

37. In granting any part of plaintiff's motion for summary judgment.

38. In not denying plaintiff's motion for summary judgment.

39. In entering judgment against the defendants, or any of them.

40. In finding:

“Newspapers supply a necessity and serve one of the most vital of all general interests: the dissemination of news from as many different sources, and with as many different facets and colors as is possible” (Finding No. 33)

without noncomitantly finding and holding that a more vital general interest embodied in the First Amendment is that the federal judicial, legislative and executive departments shall not abridge the usual, normal, customary and necessary operations of the newspaper press nor interfere with free competition in that industry.

Wherefore, petitioners pray that that part of the final judgment appealed from and entered herein on the 13th day of January, 1944, be reversed and that such other and further relief be granted as to the Court may seem just and proper.

Dated March 9, 1944.

Weymouth Kirkland, Howard Ellis, A. L. Hodson,  
George T. Townley, J. Howard Carter, Attorneys  
for the defendants, Tribune Company and Robert  
Rutherford McCormick.

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[fol. 3259] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ORDER ALLOWING APPEAL OF TRIBUNE COMPANY AND ROBERT  
RUTHERFORD McCORMICK

\* \* \* \* \*

[fol. 3260] It appearing to the Court in the above entitled cause that the defendants Tribune Company and Robert

Rutherford McCormick have filed a petition for appeal, jointly and severally, to the Supreme Court of the United States from the final judgment (except paragraphs VII and VIII thereof) entered herein on January 13, 1944, and have filed therewith their assignment of errors, and also their statement as to the jurisdiction of the Supreme Court of the United States as required by Rule 12 of the Supreme Court Rules.

It is Ordered that defendants Tribune Company and Robert Rutherford McCormick be and they are hereby allowed and granted an appeal, jointly and severally, to the Supreme Court of the United States from the final judgment entered herein on the 13th day of January, 1944, except paragraphs VII and VIII thereof, and that the record on appeal be made, certified and sent to the Supreme Court of the United States in accordance with the rules of that Court.

[fol. 3261] It is Further Ordered that the bond on appeal be fixed at the sum of \$750.00.

Dated this 9th day of March, 1944.

———, United States Circuit Judge for the Second Circuit. Thomas W. Swan, United States Circuit Judge for the Second Circuit. Augustus N. Hand, United States Circuit Judge for the Second Circuit.

[fols. 3262-3264] Bond on Appeal for \$750.00 approved. Omitted in printing.

[fol. 3265] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

PRAECIPE

To the Clerk of the United States District Court for the Southern District of New York:

You are hereby requested to make a transcript of the record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above entitled cause on behalf of Tribune Company and Robert

Rutherford McCormick, and to include in such transcript of record the following, and no other papers and exhibits, to wit:

1. Plaintiff's complaint and exhibits thereto A through F inclusive.

2. Answer of defendant The Associated Press and certain other defendants, individual and corporate.

3. Answer of defendants Tribune Company and Robert Rutherford McCormick.

4. Expediting certificate filed by plaintiff pursuant to the Expediting Act of February 11, 1903, as amended.

5. Designation of three judges to hear the case.

6. Plaintiff's request for admissions filed January 6, 1943 and exhibits thereto 1 to 8 inclusive, 10 to 43 inclusive, and the text of exhibit 9.

[fol. 3266] 7. Responses of defendants The Associated Press, et al., to plaintiff's request for admissions.

8. Plaintiff's second request for admission and exhibits thereto 1-A, 1-B, 1-C, 2-A, 2-B, 2-C, 3-A, 3-B, 4-A, 4-B, 4-C, 5-A, 5-B, 5-C, 5-D, 6-A, 6-B and 6-C.

9. Responses of defendants The Associated Press, et al., to additional requests for admissions and exhibits thereto A, B, C, D, E and F.

10. Answers of defendants Tribune Company and Robert Rutherford McCormick to plaintiff's first and second requests for admissions.

11. Interrogatories of plaintiff to be answered by defendant The Associated Press and exhibits thereto 1 to 8, inclusive, and 10 to 13, inclusive.

12. Interrogatories of plaintiff to be answered by defendants Tribune Company and Robert Rutherford McCormick.

13. Answers of defendant The Associated Press to the interrogatories addressed to it by plaintiff.

14. Answers of defendants Tribune Company and Robert Rutherford McCormick to the interrogatories addressed to them by plaintiff, and exhibits thereto 1 to 18 inclusive, including exhibit 14A.

15. Interrogatories of plaintiff served upon defendants the Bulletin Company and Robert McLean, plaintiff's exhibits, 1, 1A, 1B, 1C, 1D and 2 attached thereto, answers of defendants the Bulletin Company and Robert McLean to the interrogatories served upon them by plaintiff, and

defendants' exhibits thereto A, B, B(1), B(2), B(3) and C. [fol. 3267] 16. Stipulation dated February 27, 1943 and exhibits thereto A, B, C and D.

17. Interrogatories on behalf of defendant The Associated Press, exhibits thereto 1 and 2, answers of plaintiff to those interrogatories, exhibits 1, 2-A and 2-B to those answers and, as printed by defendants The Associated Press, et al. for the benefit of the District Court, exhibits 3-A 3-B and 5 to those answers, and description of exhibits 4-A, 4-B, and 6 and 7 to those answers.

18. Requests by defendant The Associated Press for admissions by the plaintiff, exhibits thereto A, B, C, D, E, F, G, H, I, J, K and L, responses of plaintiff to such requests for admissions, and exhibits A, B and C to such responses.

19. Motion for summary judgment filed by plaintiff May 25, 1943.

20. Affidavits filed by plaintiff in support of its motion for summary judgment, exhibit 1 to the affidavit of Thomas J. Barry, exhibits 5, 6, 7, 8, 9, 12 and 14 to the affidavit of Marshall Field, exhibits A, B-L, B-2, C-3 and C-4 to the affidavit of Guy Raynor Hill, exhibits 1 to 8 inclusive to the affidavit of Alfred McClung Lee dated May 10, 1943, exhibits 1 to 14 inclusive to the affidavit of Alfred McClung Lee dated May 22, 1943, exhibits A, B, C and D to the affidavit of John Henry Lewin, exhibits A and B to the affidavit of N. S. MacNeish, exhibit A to the affidavit of J. A. McNeil, Exhibits 1 and 2 to the affidavit of Thomas M. McNicholas, exhibits A and B to the affidavit of John J. Padulo, exhibits 1 to 6 inclusive to the affidavit of Harold L. Schilz [fol. 3268] dated May 24, 1943 and exhibits D, E, F, G, H, I and J to the affidavit of Edwin Moss Williams dated May 12, 1943.

21. Affidavits filed on behalf of defendants Tribune Company and Robert Rutherford McCormick in opposition to the motion for summary judgment, exhibits 1 and 2 to the second affidavit of Robert Rutherford McCormick, exhibits 1 and 2 to the affidavit of William Donald Maxwell, exhibits A and B to the affidavit of Arch Ward and exhibits A, C and D to the affidavit of W. J. Byrnes.

22. Affidavits filed by defendants The Associated Press, et al. in opposition to motion of plaintiff for summary judgment (two volumes), exhibit 1 to the affidavit of Kent Cooper, exhibits A and B to the affidavit of Daniel J. Shiller

dated June 19, 1943, exhibits 1 and 2 to the first affidavit of Edwin M. Williams dated June 17, 1943, exhibits 1 to 11 inclusive to the second affidavit of Edwin M. Williams dated June 17, 1943, exhibits 1 to 6 inclusive, including exhibit 5-a, to the affidavit of Fred S. Ferguson, exhibit 1 to the affidavit of Earl J. Johnson, exhibit A to the affidavit of William Mapel, exhibit 1 to the affidavit of Harold L. Cross, exhibits A, B, C, D and E to the affidavit of F. A. Resch, exhibits A, B and C to the affidavit of William W. Duson, exhibit 1 to the affidavit of Paul Patterson, exhibit 1 to the affidavit of Vance C. McCormick, exhibit One to the affidavit of V. Hummel Berghaus, Jr., exhibits A and B to the affidavit of Paul Miller, exhibit A to the affidavit of Mary Bauer, exhibit 1 to the affidavit of J. A. McNeil, exhibits A and B to the affidavit of Einar B. Faust, exhibits A and B to the affidavit of Timothy N. Pfeiffer, and exhibit 1 to the affidavit of Robert R. Booth.

[fol. 3269] 23. Counter affidavits filed in support of plaintiff's motion for summary judgment, and exhibits A, B, C and D to the affidavit of John Henry Lewin.

24. Notice of defendants The Associated Press, et al. to take depositions upon oral examination.

25. Narrative statement of examinations before trial, filed herewith, and the following exhibits filed in connection therewith: exhibits introduced by defendants in connection with examinations held in New York, 1, 2, 3, 4, 5, 6A, 6B, 8, 9, 10, 11, 12, 13, 14, 15, 16, 16A, 17, 22, 23, 25, 26, 27, 28, 30, 31, 32, 35, 38, 39, 40, 41, 42, 44, 45, 46, 48, 49, 50, 51; exhibits introduced by defendants in connection with examinations held in Chicago, 1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15 to 33 inclusive; exhibits introduced by plaintiff in connection with examinations held in New York, 1, 2, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 17A, 18, 19, 20, 21, 22, 43, 44, 45, 46; and exhibit 2 introduced by plaintiff in connection with examinations held in Chicago.

26. Opinion of the District Court filed October 6, 1943, together with the dissenting opinion of Judge Swan.

27. Findings of fact and conclusions of law filed by the District Court on January 13, 1944.

28. Final judgment of the District Court filed January 13, 1944.

29. Petition for appeal.

30. Assignment of errors.

31. Jurisdictional statement.
- [fol. 3270] 32. Order allowing appeal.
33. Citation on appeal.
34. Bond on appeal.
35. Statement calling attention to the provisions of Supreme Court Rule 12(3).
36. Proof of service.
37. This praecipe and service thereof.

Said transcript is to be prepared as required by law and the Rules of this Court and Rules of the Supreme Court of the United States, and is to be filed in the office of the Clerk of the Supreme Court.

Dated: April 3, 1944.

Weymouth Kirkland, Howard Ellis, A. L. Hodson,  
J. Howard Carter, Attorneys for Tribune Com-  
pany and Robert Rutherford McCormick.

Copy of the above praecipe and narrative statement of examinations before trial received this 4th day of April, 1944.

Charles H. Weston and Lawrence S. Apsey, Special  
Assistants to the Attorney General.

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[fols. 3271-3272] Citation in usual form, filed March 9, 1944, omitted in printing.

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[fol. 3273] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

PETITION FOR APPEAL

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final judgment of this Court entered on the thirteenth day of January, 1944, does hereby pray an appeal from said final judgment to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the judgment erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Plaintiff prays that this appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said final judgment was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

John Henry Lewin, Charles H. Weston, Charles B. Rugg, Special Assistants to the Attorney General.

Dated this 13th day of March, 1944.

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[fol. 3274] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry of the final judgment of the District Court on January 13, 1944, in the above-entitled cause, and says that in the entry of the final judgment the District Court committed error to the prejudice of the plaintiff in the following particulars:

1. The Court erred in entering a final judgment which limited and qualified by the following provisos the injunction, contained in paragraph I B, against promulgating, agreeing to observe and observing any new or amended by-laws of The Associated Press having a purpose or effect like the provisions of the present by-laws of The Associated Press respecting admission to membership therein:

“provided, however, that nothing herein shall prevent the adoption by The Associated Press of new or amended by-laws which will restrict admission, provided that members in the same city and in the same ‘field’ (morning, evening or Sunday), as an applicant

publishing a newspaper in the United States of America or its territories, shall not have power to impose, or dispense with any conditions upon his admission and that the by-laws shall affirmatively declare that the effect of admission upon the ability of such applicant to compete with members in the same city and 'field' shall not be taken into consideration in passing upon his application.'"

2. The Court erred in refusing to enter a final judgment enjoining the defendants, and each of them, from agreeing to observe and observing any agreement among members of [fol. 3275] The Associated Press having a purpose or effect like the provisions of Article III, Sections 1-3, inclusive, of the by-laws of The Associated Press which the Court adjudged to be illegal.

3. The Court erred in refusing to enter a final judgment enjoining the defendants, and each of them, from promulgating, agreeing to observe and observing, any new or amended by-laws of The Associated Press authorizing denial of membership in The Associated Press for any reason other than (1) that the applicant is not the sole owner of a bona fide newspaper published in the United States, (2) that the applicant has not assented in writing to the lawful by-laws of The Associated Press, or (3) that the applicant has not paid to The Associated Press any money contribution which its by-laws may require new members to pay and which is based upon the new member's equitable proportion of the value of the net tangible assets of The Associated Press and is applicable irrespective of whether the new member's newspaper is or is not published in the same city and "field" (morning, evening or Sunday) as the newspaper of an existing member.

4. The Court erred in holding that the provisions of the by-laws of The Associated Press which require that each regular member and its employees furnish exclusively to The Associated Press and its members the local news of spontaneous origin gathered by the member and by persons in his employ are, taken by themselves and apart from illegal restriction on admission to membership in The Associated Press, reasonable and not in violation of the antitrust laws of the United States.

5. The Court erred in entering a final judgment which enjoined the defendants from promulgating, observing and agreeing to observe any new or amended by-laws of The Associated Press or agreements between The Associated Press and any members thereof which prohibit any member or persons in his employ from furnishing local news of [fol. 3276] spontaneous origin to persons other than The Associated Press and its members, only in connection with the existence of by-laws of The Associated Press which illegally restrict admission to membership therein.

6. The Court erred in refusing to enter a final judgment permanently enjoining the defendants, and each of them, from promulgating, agreeing to observe and observing any new or amended by-laws of The Associated Press or agreements between The Associated Press and any members thereof which prohibit any member or persons in his employ from furnishing local news of spontaneous origin gathered by them to persons other than The Associated Press and its members.

7. The Court erred in holding that the provisions of the contract between The Associated Press and The Canadian Press dated November 1, 1935, whereby the former obtains the exclusive right to receive, in the United States, the news reports of The Canadian Press and its members are, taken by themselves and apart from illegal restrictions on admission to membership in The Associated Press, reasonable and not in violation of the antitrust laws of the United States.

8. The Court erred in entering a final judgment which enjoined The Associated Press and its representatives from performing and observing and from entering into any agreements with The Canadian Press whereby The Associated Press obtains the exclusive right to receive, in the United States, the news reports of The Canadian Press and its members, only in connection with the existence of by-laws of The Associated Press which illegally restrict admission to membership therein.

9. The Court erred in refusing to enter a final judgment permanently enjoining the defendants, and each of them, from performing, observing and entering into any agree-[fol. 3277] ment between The Associated Press and The Canadian Press whereby the former obtains the exclusive

right to receive, in the United States, the news reports of The Canadian Press and its members.

10. The Court erred in holding that the antitrust laws of the United States do not apply to the restraints imposed by the provisions of the contract between The Associated Press and The Canadian Press dated November 1, 1935, which give to The Canadian Press the exclusive right to receive, in Canada, the news reports of The Associated Press.

11. The Court erred in refusing to enter a final judgment permanently enjoining the defendants, and each of them, from performing and observing and from entering into any agreement between The Associated Press and The Canadian Press whereby the latter obtains the exclusive right to receive, in Canada, the news reports of The Associated Press and such news of its members as they are required by its by-laws to furnish exclusively to The Associated Press.

12. The Court erred in its conclusion of law that The Associated Press does not monopolize or dominate the furnishing of news reports, news pictures, or features to newspapers in the United States.

13. The Court erred in finding that The Associated Press has accumulated tangible property estimated by it as having a value of more than \$7,000,000 and that its good will and other intangible property are appraised at a value of more than \$12,000,000.

14. The Court erred in failing to find that during the period 1900-1928, inclusive, 97 applications for membership in The Associated Press were submitted to the vote of the members because they were subject to "protest rights" held by members; that only six of these applicants obtained [fol. 3278] the requisite four-fifths vote for admission; and that in each of these six instances the applicant's newspaper was published in a city of comparatively small size, no holder of a "protest right" published a newspaper therein, and the directors of The Associated Press had recommended election.

15. The Court, erred in failing to find that during the period 1928-1942, inclusive, there were only six applicants for membership in The Associated Press whose applications were submitted to the vote of the members and that all of these failed of election by the members.

16. The Court erred in failing to find that during the period 1938-1941, inclusive, at least 20 applications for membership which were not subject to "protest rights" were denied by the Board of Directors of The Associated Press after a member competing to some extent with each such applicant had objected to his admission.

17. The Court erred in failing to find that Marshall Field, owner of The Chicago Sun, applied for membership in The Associated Press in September 1941; that the owners of the Chicago Herald-American and The Chicago Daily Tribune refused to waive their "protest rights"; and that Field's application was referred to the annual membership meeting held in April 1942 and was rejected by a vote of 684 to 287.

18. The Court erred in failing to find that the publisher of The Chicago Daily Tribune solicited proxies and votes against the application of Marshall Field by correspondence, and by personal interviews of his representatives with at least 755 members of The Associated Press; that he obtained 195 proxies from such members which were voted against Field's application; and that prior to the vote a representative of The Chicago Daily Tribune addressed the membership meeting in opposition to Field's election [fol. 3279] upon the ground that his election would enhance the ability of The Chicago Sun to compete with The Chicago Daily Tribune.

19. The Court erred in failing to find that the publisher of the Chicago Herald-American solicited proxies from members of The Associated Press against the application of Marshall Field; that he informed such members that if Field were elected over the protest of the Chicago Herald-American the "asset value of your membership would be affected and your own property rights might be similarly imperiled at any time"; and that he obtained 81 proxies from members of The Associated Press which were voted against Field's application.

20. The Court erred in failing to find that The Chicago Sun, for a substantial period after it began publication in December 1941, was unable to obtain news pictures from Acme News Pictures, Inc., because that organization had entered into a contract with The Chicago Daily Tribune barring it from serving any other morning newspaper in Chicago and that The Chicago Sun has been unable to ob-

tain news pictures from International News Photos because that organization, in cities (including Chicago) in which there is a newspaper which is under the same ownership and control as International News Photos, furnishes its pictures exclusively to such newspaper.

21. The Court erred in failing to find that in November 1941 Eleanor Medill Patterson filed two applications for membership in The Associated Press, one on behalf of the morning and one on behalf of the evening editions of her newspaper, The Washington Times-Herald; that the owners of the Washington Post and of The Evening Star failed to waive their "protest rights"; that Patterson's applications were referred to the annual membership meeting held in April 1942; that representatives of the Washington Post [fol. 3280] and The Evening Star addressed this meeting in opposition to the election of Patterson; and that her applications for membership were rejected by a vote of 514 to 242.

22. The Court erred in failing to enter such final judgment with respect to the making of new or amended by-laws of The Associated Press with reference to admission to membership and with reference to the members' obligation to furnish their local news exclusively to The Associated Press and its members, and with respect to the carrying out or the making of any agreement between The Associated Press and The Canadian Press which gives to either organization the exclusive right to receive the other's news reports within its territory, as were and are consistent with right and justice within the laws of the United States.

Wherefore, plaintiff prays that the final judgment of the District Court may be reversed to the extent that it is inconsistent with the errors herein assigned by the plaintiff, and for such other and fit relief as the Court may deem just and proper.

John Henry Lewin, Charles H. Weston, Charles B. Rugg, Special Assistants to the Attorney General.

This 13th day of March, 1944.

[fol. 3281] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ORDER ALLOWING APPEAL

In the above-entitled cause the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final judgment of this Court in this cause entered on the 13th day of January, 1944, and having also made and filed its petition for appeal, assignment of errors and prayer for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided,

It is therefore ordered and adjudged that the appeal be and the same is hereby allowed as prayed for.

Learned Hand, Augustus N. Hand, Circuit Judges  
Sitting as the District Court.

Dated this 13 day of March, 1944.

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[fol. 3282] IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

PRAECIPE

To the Clerk of The United States District Court for The  
Southern District of New York:

You are hereby requested to make a transcript of the record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above-entitled cause on behalf of the United States of America, and to include in such transcript of record the following:

1. All portions of the record which counsel for the defendants The Associated Press, Paul Bellamy, George Francis Booth, John Cowles, William Hutchinson Cowles, Edward King Gaylord, Houston Harte, Josh L. Horne, Clark Howell, Jr., Joseph Russell Knowland, Robert McLean, Leonard Kimball Nicholson, Frank Brett Noyes, Paul Patterson, Stuart Hoffman Perry, E. Lansing Ray, Edward Hubert Butler, The Adrian Telegram, The A. S.

Abell Company, Bulletin Company, The Constitution Publishing Company, Cowles Publishing Company, The Evening Star Newspaper Company, Forest City Publishing Company, The Kansas City Star Company, The Oklahoma Publishing Co., The Register and Tribune Company, Rocky Mount Publishing Co., Globe Democrat Publishing Co., San Angelo Standard, Inc., The Times-Picayune Publishing Company, The Tribune Publishing Co., and Worcester Telegram Publishing Co., Inc., have, by a praecipe dated [fol. 3283] April 3, 1944, requested you to include in the transcript of the record to be filed in the Supreme Court of the United States pursuant to the appeal allowed in the above-entitled cause on behalf of said defendants.

2. Exhibits introduced by plaintiff in connection with examinations held in New York, 24, 25, 26, 28, 29, 30, 31, 33, 34, 35, 37, 38, 39, 40 and 42.

3. Three copies of Exhibit 9 attached to plaintiff's request for admissions filed January 6, 1943, to be transmitted as an original exhibit, and stipulation relating thereto.

4. Plaintiff-appellant's petition for appeal.

5. Plaintiff-appellant's assignment of errors.

6. Order allowing appeal of plaintiff-appellant.

7. Citation on appeal of plaintiff-appellant.

8. Statement of plaintiff-appellant calling attention to Supreme Court Rule 12 (3).

9. Statement as to jurisdiction filed by plaintiff-appellant.

10. Proof of service filed by plaintiff-appellant.

11. This praecipe and service thereof.

Dated: April 6, 1944.

Charles B. Rugg, Charles H. Weston, Special Assistants to the Attorney General.

Service of the above praecipe is accepted and copy thereof received this — day of April, 1944.

John T. Cahill, Counsel for the Defendants Other Than Robert Rutherford McCormick and Tribune Company; Weymouth Kirkland, Counsel for the Defendants Robert Rutherford McCormick and Tribune Company.

[fols. 3284-3286] Citation in usual form, filed March 13, 1944, omitted in printing.

2674

[fols. 3287-3288] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

STIPULATION AS TO RECORD

It is hereby stipulated and agreed that the foregoing is a true copy of the documents designated in the praecipe of each appellant filed herein.

Dated: New York, N. Y., April 6th, 1944.

John T. Cahill, Counsel for The Associated Press, et al.; Weymouth Kirkland, Counsel for the Tribune Company and Robert Rutherford McCormick; Charles Fahy, Solicitor General of the United States; Charles H. Weston, Special Assistant to the Attorney General.

[fol. 3289] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 3290] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 57

APPELLANTS' STATEMENT OF POINTS AND DESIGNATION OF PORTIONS OF RECORD ON APPEAL—Filed April 24, 1944

A. Come now The Associated Press, Paul Bellamy, George Francis Booth, John Cowles, William Hutchinson Cowles, Edward King Gaylord, Houston Harte, Josh L. Horne, Clark Howell, Jr., Joseph Russell Knowland, Robert McLean, Leonard Kimball Nicholson, Frank Brett Noyes, Paul Patterson, Stuart Hoffman Perry, E. Lansing Ray, Edward Hubert Butler, The Adrian Telegram, The A. S. Abell Company, Bulletin Company, The Constitution Publishing Company, Cowles Publishing Company, The Evening Star Newspaper Company, Forest City Publishing Company, The Kansas City Star Company, The Oklahoma Publishing Co., The Register and Tribune Company, Rocky Mount Publishing Co., Globe Democrat Publishing Co., San Angelo Standard, Inc., The Times-Picayune Publishing Company, The Tribune Publishing Co.,

and Worcester Telegram Publishing Co., Inc., appellants in the above entitled cause and for their statement of the points on which they intend to rely on their appeal to this Court adopt the points contained in their assignments [fol. 3291] of error heretofore filed herein.

B. Appellants further state that only the following parts of the record, as filed in this Court, need be printed for the hearing of this appeal:

1. Plaintiff's complaint and exhibits thereto A through F inclusive.

2. Answer of defendant The Associated Press and certain other defendants, individual and corporate.

3. Answer of defendants Tribune Company and Robert Rutherford McCormick.

4. Expediting certificate filed by plaintiff pursuant to the Expediting Act of February 11, 1903, as amended.

5. Designation of three judges to hear the case.

6. Plaintiff's request for admissions filed January 6, 1943 and exhibits thereto 1 to 8 inclusive, 10 to 43 inclusive, and the text of exhibit 9.

7. Responses of defendants The Associated Press, et al., to plaintiff's request for admissions.

8. Plaintiff's second request for admissions and exhibits thereto 1-A, 1-B, 1-C, 2-A, 2-B, 2-C, 3-A, 3-B, 4-A, 4-B, 4-C, 5-A, 5-B, 5-C, 5-D, 6-A, 6-B and 6-C.

9. Responses of defendants The Associated Press, et al., to additional requests for admissions and exhibits thereto A, B, C, D, E and F.

10. Answers of defendants Tribune Company and Robert Rutherford McCormick to plaintiff's first and second requests for admissions.

11. Interrogatories of plaintiff to be answered by defendant The Associated Press and exhibits thereto 1 to 8, inclusive, and 10 to 13, inclusive.

[fol. 3292] 12. Interrogatories of plaintiff to be answered by defendants Tribune Company and Robert Rutherford McCormick.

13. Answers of defendant The Associated Press to the interrogatories addressed to it by plaintiff.

14. Answers of defendants Tribune Company and Robert Rutherford McCormick to the interrogatories addressed to them by plaintiff, and exhibits thereto 1 to 18 inclusive, including exhibit 14A.

15. Interrogatories of plaintiff served upon defendants the Bulletin Company and Robert McLean plaintiff's exhibits 1, 1A, 1B, 1C 1D and 2 attached thereto, answers of defendants the Bulletin Company and Robert McLean to the interrogatories served upon them by plaintiff, and defendants' exhibits thereto A, B, B(1), B(2), B(3) and C.

16. Stipulation dated February 27, 1943 and exhibits thereto A, B, C and D.

17. Interrogatories on behalf of defendant The Associated Press, exhibits thereto 1 and 2, answers of plaintiff to those interrogatories, exhibits 1, 2-A and 2-B to those answers and, as printed by defendants The Associated Press, et al. for the benefit of the District Court, exhibits 3-A and 3-B and 5 to those answers, and description of exhibits 4-A, 4-B, 6 and 7 to those answers.

18. Requests by defendant The Associated Press for admissions by the plaintiff, exhibits thereto A, B, C, D, E, F, G, H, I, J, K and L, responses of plaintiff to such requests for admissions, and exhibits A, B and C to such responses.

19. Motion for summary judgment filed by plaintiff May 25, 1943.

[fol. 3293] 20. Affidavits filed by plaintiff in support of its motion for summary judgment, exhibit 1 to the affidavit of Thomas J. Barry, exhibits 5, 6, 7, 8, 9, 12 and 14 to the affidavit of Marshall Field, exhibits A, B-1, B-2, C-3 and C-4 to the affidavit of Guy Raynor Hill, exhibits 1 to 8 inclusive to the affidavit of Alfred McClung Lee dated May 10, 1943, exhibits 1 to 14 inclusive to the affidavit of Alfred McClung Lee dated May 22, 1943, exhibits A, B, C and D to the affidavit of John Henry Lewin, exhibits A and B to the affidavit of N. S. MacNeish, exhibit A to the affidavit of J. A. McNeil, exhibits 1 and 2 to the affidavit of Thomas M. McNicholas, exhibits A and B to the

affidavit of John J. Padulo, exhibits 1 to 6 inclusive to the affidavit of Harold L. Schilz dated May 24, 1943 and exhibits D, E, F, G, H, I and J to the affidavit of Edwin Moss Williams dated May 12, 1943.

21. Affidavits filed on behalf of defendants Tribune Company and Robert Rutherford McCormick in opposition to the motion for summary judgment, exhibits 1 and 2 to the second affidavit of Robert Rutherford McCormick, exhibits 1 and 2 to the affidavit of William Donald Maxwell, exhibits A and B to the affidavit of Arch Ward and exhibits A, C and D to the affidavit of W. J. Byrnes.

22. Affidavits filed by defendants The Associated Press, et al. in opposition to motion of plaintiff for summary judgment (two volumes), exhibit 1 to the affidavit of Kent Cooper, exhibits A and B to the affidavit of Daniel J. Shiller dated June 19, 1943, exhibits 1 and 2 to the first affidavit of Edwin M. Williams dated June 17, 1943, exhibits 1 to 11 inclusive to the second affidavit of Edwin M. Williams dated June 17, 1943, exhibits 1 to 6 inclusive, [fol. 3294] including exhibit 5-a, to the affidavit of Fred S. Ferguson, exhibit 1 to the affidavit of Earl J. Johnson, exhibit A to the affidavit of William Mapel, exhibit 1 to the affidavit of Harold L. Cross, exhibits, A, B, C, D and E to the affidavit of F. A. Resch, exhibits A, B and C to the affidavit of William W. Duson, exhibit 1 to the affidavit of Paul Patterson, exhibit 1 to the affidavit of Vance C. McCormick, exhibit One to the affidavit of V. Hummel Berghaus, Jr., exhibits A and B to the affidavit of Paul Miller, exhibit A to the affidavit of Mary Bauer, exhibit 1 to the affidavit of J. A. McNeil, exhibits A and B to the affidavit of Einer B. Paust, exhibits A and B to the affidavit of Timothy N. Pfeiffer, and exhibit 1 to the affidavit of Robert R. Booth.

23. Counter affidavits filed in support of plaintiff's motion for summary judgment, and exhibits A, B, C and D to the affidavit of John Henry Lewin.

24. Notice of defendants The Associated Press, et al. to take depositions upon oral examination.

25. Narrative statement of examinations before trial and the following exhibits filed in connection therewith: exhibits introduced by defendants in connection with exam-

inations held in New York, 1, 2, 3, 4, 5, 6A, 6B, 8, 9, 10, 11, 12, 13, 14, 15, 16, 16A, 17, 22, 23, 25, 26, 27, 28, 30, 31, 32, 35, 38, 39, 40, 41, 42, 44, 45, 46, 48, 49, 50, 51; exhibits introduced by defendants in connection with examinations held in Chicago, 1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15 to 33 inclusive; exhibits introduced by plaintiff in connection with examinations held in New York, 1, 2, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 17A, 18, 19, 20, 21, 22, 24, 25, 26, 28, 29, 30, 31, 33, 34, 35, 37, 38, 39, 40, 42, 43, 44, 45, 46; and exhibit 2 introduced by plaintiff [fol. 3295] in connection with examinations held in Chicago.

26. Opinion of the District Court filed October 6, 1943, together with the dissenting opinion of Judge Swan.

27. Findings of fact and conclusions of law filed by the District Court on January 13, 1944.

28. Final judgment of the District Court filed January 13, 1944.

29. These appellants' petition for appeal.

30. These appellants' assignment of errors.

31. These appellants' jurisdictional statement (including appendices A to D inclusive).

32. These appellants' order allowing appeal.

33. These appellants' citation on appeal.

34. These appellants' statement calling attention to the provisions of Supreme Court Rule 12 (3).

35. These appellants' proof of service of papers on appeal.

36. These appellants' praecipe and service thereof.

37. Stipulation as to record on appeal.

38. Stipulation that three original copies of Exhibit 9 to the Government's request for admissions be transmitted to the Supreme Court as an original exhibit.

39. This statement of points and designation of portions of record on appeal.

(S.) John T. Cahill, Thurlow M. Gordon, 63 Wall Street, New York 5, N. Y.; Morris Hadley, Timothy N. Pfeiffer, 15 Broad Street, New York 5, N. Y., Solicitors for the above named appellants.

[fol. 3296] Service of the foregoing statement on behalf of the United States of America is acknowledged this 24 day of April 1944.

Charles Fahy, Solicitor General of the United States,  
Charles H. Weston, Special Assistant to the At-  
torney General.

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[fol. 3296a] [File endorsement omitted.]

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[fol. 3297] IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1944

No. 58

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO  
RELY AND PARTS OF RECORD WHICH APPELLANTS THINK  
NECESSARY FOR CONSIDERATION THEREOF—Filed April 24,  
1944.

I

Tribune Company and Robert Rutherford McCormick, appellants, state that in their brief and oral argument on their appeal in the above entitled cause they will rely on the points stated in their assignment of errors and jurisdictional statements filed therein.

II

Appellants state that the following parts of the record as filed in this Court are necessary for consideration of the points stated by appellants and that such parts of the record should be printed by the Clerk of this Court:

[fol. 3298] A. The parts of the record designated in the praecipe of these appellants.

B. Stipulation dated April 6, 1944 between counsel for the Associated Press et al., counsel for these appellants, Solicitor General of the United States and Special Assistant to the Attorney General as to the record on appeal.

C. This statement of points on which appellants intend to rely and parts of record which appellants think necessary for consideration thereof.

Weymouth Kirkland, Howard Ellis, George T. Townley, A. L. Hodson, J. Howard Carter, Attorneys for Tribune Company and Robert Rutherford McCormick, appellants.

Service of the Statement of Points on which Appellants Intend to Rely And Parts of Record Which Appellants Think Necessary for Consideration Thereof, acknowledged this 24th day of April, 1944.

Charles Fahy, Solicitor General of the United States.  
Charles H. Weston, Special Assistant to the Attorney General.

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[fols. 3298a-3299] [File endorsement omitted.]

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[fol. 3300] IN THE SUPREME COURT OF THE UNITED STATES,  
OCTOBER TERM, 1944

No. 59

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF THE RECORD NECESSARY FOR CONSIDERATION THEREOF—Filed April 25, 1944

1. Now comes the appellant in the above-entitled cause and for its statement of points upon which it intends to rely in its appeal to this Court adopts the points contained in its assignment of errors heretofore filed herein.

2. The entire record in this cause as filed in this Court pursuant to appellant's praecipe to the Clerk of the United States District Court for the Southern District of New York is necessary for the consideration of the foregoing points and appellant designates said entire record for printing by the Clerk of this Court except (1) the bond on appeal of the appellants in No. 880, *The Associated Press, et al. v. United States*, and (2) the copies of the exhibit referred to in paragraph numbered "3" of appellant's praecipe.

cipe which, by the stipulation referred to in said paragraph, were transmitted to this Court as original exhibits and were not to be printed.

Dated this 22 day of April, 1944.

Charles Fahy, Solicitor General.

[fol. 3301] Service of the foregoing statement of points to be relied upon and designation of parts to the record necessary for consideration thereof and receipt of a copy thereof are hereby acknowledged this 24th day of April, 1944.

John T. Cahill, Counsel for appellees other than  
Tribune Company and Robert Rutherford McCormick.

Service of the foregoing statement of points to be relied upon and designation of parts of the record necessary for consideration thereof and receipt of a copy thereof are hereby acknowledged this 24th day of April, 1944.

Weymouth Kirkland, Counsel for appellees Tribune  
Company and Robert Rutherford McCormick.

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[fol. 3301a] [File endorsement omitted.]

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[fol. 3302] SUPREME COURT OF THE UNITED STATES, OCTOBER  
TERM, 1944

Nos. 57-58-59

ORDER NOTING PROBABLE JURISDICTION—May 8, 1944

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted.