

L. B. SULLIVAN

vs.

THE NEW YORK TIMES CO., A CORP., RALPH D. ABERNATHY, FRED  
L. SHUTTLESWORTH, S. S. STAY, SR., AND J. E. LOWERY.

SUMMONS AND COMPLAINT

The State of Alabama  
Montgomery County

To Any Sheriff of the State of Alabama-Greeting:

You are hereby commanded to summon The New York Times Company, a Corporation, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery to appear before the Circuit -Court of Montgomery County \* \* \* within thirty days from the service of this summons and complaint, then and there to demur or plead to the complaint of L. B. Sullivan.\*\*\*

Witness my hand this 19 day of April, 1960.

John R. Matthews, Clerk.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

COMPLAINT--Filed April 19, 1960

Count I

Plaintiff claims of the defendants the sum of Five Hundred Thousand Dollars (\$500,000.00) as damages for that plaintiff avers that defendants falsely and maliciously published in the City of New York, State of New York, and in the City of Montgomery, Alabama. and throughout the State of 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" (a copy of said advertisement being attached hereto and made a part hereof as Exhibit "A"), false and defamatory matter of charges reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama, and imputing improper conduct to him, and subjecting him to public contempt, ridicule and shame, and prejudicing the \*\*\* plaintiff in his office, profession, trade, or business, with an intent to defame the plaintiff \*\*\*\*\*

And plaintiff further avers that more than five days before the bringing of this action plaintiff made a written demand for a full and fair public retraction of the aforesaid false and defamatory matter or charges upon defendants and each of them; and defendants, and each of them, have failed or refused

to publish a full and fair retraction of such charges or matter in as prominent and public a place or manner as the aforesaid charges or matter occupied as aforesaid;

And plaintiff further avers that he has suffered damage, and embarrassment to his character and reputation, personally and as a public official of the City of Montgomery, Alabama; that he has been subjected to public ridicule and shame; that he has been injured and damaged in the lawful pursuit of his office, profession, trade or business, as a proximate result of the aforesaid false and defamatory publication by the defendants; and plaintiff further claims punitive damages; hence this suit.

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Scott, Whitesell & Scott, By: Calvin Whitesell; Steiner,  
Cram and Baker, By: M. R. Nachman, Jr.;  
Attorneys for Plaintiff.

Plaintiff demands trial by jury in this cause.<sup>e</sup>

Steiner, Cram & Baker, By: N. R. Nachman, Jr.,  
Attorneys for Plaintiff.

#### AFFIDAVIT

State of Alabama  
Montgomery County

Before me, Bernice S. Osgoode, a Notary Public in and for said County, in said State, personally appeared M. R. Nachman, Jr., who is known to me, and who, being first duly sworn, deposes and says as follows.

That defendant The New York Times Company, a corporation, is a non-resident of the State of Alabama; that it is not qualified under the Constitution and laws of the State of Alabama as to doing business in the State of Alabama; that it has actually done and is now doing business or performing work or services in the State of Alabama; that this cause of action has arisen out of the doing of such business or as an incident thereof by the said defendant in the State of Alabama, and that by the doing of such business or the performing of such work or services this defendant, in accordance with the Constitution and laws of the State of Alabama, is deemed to have appointed the Secretary of State of Alabama, or her successor or successors in office, to be the true and lawful attorney or agent of this nonresident defendant, upon whom process may be served in this action which has accrued from the performing of such work or services. or as an incident thereof, by this nonresident defendant, acting through its agents, servants, or employees.

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<sup>e</sup> In most civil cases seeking money damages, the federal or state constitutions guarantee either party the right to trial before a jury as long as that party notifies the court in a timely fashion that it wants a jury trial rather than a *bench trial* (trial before a judge). See, e.g., Fed. R. Civ. P. 38; Ala. R. Civ. P. 38. Today, many state-court systems have civil rules that closely track the Federal Rules of Civil Procedure. You should be especially careful, though, to make sure you are following the rules of the specific court system you are in, once there are usually at least some significant differences between state and federal practice. In the early 1960s, state rules of procedure were much more diverse. As you will see shortly Alabama had some very different rules about motions practice.

And affiant further avers that process should be served upon this defendant, to-wit. The New York Times Company, in the manner prescribed by the laws of Alabama, and particularly in the manner prescribed by Title 7; Sec. 199(1), Code of Alabama 1940 as amended.

Affiant further avers that the residence and the last known address of this defendant is as follows: The New York Times Company. Times Building, 229 West 43d Street, New York, New York.

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THE NEW YORK TIMES, TUESDAY MARCH 29, 1960.

[APPENDIX.j

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1<sup>st</sup> Amendment Online

<http://1stam.umn.edu>

*The growing movement of peaceful mass*

*demonstrations by Negroes is something  
new in the South, something understandable....*

*Let Congress heed their rising voices,  
for they will be heard."*

*-New York Times editorial  
Saturday, March 19, 1960*

# Heed Their

# Rising Voices

As the whole world knows by now, thousands of Southern Negro students are engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U. S. Constitution and the Bill of Rights. In their efforts to uphold these guarantees, *they* are being met by an unprecedented wave of terror by those who would deny and negate that document which the whole world looks upon as setting the pattern for modern freedom....

In Orangeburg, South Carolina, when 400 students peacefully sought to buy doughnuts and coffee at lunch counters in the business district, they were forcibly ejected, tear-gassed, soaked to the skin in freezing weather with fire hoses, arrested en masse and herded into an open *barb-wire* stockade to stand for hours in the bitter cold.

In Montgomery, Alabama, after students sang "My Country, 'Tis of Thee" on the State Capitol steps, their leaders were expelled from school, and truck-loads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.

In Tallahassee, Atlanta, Nashville, Savannah, Greensboro, Memphis, Richmond, Charlotte, and a host of other cities in the South, young American teenagers, in face of the entire weight of official state apparatus and police power, have boldly stepped forth as

protagonists of democracy. Their courage and amazing restraint have inspired millions and given a new dignity to the cause of freedom.

Small wonder that the Southern violators of the Constitution fear this new, non-violent brand of freedom fighter... even as they fear the upswelling right-to-vote movement. Small wonder that they are determined to *destroy* the one man who, more than any other, symbolizes the new spirit sweeping the South—the Rev. Dr. Martin Luther King, Jr., world-famous leader of the Montgomery Bus Protest. For it is his doctrine of non-violence which has inspired and guided the students in their widening wave of sit-ins; and it is this same Dr. King who founded and is president of the Southern Christian Leadership Conference—the organization which is spearheading the surging right-us-.,n, movement. Under Dr. King's direction the Leadership Conference conducts Student Workshops and Seminars in the philosophy and technique of non-violent resistance.

Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for "speeding," "loitering" and similar "offenses." And now they have charged him with "perjury"—a *felony* under which they could imprison him *for ten years*. Obviously, their real purpose is to remove him physically as the leader to whom the students and millions

of others look for guidance and support, and *hereby* to intimidate all leaders who may rise in the South. Their strategy is to behead this affirmative movement, and thus to demoralize Negro Americans and weaken their will to struggle. The defense of Martin Luther King, spiritual leader of the student sit-in movement, clearly, therefore, is an integral part of the total struggle for freedom in the South.

Decent-minded Americans cannot help but applaud the creative daring of the students and the quiet heroism of Dr. King. But this is one of those moments in the stormy history of Freedom when men and women of good will must do more than applaud the rising-glory of others. The America whose good name hangs in the balance before a watchful world, the America whose heritage of Liberty these *Southern* Upholders of the Constitution are defending, is *our* America as well as theirs...

We must heed their rising voices—yes—but we must add our own.

We must extend ourselves above and beyond moral support and render the material help so urgently needed by those who are taking the risks, facing jail, and even death in a glorious re-affirmation of our Constitution and its Bill of Rights.

We urge you to join hands with our fellow Americans, in the South by supporting, with your dollars, this Combined Appeal for all three needs—the defense of Martin Luther King—the support of the embattled students—and the struggle for the right-to-vote.

# Your Help Is Urgently Needed ... NOW !!

Std. Adler	Dr. Alan Knight Chalmers	Anthony Franciosa	John Killens	L. Joseph Overton	Maureen Stapleton
Raymond Pace Alexander	Richard Coe	Lorraine Hansbury	Eartha Kitt	Clarence Pickett	Frank Silvera
Harry Van Arsdale	Nat King Cole	Rev. Donald Harrington	Rabbi Edward Klein	Shad Polier	Hope Stevens
Harry Belafonte	Cheryl Crawford	Nat Hentoff	Hope Lange	Sidney Poitier	George Tabori
Julie Belafonte	Dorothy Dandridge	James Hicks	John Lewis	A. Philip Randolph	Rev. Gardner C. Taylor
Dr. Algernon Black	Ossie Davis	Mary Hinkson	Viveca Lindfors	John Raitt	Norman Thomas
Marc Blitzstein	Sammy Davis, Jr.	Van Heflin	Carl Murphy	Elmer Rice	Kenneth Tynan
William Branch	Ruby Dee	Langston Hughes	Don Murray	Jackie Robinson	Charles White
Marlon Brando	Dr. Philip Elliott	Morris Lushewitz	John Murray	Mrs. Eleanor Roosevelt	Shelley Winters
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Diahann Carroll		Mordecai Johnson	Federick O'Neal	Robert Ryan	

*Please mail this coupon TODAY!*

*We in the south who are struggling daily for dignity and freedom warmly endorse this appeal*

Rev. R. D. Abernethy (Montgomery, Al.)	Rev. Matthew D. McCallum (PC. ... short, S. C.)	Rev. Walt L. Ham Joo (Nodalk, Va.) I. S. Levy (Columbia, S. C.)	Rev. A. L. Davis (Hew Orleans, la')	Committee To Defend Martin Luther King and The Struggle For Freedom In The South
Mo.) Y'Br'gb Mo.) Rev. Kelley	Rev. William Holmes Borders (Atlanta, Ga.)	Rat Martin Lothe'King, Sr. -(Atlanta, Ga.) -Rev. Henry C. Bunion (A. Al., Term.) . 3 C ay. 5f)	Mrs. Katie E. Whickham (New Odeam, Pa.)	312 West 125th Street, New York 27, N. Y. '
Miller Smith (Nashville Tenn.)	Rev. Douglas Moore (Durham, N. C.)	(~ laa Rev. Samuel W. Williams (Manor, Ca.)	Rev. W. H. Hall (Hatticebyrg, Mirs.) 1. E.L<wa, (Mabde, Ala.)	141 mrs ty 6-1700 I am enJovng my contribution of \$ _____ for the work of he Committee.
(Chamnooge, Tent.,)	Rev. Wyatt Tee Walker (Peh"burg, V..)		Rev. T. J. Jemison (Baton Rouge, U.)	HTF _____
Rev. C. K. Steel. (TaLLMrseeFla.)				Saar. _____

COMMITTEE TO DEFEND MARTIN LUTHER KING AND THE STRUGGLE FOR FREEDOM IN THE SOUTH  
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Chairmen: A. Philip Randolph, Dr. Gardner C. Taylor; Chairmen of Cultural Division: Harry Belafonte, Sidney Poitier, Treasurer: Nat King Cole;  
Executive Director: Bayard Rustin; Chairmen of Church Division: Father George B. Ford, Rev. Harry Emerson Fosdick, Rev. Thomas Kilgore, Jr., Rabbi  
Edward E. Klein; Chairman of Labor Division: Morris Lushewitz.

*Please make checks payable to:*

Committee To Defend Martin Luther King  
L. \_\_\_\_\_ . 1