UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, PLAINTIFF, v. U.S. GENERAL SERVICES ADMINISTRATION and U.S. NATIONAL ARCHIVES AND RECORDS SERVICES, Defendants.	:	Civil Action No. 2569-70

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE WITH REGARD TO THE PHOTOGRAPHS OF EVIDENCE

There is not now and there has never been any genuine question as to any of the material facts in this case, except to the extent defendants have obfuscated and misrepresented them to this Court.

1. Plaintiff has, over a period of more than four years, attempted to obtain from the National Archives and Records Service, a part of the General Services Administration (hereinafter referred to as National Archives and GSA) photographs of items of official evidence of the President's Commission on the Assassination of President Kennedy (hereinafter referred to as the Commission), identified as Commission Exhibits (CE) 393, 394 and 395, consisting of garments alleged to have been damaged by a bullet, worn by the President at the time he was murdered.

2. Defendants do not deny that these garments are, in fact, part of the official evidence of the said Commission and in their own records and communications refer to them by their official exhibit numbers.

3. The statutory requirement is that the request for public information be for "records" and that these records be "identifiable". There is no question, and none is raised by defendants, but that Plaintiff has adequately identified these public records he seeks. All Plaintiff has requested is photographs, and photographs are, specifically, included in the statutory definition of "records". Aside from Plaintiff's having specifically met the specific statutory requirements, nothing could more fully meet any definition of "records" than official exhibits of an official proceeding.

4. Exemptions are provided in the law for such public information as is not required to be made available to applicants (subsection (e)). What Plaintiff seeks in this instant action is not encompassed by any of these exemptions and defendants have neither here nor ever claimed or alleged the applicability of any of these nine enumerated exemptions.

5. Plaintiff, desiring to avoid needless litigation and any possible unpleasant by-products thereof, has patiently made these efforts, in accord with existing law and regulation, to the point where he had no alternative but to seek relief in court.

6. Aside from verbal requests going back to, at the very latest, the first of November 1966, the first written request dated not later than August 4, 1967 (Complaint Exhibit B), in the nine months prior to

the filing of the complaint Plaintiff made not fewer than 10 such requests in writing alone, plus extensive correspondence with Mr. Burke Marshall, representative of the executors of the estate of the late President, plus a written appeal of June 20, 1970, as prescribed by defendants' applicable regulations under the law. After the filing of the complaint, and in a continuing effort to avoid the need for this litigation, there ensued further correspondence. These facts are not denied by defendants.

7. Defendants made but three written responses prior to the filing of the said appeal, all rejecting Plaintiff's proper requests; and one after filing of the appeal; and one after rejection of the appeal. The appeal was ignored for two months, which violates the requirement of the law that appeals be acted on promptly. The appeal was not forwarded, as required, "to the head of the agency", for "prompt review" to this very day, more than seven months after the filing. Appeal was also made, in an excess of caution, to the Department of Justice, which rejected the appeal. None of these facts are denied by defendants.

8. After the complaint in this instant action was filed, which was two months after the appeal was filed, defendants rejected the appeal under date of September 17, 1970. By ignoring some of Plaintiff's requests, as set forth in the above-listed correspondence and incorporated in the said appeal by reference, and by misrepresentation, defendants pretend to deny they rejected Plaintiff's appeal, but this is a spurious and false allegation because:

A) Defendants had waived any right to invoke the requirement of an appeal by non-compliance with the legal requirement of promptness (the statute will be cited in the addenda);

B) Defendants did not alter their previous written refusals to provide copies of the evidence requested;

C) Defendants did <u>not</u>, in response to the appeal, provide <u>any</u> copies of <u>any</u> of the evidence requested;

D) Defendants <u>did</u>, in fact, <u>deny</u> Plaintiff's requests for those photographs of the evidence not ignored in their rejection of Plaintiff's appeal, saying his requests were "denied only in terms of furnishing you a personal copy." (There is no such thing as a "personal copy" in the Archives of <u>anything</u>.)

9. Controlling law and defendants' own regulations <u>both</u> require furnishing of copies, as will be cited in addenda, and refusal to furnish copies is refusing access, which is not denied by defendants and which is prohibited by law;

10. Even the contract, were it a legal contract, as defendants claim, requires that "access" be granted "to any serious scholar or investigator of matters relating to the death of the late President for purposes relevant to his study thereof."

11. By return mail, under date of September 19, 1970, Plaintiff told defendants that their denial, as they knew, was a denial and had not been written until long after the filing of the complaint, but that,

upon the providing of the requested copies of the evidence, Plaintiff himself would move to dismiss. These facts are not denied by defendants.

12. While still refusing Plaintiff's requests, after Plaintiff's first request and prior to the filing of Plaintiff's appeal, defendants had not only provided a commercial interest exactly what Plaintiff seeks but had extended additional courtesies to the said commercial interest. The law and regulations do not permit such discrimination. Defendants not only do not deny this; they admit it, in writing to Plaintiff (as will be detailed in addenda).

13. Although it is not required of Plaintiff, he obtained from the representative of the executors of the estate of the late President and signatory to the letter agreement dated October 29, 1966, with GSA (hereinafter referred to as the contract), written consent to the granting of Plaintiff's request (Complaint Exhibit C). This is not denied by defendants.

14. In the approximately half a year since the filing of the complaint, defendants have neither offered to provide copies of the withheld pictures nor to take those pictures of the evidence requested by Plaintiff (Complaint, Paragraphs 9, 14) and, in fact, as recently as in the papers filed in this Court on January 13, 1971, persisted in refusing to do either. These facts are not denied or in any way contested by defendants.

15. Relief can be granted by the simple expedient of granting both parts of Plaintiff's proper requests, by making copies of the existing still photographs Plaintiff seeks and by taking for him those photographs of the evidence as do not now exist, both being required by existing law and regulation and by practice.

16. This law and regulation applies to defendants as well as to all other agencies of the Government.

17. The Department of Justice, in accordance with this law and regulation and without dispute or delay, provided plaintiff, upon his request under 5 U.S.C. 552, with copies of those similar pictures in its files.

18. But over and above all other applicable law and regulation, defendants promulgated their own "Regulations for Reference Service on Warren Commission Materials," under which it provides that "still pictures will be furnished ... Copies will be furnished on request for the usual fees", and that with regard to "three-dimensional objects, ... photographs of these materials will be furnished to researchers .... In the event that existing photographs do not meet the needs of the researcher, additional photographic views will be made. ... Photographs reproduced from the existing negatives or prints will be furnished on request for the usual fees." (Exhibit 1)

19. Defendants' own special regulations for the specific items of evidence Plaintiff seeks require it to do precisely what Plaintiff asks, namely, provide copies of the existing photographs and take such additional photographs as he needs for his research, at Plaintiff's cost.

Plaintiff submits this statement of materials facts as to which there is no genuine issue pursuant to this Court's local rule 9(h). The law, regulations and GSA-family contract are quoted at length in Plaintiff's Memorandum of Points and Authorities and other addenda. Defendants have copies of everything cited. Copies, marked to save the Court's time, are attached to the original, for the convenience of the Court. They will be supplied to defendants, on request, should defendants desire additional copies.