury, that the Fourteenth Amendment to the Constitution of the United States is a "pariah" and "an outcast", if it forbidded him, as an officer of the State, to segregate members of the audience on the basis of their race or color, as well as the defendants themselves.

5. That the said Judge acting under the color and guise of State office, and in behalf of the State of Alabama, ordered all members of the defendants' race to be seated in a strict pattern of racial segregation, on the basis of race or color, in the following words, to-wit:

> From this hour forward, in keeping with the common law of Alabama, and observing the wise, time-honored customs and usuages of our people, both white and black, which have done so much for the good of both races and the peace of the State, there will be no integrated seating in this courtroom. Spectators will be seated in this courtroom according to their race, and this for the orderly administration of justice and the good of all people coming here lawfully.

and ending in the following words, to-wit:

> We will now continue with the trial of this case under the laws of the State of Alabama, and not under the XIV Amendment, and in the belief and knowledge that the white man's justice, a justice born long centuries ago in England, brought over to this country by the Anglo-Saxon Race, and brought today to its full flower here, a justice which has blessed countless generations of whites and blacks will give the parties at the Bar of this Court, regardless of race or color, equal justice under law.

6. That the Honorable Judge presiding, having stated in unequivocal language that courtroom spectators, as well as the defendants themselves, in attendance at proceedings wherein he resides will be seated in a pattern of strict racial or color segregation, the defendants will thus be denied the equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section VI, Constitution of Alabama, 1901, for the reason that such racial or color segregation will cause the jurors to concieve, believe and assign a status of inferiority to the defendants. (See exhibit "A" annex hereto).

7. That the equal protection of a law is denied by a state court when it is apparent that the same law, as a matter of course, and procedure, would not and could not lawfully be applied to any other person in the state under similiar circumstances.

> Ex parte Stricker, C. C. Ky. 1901, 109 F. 145. See. also Lynn v. Flanders, 1914, 81 S. E. 205, 141 Ga. 500, Art. 1 Sec. 6 Alabama Constitution, 1901.

8. That the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and the said Article 1, Section 6, of the Alabama Constitution, 1901, were not intended to control or regulate mere matters of practice in the state courts

but were intended to secure the same--an equal--protection to every person or company in a class that is accorded to every other person or company in the same class.

Andrus v. Fidelity Mut. L. Ins. Assoc., 1902, 67 S. W. 582, 168 Mo. 191.

9. That settled state practice cannot supplant constitutional guarantees, but it can establish what is state "law" within the Fourteenth Amendment to the Constitution of the United States.

Nashville, C. and St. L. Ky. v. Browning, Tenn. 1940, 60 S. Ct. 968, 310 U. S. 362, 84 L. Ed. 1254.

10. That as far back as Sweatt v. Painter, 339 U. S. 629, 70 S. Ct. 850, the Supreme Court of the United States in finding that state segregated facilities were an abuse of the state's police power turned its decree on "those qualities which are incapable of objective measurements...,".

11. That the fact of the separation and/or segregation of members of defendants' race, as well as the racial segregation of the defendants themselves, in the courtroom during the trial of this cause will cause the empaneled jurors to conceive, believe and assign a status of inferiority to the defendants, thus denying them equal protection of the law.

WHEREFORE, defendants respectfully pray that this Honorable Court take cognizance of this their Motion to have the Trial Judge Recuse Himself and after consideration of the evidence and proof defendants offer to make, grant said motion.

Respectfully submitted,

Charles S. Conley
503-A South Union Street
Montgomery, Alabama

Vernon Z. Crawford
570 Davis Avenue
Mobile, Alabama

Solomon S. Seay, Jr.
29 North McDonough Street
Montgomery, Alabama

By _____

FRANK M. PARKS,	*	IN THE CIRCUIT COURT
Plaintiff	*	OF
VS.	*	MONTGOMERY COUNTY,
THE NEW YORK TIMES COMPANY, A Corporation, Et Al,	*	ALABAMA
Defendants	*	CASE NO._____

MOTION TO HAVE TRIAL JUDGE RECUSE HIMSELF

Come now the defendants, Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr., and Fred L. Shuttlesworth, and move this Honorable Court to recuse himself from sitting as trial Judge in the trial of this cause, and for grounds for said motion set out and assign the following:

1. That pursuant to Act No. 118 of March 8, 1939, the Court is a member of the Board of Jury Supervisors of Montgomery County, Alabama.

2. That as such member of the Board of Jury Supervisors, the Court participated in selecting and determining those male citizens of Montgomery County, Alabama whose names were into the jury box from which the venire was drawn to try this cause.

3. That the Court, by so selecting and determining the persons whose names went into the jury box from which the venire was drawn to try this cause determines both the law and facts in this cause thus depriving defendants of the right to a fair and impartial trial by jury guaranteed to them by the Constitution of Alabama, 1901, Article 1, Section 11; Code of Alabama, Title 7, Section 260 and the Fourteenth Amendment to the Constitution of the United States of America.

4. That on February 1, 1961, during the trial of a companion case to the one at bar, wherein Earl James, Mayor of Montgomery, Alabama, was plaintiff against the said defendants here, and the Honorable Judge now presiding, while then presiding in the said companion case stated, as a matter of record, out of the presence of the jury, that the Fourteenth Amendment to the Constitution of the United States is a "pariah" and "an outcast", if it forbidded him, as an officer of the State, to segregate members of the audience on the basis of their race or color, as well as the defendants themselves.

5. That the said Judge acting under the color and guise of State office, and in behalf of the State of Alabama, ordered all members of the defendants' race to be seated in a strict pattern of racial segregation, on the basis of race or color, in the following words, to-wit:

> From this hour forward, in keeping with the common law of Alabama, and observing the wise, time-honored customs and usuages of our people, both white and black, which have done so much for the good of both races and the peace of the State, there will be no integrated seating in this courtroom. Spectators will be seated in this courtroom according to their race, and this for the orderly administration of justice and the good of all people coming here lawfully.

and ending in the following words, to-wit:

> We will now continue with the trial of this case under the laws of the State of Alabama, and not under the XIV Amendment, and in the belief and knowledge that the white man's justice, a justice born long centuries ago in England, brought over to this country by the Anglo-Saxon Race, and brought today to its full flower here, a justice which has blessed countless generations of whites and blacks will give the parties at the Bar of this Court, regardless of race or color, equal justice under law.

6. That the Honorable Judge presiding, having stated in unequivocal language that courtroom spectators, as well as the defendants themselves, in attendance at proceedings wherein he resides will be seated in a pattern of strict racial or color segregation, the defendants will thus be denied the equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section VI, Constitution of Alabama, 1901, for the reason that such racial or color segregation will cause the jurors to concieve, believe and assign a status of inferiority to the defendants. (See Exhibit "A" annex hereto).

7. That the equal protection of a law is denied by a State court when it is apparent that the same law, as a matter of course, and procedure, would not and could not lawfully be applied to any other person in the state under similiar circumstances.

> Ex parte Stricker, C. C. Ky. 1901, 109 F. 145. See also Lynn v. Flanders, 1914, 81 S. E. 205, 141 Ga. 500, Art. 1 Sec. 6 Alabama Constitution, 1901.

8. That the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and the said Article 1, Section 6, of the Alabama Constitution, 1901, were not intended to control or regulate mere matters of practice in the state courts

but were intended to secure the same--an equal--protection to every person or company in a class that is accorded to every other person or company in the same class.

Andrus v. Fidelity Mut. L. Ins. Assoc., 1902, 67 S. W. 582, 168 Mo. 151.

9. That settled state practice cannot supplant constitutional guarantees, but it can establish what is state "law" within the Fourteenth Amendment to the Constitution of the United States.

Nashville, C. and St. L. Ky. v. Browning, Tenn. 1940, 60 S. Ct. 968, 310 U. S. 362, 84 L. Ed. 1254.

10. That as far back as Sweatt v. Painter, 339 U. S. 629, 70 S. Ct. 850, the Supreme Court of the United States in finding that state segregated facilities were an abuse of the state's police power turned its decree on "those qualities which are incapable of objective measurements...,".

11. That the fact of the separation and/or segregation of members of defendants' race, as well as the racial segregation of the defendants themselves, in the courtroom during the trial of this cause will cause the empaneled jurors to conceive, believe and assign a status of inferiority to the defendants, thus denying them equal protection of the law.

WHEREFORE, defendants respectfully pray that this Honorable Court take cognisance of this their Motion to have the Trial Judge Recuse Himself and after consideration of the evidence and proof defendants offer to make, grant said motion.

Respectfully submitted,

Charles S. Conley
503-A South Union Street
Montgomery, Alabama

Vernon Z. Crawford
570 Davis Avenue
Mobile, Alabama

Solomon S. Seay, Jr.
29 North McDounough Street
Montgomery, Alabama

By_____

FRANK W. PARKS,)

PLAINTIFF, *

VS. (

THE NEW YORK TIMES COMPANY, CORPORATION, ET. AL., *

)

DEFENDANTS. *

(

IN THE CIRCUIT COURT

OF

MONTGOMERY COUNTY, ALABAMA

CASE NO. _____

MOTION TO DESEGREGATE THE COURT ROOM

Come now the defendants, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery, and respectfully move this Honorable Court to make and enter an order and decree prohibiting enforced segregation based on race or color within the court room of the Montgomery County Court house during the course of this trial and for grounds for said motion set out and assign both separately and severally the following:

1. The defendants, Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr., and Fred Shuttlesworth belong to that class of persons commonly designated and referred to as Negroes.

2. That there is enforced and pursued in Montgomery County a practice, custom, and usage of requiring and compelling separation of the races in the court rooms of the Court House of Montgomery County, Alabama.

3. That pursuant to said practice custom and usage enforced and pursued, the Court room wherein the above said cause is to be tried is segregated by reason of race or color.

4. That to require the above said defendants to submit to trial before said racially segregated tribunal deprives defendants of the due process of the laws and equal protection of the laws guaranteed by the 14th Amendment to the Constitution of the United States of America.

Wherefore, defendants respectfully pray that this Honorable Court take cognizance of this their motion to desegregate the Court Room of the Montgomery County Court house during the course of this trial, and after careful consideration of the evidence and proof which the defendants offer to make, grant said Motion.

_____

_____

_____

FRANK W. PARKS, PLAINTIFF, VS. THE NEW YORK TIMES COMPANY, CORPORATION, ET. AL., DEFENDANTS.	) * (*) * (	IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA CASE NO. _____

MOTION TO DESEGREGATE THE COURT ROOM

Come now the defendants, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery, and respectfully move this Honorable Court to make and enter an order and decree prohibiting enforced segregation based on race or color within the court room of the Montgomery County Court house during the course of this trial and for grounds for said motion set out and assign both separately and severally the following:

1. The defendants, Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr., and Fred Shuttlesworth belong to that class of persons commonly designated and referred to as Negroes.

2. That there is enforced and pursued in Montgomery County a practice, custom, and usage of requiring and compelling separation of the races in the court rooms of the Court House of Montgomery County, Alabama.

3. That pursuant to said practice custom and usage enforced and pursued, the Court room wherein the above said cause is to be tried is segregated by reason of race or color.

4. That to require the above said defendants to submit to trial before said racially segregated tribunal deprives defendants of the due process of the laws and equal protection of the laws guaranteed by the 14th Amendment to the Constitution of the United States of America.

Wherefore, defendants respectfully pray that this Honorable Court take cognizance of this their motion to desegregate the Court Room of the Montgomery County Court house during the course of this trial, and after careful consideration of the evidence and proof which the defendants offer to make, grant said Motion.

FRANK W. PARKS, PLAINTIFF, VS. THE NEW YORK TIMES COMPANY, CORPORATION, ET. AL., DEFENDANTS.	) * (*) * (	IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA CASE NO. _____

MOTION TO DESEGREGATE THE COURT ROOM

Come now the defendants, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery, and respectfully move this Honorable Court to make and enter an order and decree prohibiting enforced segregation based on race or color within the court room of the Montgomery County Court house during the course of this trial and for grounds for said motion set out and assign both separately and severally the following:

1. The defendants, Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr., and Fred Shuttlesworth belong to that class of persons commonly designated and referred to as Negroes.

2. That there is enforced and pursued in Montgomery County a practice, custom, and usage of requiring and compelling separation of the races in the court rooms of the Court House of Montgomery County, Alabama.

3. That pursuant to said practice custom and usage enforced and pursued, the Court room wherein the above said cause is to be tried is segregated by reason of race or color.

4. That to require the above said defendants to submit to trial before said racially segregated tribunal deprives defendants of the due process of the laws and equal protection of the laws guaranteed by the 14th Amendment to the Constitution of the United States of America.

Wherefore, defendants respectfully pray that this Honorable Court take cognizance of this their motion to de-segregate the Court Room of the Montgomery County Court house during the course of this trial, and after careful consideration of the evidence and proof which the defendants offer to make, grant said Motion.

_____

_____

_____

FRANK W. PARKS
~~EARL D. JAMES~~ *

PLAINTIFF (IN THE CIRCUIT COURT OF

VS.) MONTGOMERY COUNTY, ALABAMA

THE NEW YORK TIMES CO., A Corporation, RALPH D. ABERNATHY, FRED L. SHUTTLESWORTH, S. S. SEAY, SR. and J. E. LOWERY * CASE NO. 27417

( )

DEFENDANTS *

To The Honorable Judges of Said Court:

Now come the defendants Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery, individually and separately, and respectfully move this Honorable Court to Quash the Venire or the list of jurors (regular and special, if any) drawn to decide the issue of facts in cases set for hearing in this Court for the week beginning January 30, 1961 and to hold the same for naught, and in support of said motion alleges the following:

1. That under the laws of the State of Alabama, either the plaintiff or the defendant may elect to have this cause tried by a jury, and that the plaintiff, at the time of filing this action, demanded a trial by jury in this cause.

2. That the names which appear on said venire was not selected in accordance with the laws and the Constitution of the State of Alabama, and more particularly Title 30, Sections 20 and 21, Code of Alabama, 1940, as amended, and Act No. 118 of March 8, 1939, and Article 1, Section 6, Constitution of Alabama of 1901, and the Constitution and laws of the United States, and more particularly the Fourteenth Amendment thereof.

In support of said ground, the defendant alleges the following:

(a) In violation of the laws of Alabama, the jury roll and jury box of this County from which the venire or jurors were selected to try cases set for trial during the week of January 30, 1961, did not contain the names of all male citizens of the County who are generally reputed to be honest and intelligent men and who are esteemed in the community for their integrity, good character and sound judgment.

(b) Likewise, in violation of the laws of Alabama, a large number of citizens who posses the requisite qualifications required by law of jurors, were intentionally omitted from the said jury box and jury roll.

(c) Defendant is a citizen of the State of Alabama, and a native-born citizen of the United States, and was such at the time this action was commenced and at the time the said venire was drawn. Defendant is also one of the group of American citizens commonly designated as Negroes.

(d) The last available decennial census of the United States published by the United States Department of Commerce, Bureau of Census, taken in 1950, reported that/the population of this County, 25,021 were white males over the age of 21 years, and 15,123 were non-white males or Negroes over the age of 21 years.

(e) Few Negroes have served on the venires and petit juries in this County. The names of only a token few of the eligible Negro male citizens of this County have been placed in the jury box and on the jury roll of this County. For many years, and at the present, there is an exclusion of qualified Negro males, on account of race and color, from the jury service in this County in violation of the laws and Constitution of the State of Alabama, and the laws and Constitution of the United States and more particularly the Fourteenth Amendment thereof.

(f) Few, if any, Negroes names appear on the venire drawn to try cases set for the week of January 30, 1961, and that said venire was drawn from the jury roll and jury box of this County, and as such, said venire was drawn in violation of the laws and Constitution of the State of Alabama, and in violation of the laws and Constitution of the United States and particularly the Fourteenth Amendment thereof.

3. That the names appearing on the venire drawn to try cases set for trial during the week of January 30, 1961 were

selected from the jury box and jury roll of this County, and that said jury box and said jury roll were allegedly compiled pursuant to Act No. 118 of March 8, 1939, which act provides for, among other things, the creation of a Board of Jury Supervisors in Montgomery County, Alabama, and that if said jury roll and box were compiled pursuant to said act, then said act is unconstitutional in that defendant will be prevented from having a fair trial in that the Court is a member of the Board of Jury Supervisors of Montgomery, Alabama; and that said Board selected jurors pursuant to Act No. 118 of March 8, 1939, said Act being unconstitutional, said selection of jurors thereunder by the Court being in violation of Article 1, Section 11 of Alabama Code of 1901 and the Code of Alabama (1940), Title 7, Section 260, in that the Court as a member of the Board by so selecting those persons who are to decide the case decided both the facts and the law.

Wherefore, defendant prays that this Court will take notice of this his Motion to Quash the Venire drawn to try this case, and that your Honor will, after consideration of the evidence and proof which the defendant offers to make, grant said motion.

Respectfully made this _____day of January, 1961.

STATE OF ALABAMA
MONTGOMERY COUNTY

Personally appeared before me the undersigned authority for and in the said County and State, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J.E. Lowery, individually and separately, who being by me first duly sworn, deposes and says that he is one of the defendants in this cause, and that he has read the foregoing motion, and that the facts and matters therein averred are true and correct to his best knowledge, information and belief.

_____
Defendant

_____
Defendant

_____
Defendant

_____
Defendant

Sworn to and subscribed before me this____day of January, 1961.

_____
Notary Public

_____
Attorney for Defendants

FRANK W. PARKS	(	
PLAINTIFF	)	IN THE CIRCUIT COURT OF
VS.	(	MONTGOMERY COUNTY, ALABAMA
THE NEW YORK TIMES, COMPANY, A Corporation, Et. Al.,	)	CASE NO._____
DEFENDANTS	(	
	)	

MOTION TO HAVE TRIAL JUDGE RECUSE HIMSELF

Come now the defendants, Ralph D. Abernathy, J. E. Lowery, S. S. Seay. Sr., and Fred L. Shuttlesworth, and move this Honorable Court to recuse himself from sitting as trial judge in the trial of this cause, and for grounds for said motion set out and assign the following:

1. That pursuant of Act No. 118 of March 8, 1939, the Court is a member of the Board of Jury Supervisors of Montgomery County, Alabama.

2. That as such member of the Board of Jury Supervisors, the court participated in selecting and determining those male citizens of Montgomery County, Alabama whose names went into the jury box from which the venire was drawn to try this cause.

3. That the Court, by so selecting and determining the persons whose names went into the jury box from which the venire was drawn to try this cause determines both the law and facts in this cause thus depriving defendants of the right to a fair and impartial trial by jury guaranteed to them by the Constitution of Alabama, 1901, Article 1, Section 11; Code of Alabama, Title 7, Section 260 and the Fourteenth Amendment to the Constitution of the United States of America.

Wherefore, defendants respectfully pray that this Honorable Court take cognizance of this their Motion to have the Trial Judge Recuse Himself and after consideration of the evidence and proof defendants offer to make, grant said motion.

FRANK W. PARKS	(	
PLAINTIFF	)	IN THE CIRCUIT COURT OF
VS.	(	MONTGOMERY COUNTY, ALABAMA
THE NEW YORK TIMES, COMPANY, A Corporation, Et. Al.,	)	CASE NO._____
DEFENDANTS	(	
	)	

MOTION TO HAVE TRIAL JUDGE RECUSE HIMSELF

Come now the defendants, Ralph D. Abernathy, J. E. Lowery, S. S. Seay. Sr., and Fred L. Shuttlesworth, and move this Honorable Court to recuse himself from sitting as trial judge in the trial of this cause, and for grounds for said motion set out and assign the following:

1. That pursuant of Act No. 115 of March 8, 1939, the Court is a member of the Board of Jury Supervisors of Montgomery County, Alabama.

2. That as such member of the Board of Jury Supervisors, the court participated in selecting and determining those male citizens of Montgomery County, Alabama whose names went into the jury box from which the venire was drawn to try this cause.

3. That the Court, by so selecting and determining the persons whose names went into the jury box from which the venire was drawn to try this cause determines both the law and facts in this cause thus depriving defendants of the right to a fair and impartial trial by jury guaranteed to them by the Constitution of Alabama, 1901, Article 1, Section 11; Code of Alabama, Title 7, Section 260 and the Fourteenth Amendment to the Constitution of the United States of America.

Wherefore, defendants respectfully pray that this Honorable Court take cognizance of this their Motion to have the Trial Judge Recuse Himself and after consideration of the evidence and proof defendants offer to make, grant said motion.

FRANK W. PARKS	(	
PLAINTIFF	)	IN THE CIRCUIT COURT OF
VS.	(	MONTGOMERY COUNTY, ALABAMA
THE NEW YORK TIMES, COMPANY, A Corporation, Et. Al.,	)	CASE NO._____
DEFENDANTS	(	
	)	

MOTION TO HAVE TRIAL JUDGE RECUSE HIMSELF

Come now the defendants, Ralph D. Abernathy, J. E. Lowery, S. S. Seay. Sr., and Fred L. Shuttlesworth, and move this Honorable Court to recuse himself from sitting as trial judge in the trial of this cause, and for grounds for said motion set out and assign the following:

1. That pursuant of Act No. 118 of March 8, 1939, the Court is a member of the Board of Jury Supervisors of Montgomery County, Alabama.

2. That as such member of the Board of Jury Supervisors, the court participated in selecting and determining those male citizens of Montgomery County, Alabama whose names went into the jury box from which the venire was drawn to try this cause.

3. That the Court, by so selecting and determining the persons whose names went into the jury box from which the venire was drawn to try this cause determines both the law and facts in this cause thus depriving defendants of the right to a fair and impartial trial by jury guaranteed to them by the Constitution of Alabama, 1901, Article 1, Section 11; Code of Alabama, Title 7, Section 260 and the Fourteenth Amendment to the Constitution of the United States of America.

Wherefore, defendants respectfully pray that this Honorable Court take cognizance of this their Motion to have the Trial Judge Recuse Himself and after consideration of the evidence and proof defendants offer to make, grant said motion.

FRANK W. PARKS	(	
PLAINTIFF	)	IN THE CIRCUIT COURT OF
VS.	(	MONTGOMERY COUNTY, ALABAMA
THE NEW YORK TIMES, COMPANY, A Corporation, Et. al.,	)	CASE NO._____
DEFENDANTS	(	
	)	

MOTION TO HAVE TRIAL JUDGE RECUSE HIMSELF

Come now the defendants, Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr., and Fred L. Shuttlesworth, and move this Honorable Court to recuse himself from sitting as trial judge in the trial of this cause, and for grounds for said motion set out and assign the following:

1. That pursuant of Act No. 111 of March 8, 1939, the Court is a member of the Board of Jury Supervisors of Montgomery County, Alabama.

2. That as such member of the Board of Jury Supervisors, the court participated in selecting and determining those male citizens of Montgomery County, Alabama whose names went into the jury box from which the venire was drawn to try this cause.

3. That the Court, by so selecting and determining the persons whose names went into the jury box from which the venire was drawn to try this cause determines both the law and facts in this cause thus depriving defendants of the right to a fair and impartial trial by jury guaranteed to them by the Constitution of Alabama, 1901, Article 1, Section 11; Code of Alabama, Title 7, Section 260 and the Fourteenth Amendment to the Constitution of the United States of America.

Wherefore, defendants respectfully pray that this Honorable Court take cognizance of this their Motion to have the Trial Judge Recuse Himself and after consideration of the evidence and proof defendants offer to make, grant said motion.

FRANK M. PARKS,	*	IN THE CIRCUIT COURT
Plaintiff	*	OF
VS.	*	MONTGOMERY COUNTY,
THE NEW YORK TIMES COMPANY, A Corporation, Et Al,	*	ALABAMA
Defendants	*	CASE NO._____

MOTION TO HAVE TRIAL JUDGE RECUSE HIMSELF

Come now the defendants, Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr., and Fred L. Shuttlesworth, and move this Honorable Court to recuse himself from sitting as trial Judge in the trial of this cause, and for grounds for said motion set out and assign the following:

1. That pursuant to Act No. 118 of March 8, 1939, the Court is a member of the Board of Jury Supervisors of Montgomery County, Alabama.

2. That as such member of the Board of Jury Supervisors, the Court participated in selecting and determining those male citizens of Montgomery County, Alabama whose names were into the jury box from which the venire was drawn to try this cause.

3. That the Court, by so selecting and determining the persons whose names went into the jury box from which the venire was drawn to try this cause determines both the law and facts in this cause thus depriving defendants of the right to a fair and impartial trial by jury guaranteed to them by the Constitution of Alabama, 1901, Article 1, Section 11; Code of Alabama, Title 7, Section 260 and the Fourteenth Amendment to the Constitution of the United States of America.

4. That on February 1, 1961, during the trial of a companion case to the one at bar, wherein Earl James, Mayor of Montgomery, Alabama, was plaintiff against the said defendants here, and the Honorable Judge now presiding, while then presiding in the said companion case stated, as a matter of record, out of the presence of the jury, that the Fourteenth Amendment to the Constitution of the United States is a "pariah" and "an outcast", if it forbidded him, as an officer of the State, to segregate members of the audience on the basis of their race or color, as well as the defendants themselves.

5. That the said Judge acting under the color and guise of State office, and in behalf of the State of Alabama, ordered all members of the defendants' race to be seated in a strict pattern of racial segregation, on the basis of race or color, in the following words, to-wit:

> From this hour forward, in keeping with the common law of Alabama, and observing the wise, time-honored customs and usuages of our people, both white and black, which have done so much for the good of both races and the peace of the State, there will be no integrated seating in this courtroom. Spectators will be seated in this courtroom according to their race, and this for the orderly administration of justice and the good of all people coming here lawfully.

and ending in the following words, to-wit:

> We will now continue with the trial of this case under the laws of the State of Alabama, and not under the XIV Amendment, and in the belief and knowledge that the white man's justice, a justice born long centuries ago in England, brought over to this country by the Anglo-Saxon Race, and brought today to its full flower here, a justice which has blessed countless generations of whites and blacks will give the parties at the Bar of this Court, regardless of race or color, equal justice under law.

6. That the Honorable Judge presiding, having stated in unequivocal language that courtroom spectators, as well as the defendants themselves, in attendance at proceedings wherein he resides will be seated in a pattern of strict racial or color segregation, the defendants will thus be denied the equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section VI, Constitution of Alabama, 1901, for the reason that such racial or color segregation will cause the jurors to concieve, believe and assign a status of inferiority to the defendants. (See exhibit "A" annex hereto).

7. That the equal protection of a law is denied by a State court when it is apparent that the same law, as a matter of course, and procedure, would not and could not lawfully be applied to any other person in the state under similiar circumstances.

> Ex parte Stricker, C. C. Ky. 1901, 109 F. 145. See. also Lynn v. Flanders, 1914, 81 S. E. 205, 141 Ga. 500, Art. 1 Sec. 6 Alabama Constitution, 1901.

8. That the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and the said Article 1, Section 6, of the Alabama Constitution, 1901, were not intended to control or regulate mere matters of practice in the state courts

but were intended to secure the same--an equal--protection to every person or company in a class that is accorded to every other person or company in the same class.

Andrus v. Fidelity Mut. L. Ins. Assoc., 1902, 67 S. W. 582, 168 Mo. 151.

9. That settled state practice cannot supplant constitutional guarantees, but it can establish what is state "law" within the Fourteenth Amendment to the Constitution of the United States.

Nashville, C. and St. L. Ky. v. Browning, Tenn. 1940, 60 S. Ct. 968, 310 U. S. 362, 84 L. Ed. 1254.

10. That as far back as Sweatt v. Painter, 339 U. S. 629, 70 S. Ct. 850, the Supreme Court of the United States in finding that state segregated facilities were an abuse of the state's police power turned its decree on "those qualities which are incapable of objective measurements...,".

11. That the fact of the separation and/or segregation of members of defendants' race, as well as the racial segregation of the defendants themselves, in the courtroom during the trial of this cause will cause the empaneled jurors to conceive, believe and assign a status of inferiority to the defendants, thus denying them equal protection of the law.

WHEREFORE, defendants respectfully pray that this Honorable Court take cognizance of this their Motion to have the Trial Judge Recuse Himself and after consideration of the evidence and proof defendants offer to make, grant said motion.

Respectfully submitted,

Charles S. Conley
503-A South Union Street
Montgomery, Alabama

Vernon Z. Crawford
570 Davis Avenue
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Solomon S. Seay, Jr.
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Montgomery, Alabama

By_____