

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

RALPH D. ABERNATHY, J.E. LOWERY)
S.S. SEAY, SR., and FRED L.)
SHUTTLESWORTH,)

Plaintiffs,)

vs.)

Civil Action

File No. _____

JOHN PATTERSON, individually and)
as Governor of Alabama, EARL)
JAMES, individually and as)
Mayor of Montgomery, L.B.)
SULLIVAN, individually and as)
Commissioner of Police of)
Montgomery, FRANK PARKS, in-)
dividually and as Commissioner)
of Public Affairs of Montgomery,)
MAC SIM BUTLER, individually and)
as Sheriff of Montgomery County,)
RAY D. BRIDGES, individually)
and as Sheriff of Mobile County,)
HOLT A. McDOWELL, individually)
and as Sheriff of Jefferson)
County, and WILMER SHIELDS,)
individually and as Sheriff of)
Marengo County,)

Defendants.)

COMPLAINT

The plaintiffs, Ralph D. Abernathy, J. E. Lowery,
S.S. Seay, Sr., and Fred L. Shuttlesworth, say:

1. The plaintiff, Ralph D. Abernathy, is a citizen of the United States over the age of 21 and resides in the City of Montgomery, Alabama. He is an ordained minister and pastor of the First Baptist Church of Montgomery and is president of the Montgomery Improvement Association, Inc., an organization functioning in the City of Montgomery devoted to the achievement of equality of treatment for members of the Negro race under the Constitution of the United States and through the Christian and non-violent approach.

2. The plaintiff, J.E. Lowery, is a citizen of the United States over the age of 21 residing in Mobile, Alabama. He is an ordained minister and is the pastor of Warren Street Methodist Church and president of the Alabama Civic Affairs Association, an organization functioning in the State of Alabama, devoted to similar aims as those stated above.

3. The plaintiff, S.S. Seay, Sr., is a citizen of the

United States over the age of 21, residing in Montgomery, Alabama. He is an ordained minister and pastor of Rogers Chapel A.M.E.Z. Church. He is executive secretary of the Montgomery Improvement Association, Inc., whose purpose is as stated above.

4. The plaintiff, Fred L. Shuttlesworth, is a citizen of the United States over the age of 21, residing in Birmingham, Alabama. He is an ordained minister and pastor of Bethel Baptist Church, and is founder and president of the Alabama Christian Movement for Human Rights, an organization similarly devoted to the objectives stated above.

5. All of the plaintiffs are associated with and are members of the executive committee of the Southern Christian Leadership Conference, a South-wide organization of religious leaders devoted to the Christian and non-violent achievement of the foregoing objectives.

6. Each of the plaintiffs herein belongs to that class of persons commonly referred to and designated as Negroes.

7. The defendant, John Patterson, is a citizen of the United States over the age of 21 and is a resident of and the Governor of the State of Alabama.

8. The defendant, Earl James, is a citizen of the United States over the age of 21 and is a resident of and the Mayor and a member of the Board of Commissioners of the City of Montgomery. The Board of Commissioners is the highest executive organ of the City of Montgomery.

9. The defendant, L. B. Sullivan, is a citizen of the United States over the age of 21, a resident of the City of Montgomery, and a member of the Board of Commissioners, having specific responsibility as Commissioner of Police.

10. The defendant, Frank Parks, is a citizen of the United States over the age of 21, and is a resident of the City of Montgomery, and a member of the Board of Commissioners, charged with responsibility for Public Affairs.

11. The defendants, Mac Sim Butler, Ray D. Bridges, Holt A. McDowell, and Wilmer Shields, are respectively the Sheriffs of Montgomery, Mobile, Jefferson and Marengo Counties in the State of

Alabama, and as such it is their duty to execute and return the process and orders of the courts of record of the State of Alabama under the authority of the statutes of the said State.

12. Each of the above defendants is being sued in his individual and official capacities.

13. This is a suit of a civil nature to redress the deprivation under color of state law, statutes, ordinances, regulations, custom or usage, of rights, privileges and immunities secured by the Constitution of the United States and by Acts of Congress providing for equal rights of citizens and all persons within the jurisdiction of the United States.

14. Jurisdiction is conferred on this Court under the provisions of 28 U.S.C.A. §1331(a), which provides as follows:

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.";

and under 28 U.S.C.A. §§1343(3) and (4), which provide as follows:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.";

and under 42 U.S.C.A. §1983, which provides as follows:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.";

and under 42 U.S.C.A. §1985(3), which provides as follows:

"If two or more persons in any State or Territory conspire ... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the law, or of equal privileges and immunities under the laws; ... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in

furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.";

and under the Constitution of the United States, Article IV, Section 2, and the 13th, 14th and 15th Amendments thereto.

15. The matter in controversy exceeds the sum or value of \$10,000 exclusive of interest and costs.

16. Each of the plaintiffs individually and through his association with the organizations hereinabove named and in association with other persons throughout the State of Alabama and the United States, under the spiritual leadership of the Reverend Martin Luther King, Jr., has for some time sought to advance the equality of treatment of members of the Negro race through Christian and non-violent constitutional means. Accordingly, the purpose of the plaintiffs, individually, and the associations they have been identified with as leaders, has been to achieve for themselves individually and for the Negro citizens of this State and the country the full enjoyment of the privileges and immunities guaranteed to all citizens under the provisions of the Constitution of the United States. Attached hereto and made a part hereof as Exhibit A is a copy of the official program of the Montgomery Improvement Association, Inc., the contents of which are incorporated herein as if stated in full.

17. In pursuance of the foregoing objectives, the plaintiffs, their supporters and others with whom they have been associated, have sought to rely on the utilization of educational processes, the various media of press and speech, the right to assembly, and the right to petition for redress of grievances and the peaceful assertion of constitutional rights, all of which means of achieving the above objectives are guaranteed by the Constitution of the United States to all citizens regardless of color or creed and are privileges flowing from national citizenship.

18. In or about February 1960, several of the defendants and divers other co-conspirators, the names of whom are to the plaintiffs presently unknown, entered into a conspiracy, individually

and under the authority of their offices, to prevent the plaintiffs and others from accomplishing their objectives as aforesaid and to deprive the plaintiffs and others of the equal protection of the laws and of their equal privileges and immunities under the laws and from exercising their rights and privileges as citizens of the United States, and to deprive them of their rights, privileges and immunities secured by the Constitution and laws of the United States and entered into a conspiracy to deprive the plaintiffs of their rights to access to a free press, free speech and peaceful assembly as well as the right to petition for redress of grievances guaranteed to them under the 1st Amendment of the Constitution, as incorporated in the 14th Amendment thereto. See affidavit, incorporated herein.

19. Pursuant to the above stated rights, several Negro students of the Alabama State College, in or about February 1960, responding to the spiritual inspiration and leadership of the plaintiffs and others, entered the lunchroom located in the Montgomery County Court House and peaceably sat down therein to order food. The said lunchroom, notwithstanding its location in the Court House, is normally used only by white persons. Service of food was refused to said students solely because they were Negroes. The persons then in charge of the lunchroom promptly closed the counter and the students seeking to be served were required to move out to the corridor of the Montgomery County Court House. While the said students were in the corridor, persons who identified themselves as being associated with the office of the defendant Patterson, together with a Montgomery City policeman, arrived and took photographs of each of the persons there present.

20. Following this infringement upon their constitutional rights, the students, when they sought, under the spiritual guidance of certain of the plaintiffs herein, to exercise their constitutional rights of peaceful assembly on the steps of the State Capitol and to hold a brief religious devotional service, the defendants herein and in particular the defendant Patterson, utilizing his authority as Governor of Alabama and ex officio chairman of the Board of Education of Alabama, directed that student-participants in the aforesaid attempted exercise of constitutional rights be forthwith

expelled from Alabama State College and deprived of an opportunity to education. The expulsions have had the practical effect of deterring and prohibiting these students and all Negro citizens of the State of Alabama, including the plaintiffs herein, from exercising their rights to access to a free press, freedom of speech freedom of religion, and the right to petition for redress of grievances, all of which are protected by the Constitution of the United States.

21. On or about Sunday, March 6, 1960, the plaintiff Abernathy, together with numbers of other clergymen and approximately 1,000 persons, sought peaceably to hold a prayer meeting on the steps of the State Capitol to pray for the students who had been expelled from Alabama State College. Pursuant thereto said plaintiff Abernathy and others assembled at the Dexter Avenue Baptist Church in Montgomery. Thereafter, the Police Commissioner of Montgomery, acting in concert with the other defendants and divers persons presently unknown to the plaintiffs, directed his officers to prevent the plaintiff Abernathy and others from proceeding to the Capitol, aimed fire hoses at such persons, and directed those there assembled at the Church to leave in groups of not more than twelve, thereby depriving certain of the plaintiffs and their supporters from exercising their right peaceably to assemble, to petition for redress of grievances, and to worship, as guaranteed by the Constitution of the United States. These actions of the defendants have had the practical effect of deterring and prohibiting the plaintiffs and the Negro citizens of Montgomery and of the State of Alabama from exercising their constitutional rights as above described.

22. On the said Sunday, several hundred white citizens of Montgomery and adjacent communities, in the presence of the police, openly threatened violence against the plaintiff Abernathy and others. The said white citizens had assembled there initially without being restrained by the Montgomery Police Commissioner, with arms and brickbats to threaten violence upon the plaintiff Abernathy and those assembled with him, thus deterring and prohibiting the plaintiffs and the Negro citizens of Montgomery and of the State of

Alabama from exercising the rights guaranteed to them by the Constitution of the United States of America.

23. On and after March 8, 1960, the police, while responsible to the defendants herein, and under the color of ordinance thereafter enacted by certain of said defendants, proceeded to break up all demonstrations against segregation, however peaceable, and pursuant thereto, they there and then instituted actions under their direction, designed to intimidate and deter Negro citizens of Montgomery and the State of Alabama from exercising any or all of the rights guaranteed to them under the Constitution and the laws of the United States in order to achieve the objective of equality under the law, likewise guaranteed by the Constitution and laws of the United States. These actions of the defendants continue until this day, creating at the present time in the City of Montgomery and the State of Alabama an atmosphere which effectively frustrates the utilization of constitutional rights by the plaintiffs and the Negro citizens of the State.

24. On or about March 29, 1960, supporters of the plaintiffs and the movement for equality which they lead, on their own, and pursuant to their own responsibility, utilizing the channel of a free press, inserted in the NEW YORK TIMES, a newspaper of national and international reputation, a paid advertisement signed by approximately 64 prominent Americans from all walks of life, a copy of which advertisement is annexed hereto and made a part hereof as Exhibit B. This advertisement expressed the opinions, criticisms and comments of these prominent Americans on the developments in the City of Montgomery and the State of Alabama, as described above, for the purpose of:-

a) Educating the general public on important social and political issues in the free market place of ideas;

b) Soliciting support for the defense of the Reverend Martin Luther King, Jr., a leader of the movement in which the plaintiffs participate as active leaders, in a then pending criminal prosecution brought by the State of Alabama against the Reverend Dr. King;

c) Soliciting support for the plaintiffs herein and their supporters in their peaceful activities for the enforcement of

their right to vote, as guaranteed by the 15th Amendment to the Federal Constitution; and

d) Soliciting support for the Negro students of the City of Montgomery and the Negro citizens of that city and the plaintiffs herein in their peaceful efforts to end segregation and achieve the constitutional promise of equality before the law.

25. The defendants herein at some time thereafter conspired and planned under the color of law and utilizing their official positions as well as the judicial machinery of the State, to deter and prohibit the plaintiffs and their supporters as set forth above, from utilizing their constitutional rights and in particular their right to access to a free press, by instituting fraudulent actions in libel against the plaintiffs, without any basis in law or fact, in the Alabama State courts, arising out of the aforesaid advertisement. Said libel actions were also against the NEW YORK TIMES.

26. Pursuant to the above described conspiracies, the defendants Patterson, James, Sullivan and Parks have instituted actions in libel against the plaintiffs, as a result of which fraudulent judgments, without any basis in law or fact, have been awarded to the defendant Sullivan, the Police Commissioner, and to the defendant James, the Mayor of the City of Montgomery, in the amount of \$500,000 each in the Circuit Court for Montgomery County, Alabama, and which judgments represent the highest ever awarded in libel actions in the State of Alabama. As a result of the fraudulent and extraordinarily high judgments, plaintiffs are required under Alabama law, to post supersedeas bonds in the amount of \$1,000,000 each, thereby making it absolutely impossible for the plaintiffs to avail themselves of the rights usually afforded to other citizens under the Alabama statute to obtain a stay of execution pending their exercise of the statutory right to appeal.

27. The judgments rendered in the two cases already tried, are null and void and deprive the plaintiffs of their constitutional rights and serve to actively deter and discourage the plaintiffs, their supporters and other Negro citizens of the City of Montgomery and State of Alabama from exercising constitutional

rights of freedom of speech, press and assembly, secured to them by the First Amendment, as incorporated into the 14th Amendment.

28. These judgments awarded to the defendants Sullivan and James of \$500,000 each are null and void for the following additional reasons, among others:

a) The actions represent a concerted effort on the part of the defendants named herein, all of whom are State officers and who are acting under color of State law, without any foundation in law or fact, to punish individual citizens for the exercise of constitutional rights, and particularly for the exercise of the right to comment upon matters of grave social and political importance, which rights are particularly protected by the 1st Amendment as incorporated in the 14th Amendment.

b) The jury verdicts are null and void as violative of the 14th Amendment to the United States Constitution and, in particular, Section 1 of the 14th Amendment, in violation of the due process clause and the equal protection clause of the said Amendment as well as the 13th Amendment, in that the actions were tried in a courtroom in which segregation of Negro and white citizens was enforced pursuant to the specific orders of the presiding judge, over the objection of counsel for the plaintiffs herein. See Exhibits attached to Affidavit of counsel.

29. The verdicts were null and void and violative of the due process and equal protection clauses of the 14th Amendment in that the defendants in those actions were unable to obtain a fair and impartial trial because of the highly prejudicial atmosphere in the community, an atmosphere developed to a great degree by the defendants herein, for the following reasons:

a) The year 1961 has been officially proclaimed and designated by Proclamation of the Governor of Alabama, one of the defendants herein, as the "Centennial Year" commemorating the outbreak of and events pertaining to the rebellion of 1861. Montgomery, Alabama has been designated and referred to as the "Cradle of the Confederacy", and as such, the Montgomery community has evidenced widespread and intense interest in such centennial commemoration as

above referred to, which has manifested itself by male members of the community growing beards and affecting a tie suggestive and commemorative of the mode and fashion of dress prevalent during the era embracing the year 1961; the female members of the community are likewise affecting the dress and mode of attire of females of the same era.

b) There has been and continues to be extensive and continuous publicity given to such commemoration by various media of expression, including the press, radio and television. In the City of Montgomery certain "Highlights of the Montgomery Civil War Centennial Commemoration" have been scheduled for the week of February 12-18, inclusive, including torchlight parades, historical re-enactments, pageants, fireworks and contests. Because of the relationship between the nature of the subject matter of this action and certain of the issues of the Civil War, to wit, the issue of segregation of the races, and the feeling presently engendered in this community by reason of the revival of such issues in the minds of the community, with respect to slavery and the total problem of the previous condition of Negro citizens prior to the Emancipation Proclamation, and the emotions and feelings of sectionalism engendered thereby, the plaintiffs herein were not able to secure a fair and impartial trial.

c). In addition, the name of Court Square in the City of Montgomery has been changed to "Confederate Square", with attendant publicity on, to wit, October 31, 1960. As a result, the cases which were brought by the defendants Sullivan and Parks resulted in verdicts against the plaintiffs herein in the sum of \$1,000,000, which verdicts were the highest ever awarded in libel actions in the State of Alabama and could only have been the result of the passionate prejudice revived by the celebration and other events embraced within the Civil War, among others.

d) The verdicts were null and void in that plaintiffs were unable to obtain a fair and impartial trial in that plaintiffs are members of an eligible class of electors systematically excluded from participating in the electoral selection of judges pursuant to Section 152 of the Alabama Constitution of 1901 and as a consequence

thereof, the imposition of judicial powers over plaintiff members of the systematically excluded class resulted in a denial of due process of law and equal protection of the law as guaranteed by Section 1 of Amendment 14 of the United States Constitution.

e) The verdicts herein are null and void and violative of the due process clause of the 14th Amendment in that there is not a scintilla of legally relevant evidence sufficient to sustain the verdicts rendered.

f) The verdicts herein are null and void in that they are the result of bias, prejudice and passions on the part of the jury and therefore violate the due process and equal protection clauses of the 14th Amendment.

30. It is obvious that the judgments already awarded by the jury are excessive and punitive. The verdicts clearly show that they resulted from bias, passion and prejudice and other improper motivations on the part of the jury.

31. As a part of the conspiracy aforesaid, said actions were contrived and manufactured by the defendants Patterson, Sullivan, James and Parks, to enrich themselves by taking advantage of sentiments against the plaintiffs herein resulting from their well-known past and present views on the subject of segregation and civil rights.

32. Plaintiffs further allege and aver that the verdicts rendered against them are an unconstitutional usurpation of judicial machinery on the part of the defendants herein, acting under color of authority of the State of Alabama, in that the institution of said libel actions for alleged defamation of the defendants in their governmental capacity infringe upon the plaintiffs' and their supporters' rights of freedom of speech, press and association, in contravention of the 1st Amendment as incorporated by the 14th Amendment to the Constitution of the United States, and said verdicts have the practical effect of deterring and/or discouraging plaintiffs' exercise of their constitutionally protected rights of freedom of speech, press and assembly.

33. Plaintiffs are unable financially to post supersedeas bonds in the amount of \$2,000,000, in order to stay execution pending appeals in the two cases which have been tried. By virtue

of not being able to post the bonds required, the plaintiffs have been subjected to continuous harassments with respect to the modest personal and real property in which several have a mere equity. Plaintiffs are in addition thereto subjected to preparation for further trials in the Parks and Patterson cases, which are still pending in the Circuit Court of Montgomery County, Alabama.

34. Accordingly, plaintiffs are subjected to immediate and irreparable injury and loss:

a) They are subjected to the immediate loss and damage as a result of levies and attachments of all of their property, both real and personal, which they own, individually as well as jointly, and

b) Unless this Honorable Court gives relief, the plaintiffs herein and the Negro citizens of the State of Alabama will be deterred from using the media of a free press and all other rights guaranteed under the 1st Amendment, as incorporated in the 14th Amendment, to present the injustices to which they have been submitted.

35. Unless defendants are enjoined from executions, garnishments and sale of plaintiffs' properties pending outcome of said appeals, they, and each of them, will suffer immediate and irreparable injury and harm, in addition to the immediate and irreparable injury to the exercise of constitutionally protected rights.

36. The plaintiffs have no plain, adequate and complete remedy at law which can protect the plaintiffs' rights of freedom of expression, of press and assembly, and unless this Court gives relief, plaintiffs will be further relegated to a segregated court system. The plaintiffs have not and cannot, under the present segregated organization of the Alabama State courts, receive a fair and impartial trial. Therefore, recourse to such a system would be no remedy at all consistent with the guarantees of the Constitution.

WHEREFORE, plaintiffs respectfully pray:

1. That this Learned Court enter a permanent injunction:

a) Enjoining defendants, their agents, servants, employees and attorneys, from levying upon plaintiffs' property,

both real and personal, which has already been attached, as well as all future levies.

~~b)~~ b) Enjoining defendants from proceeding with trials presently pending and which are instituted by the defendants, John Patterson and Frank Parks.

b) c) Restraining each of the defendants named herein, their agents, employees or attorneys, from engaging in the aforesaid conspiracy designed to deter and prohibit the plaintiffs from exercising rights guaranteed by the 1st and 14th Amendments with respect to freedom of speech, press, assembly, the right to petition for redress of grievances, and the right to free worship.

2. That this Learned Court make, declare and enter a declaratory judgment, declaring the judgments awarded to the defendants Sullivan and James to be null and void.

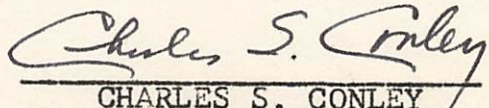
3. That this Learned Court, in the meantime, enter an Order Pendente Lite, enjoining the defendants herein, their agents, servants, employees and attorneys:-

a) From proceeding with all sales of automobiles and other personal property which has been attached and is about to be sold pursuant to present levys, including garnishments, and from proceeding to the selling of or the otherwise encumbering of or disposing of property of the plaintiffs in satisfaction of judgments entered in cases No. 27416 and 27417, which are pending before the Circuit Court of Montgomery County, Alabama, pending disposition of this action; and

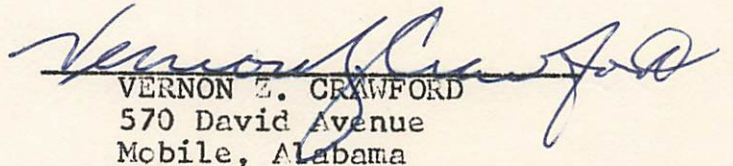
b) From proceeding in any manner whatsoever with the libel actions in the Circuit Court of Montgomery County, Alabama, entitled "Frank Parks v. New York Times Company, a corporation, et al." and "John Patterson v. New York Times Company,

a corporation, et al."

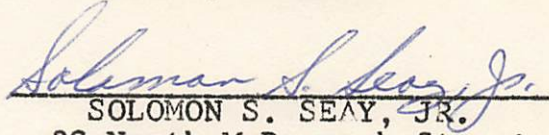
Respectfully submitted,



CHARLES S. CONLEY
530 South Union Street, Suite A
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VERNON E. CRAWFORD
570 David Avenue
Mobile, Alabama



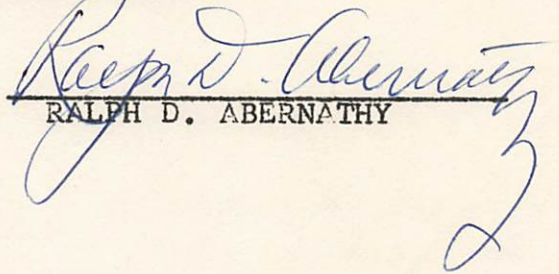
SOLOMON S. SEAY, JR.
29 North McDonough Street
Montgomery, Alabama

ATTORNEYS FOR THE PLAINTIFFS

STATE OF ALABAMA)
) ss.:
COUNTY OF MONTGOMERY)

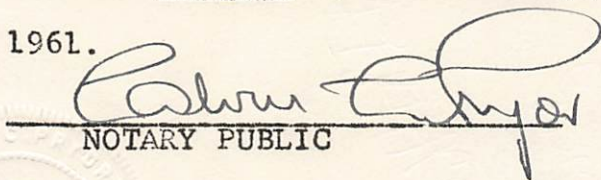
RALPH D. ABERNATHY, being duly sworn, according to law
upon oath, deposes and says:

That affiant is one of the plaintiffs herein; that he
has read the foregoing and knows the contents thereof, and that
the same is true to his own knowledge and belief.



RALPH D. ABERNATHY

Sworn to and subscribed before
me this 20th day of February,
1961.


NOTARY PUBLIC

