UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

ADDITION TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS; PLAINTIFF'S RENEWAL OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE, and MEMORANDUM OF POINTS AND AUTHORITIES ATTACHED THERETO.

Plaintiff apologizes to the Court for his inability to incorporate this at the appropriate places, that that was made impossible by counsel for defendants. Despite the contrary certification to this Court that the exhibits had been served upon Plaintiff on January 13, they were not. Moreover, they were not supplied in response to Plaintiff's first request for them. They had not even been copied for Plaintiff by the time of the second request. Plaintiff first saw them at 11:23 a.m. February 8, 1971, at a time when the foregoing had already been typed. Plaintiff's resources and facilities are severely limited. Because he cannot anticipate being able to complete the responses he deems necessary within the time allowed, he has no alternative to the form he here uses. Unfortunately, this also imposes a burden upon the Court in that it makes necessary a certain amount of repetition and redundancy. Plaintiff hopes the Court will understand that this is neither Plaintiff's desire nor of his choosing.

The facts as to the non-service and non-receipt of the attachments and to the time of their receipt are contained in the attached affidavit and the letter to the Assistant United States Attorney, both dated February 8, 1971. (EXS 10+11)

Even at this late date, a remarkably late date for an affidavit executed more than four months earlier, two of the three exhibits were not fully complete in the copies provided Plaintiff and with respect to at least one the annotations thus eliminated are germane.

This late receipt of the attachments, with other of Plaintiff's papers not yet completed, makes impossible the organization and correlation that would be preferred by Plaintiff for the logical presentation of his case and to economize on space and the time of the Court.

Plaintiff believes, has alleged, and believes he has proven that there is, in fact, no genuine issue as to any material fact. Proper understanding of these attachments fortifies this statement, which may, in part, explain defendants' failure to supply them as certified to the Court and in response to Plaintiff's request thereafter.

Plaintiff has alleged deliberate obfuscation, misrepresentation, deception and falsehood. The attachments establish these charges with one difference: some of the falsehood is under oath and is, in

Plaintiff's opinion, at the very crux of the matters pretended to be in issue by defendants. They also make unavoidable the belief that defendants have knowingly and purposefully larded their various papers with the irrelevant, to the end that Plaintiff's responses thereto would have to be at length, thus interfering with Plaintiff's ability to devote his attention exclusively to the relevant, and requiring that he address the irrelevant so that a false record might not be established, now and for history, and so that the Court might evaluate what is and is not relevant.

Because of the serious nature of Plaintiff's charges, he commences with those that affiant, the Archivist, has to have known were false when he swore to them. These selections are from the paragraphs numbered 8 and 9, page 5 of Exhibit 3:

> 8. In regard to the request of the Plaintiff to be allowed to take his own photographs of the clothing of the late President, this procedure would make it impossible for the National Archives to be sure of preventing violation of the terms of the letter agreement ...;
>
> 9. Plaintiff has never specifically requested permission to examine the above-mentioned articles of clothing, nor has he specifically requested permission to photograph the above-mentioned articles of clothing. Consequently, the National Archives and Records Service has never denied such requests. (All emphasis added.)

The second part of the first quotation is false because, as previously set forth, the National Archives, meaning the affiant also,' did permit the Columbia Broadcasting System to do just that.

Before going into the citations of the written record establishing the complete and knowing falsehood in these material misrepresentations, Plaintiff asks the Court to notatthe complete contradiction in these two paragraphs. The first begins, "In regard to the request of plaintiff to be allowed to take his own photographs of the clothing of the l te President" and the second avowing that "plaintiff has never specifically requested permission to photograph the above-mentioned articles of clothing."

Both are under oath. If one is true, the other is false. There is still further misrepresentation to this Court. The "above-mentioned articles of clothing are listed in Paragraph 2 (p.1) as "consisting of a coat, shirt, necktie, shoes, socks, trousers, belt, handkerchief, comb, back brace and shorts, which are referred to in the complaint filed in the above-entitled motion."

Beyond any question, these are not what Plaintiff sought or seeks. Plaintiff's requests are and have been limited to those items in evidence before the Warren Commission as CEs 393, 394, 395, and Plaintiff has never expressed any interest of any kind in any of the clothing other than the shirt, tie and jacket. Plaintiff suggests that this deception upon the Court is not accidental but is deliberately designed to include all these unsought things, notably the undergarment and the brace (how did they happen to forget that Ace bandage in this manufacture?), to make to appear falsely to this Court that Plaintiff's interests are other than scholarly. the insidious suggestions of

paragraphs 7 and 8, particularly this language: "... for the purpose of satisfying personal curiosity rather than for research purposes."

In the context of the lengthy correspondence which could not be more explicit, Plaintiff feels impelled to protest this additionally as a libel and so designed and phrased.

The use of the word "specifically" is an unbecoming weaseling. Plaintiff either did or did not make such requests. While there is no genuine issue, defendants pretend there is. Plaintiff did make such requests and to affiant's personal knowledge did.

Verbal requests, of course, cannot be cited from files. But the reflection of them can be, and where this is done, the Court is asked to note that they are not only undenied but are confirmed in the correspondence here quoted and also incorporated by reference in Plaintiff's rejected appeal. Affiant had and has all this correspondence.

Plaintiff is aware of the burden lengthy papers place upon the Court and the jeopardy to Plaintiff involved therein. He therefore asks this Court to understand that the following quotations are not presented in full context but are selected solely on the basis of their relevance to the false representation of them under oath (all emphasis added):

(Exhibit 12)

Plaintiff's letter of December 1, 1969, to affiant:

> It has now been some time since I asked Mr. Johnson about access to President Kennedy's shirt and tie. When he said he presumed it could not be seen I asked about having pictures taken for me. There has been no word since.

Mr. Johnson is Marion Johnson, the Archives employee in immediate charge of the Warren Commission archive.

Plaintiff described with care several of the pictures he desired:

> ...closeup picture of the button-hole area of the collar ... to clearly show the slits. ... closeup picture of the knot area of the tie, from the front, and showing the cut, and a picture directly from the side of the cut, showing the nick ...

Plaintiff also requested duplicate negatives, defendants to keep the original negatives, and specified, rather than the deliberately false claim that Plaintiff asked to be his own photographer (which also implies handing the garments), which of defendants' cameras he wanted defendants to use ("I would like the Speed-Graphic camera used") and the size of the prints of these closeup views ("8x10 prints").

In and of itself this letter proves the deliberate falsity of all of defendants' relevant misrepresentations and false swearings under oath and establishes that there is no genuine issue as to any material facts. But it is not alone, far from it. And it and the other letters leave no doubt that Plaintiff requested that defendants take the photographs and on their own equipment, even keeping the negatives and supplying Plaintiff, at his cost, with duplicate negatives.

(Exhibit 13)

Affiant, personally, responded under date of January 22, 1970: "We do not prepare special photographs of President Kennedy's clothing for researchers." (p.3 first line.) This is full acknowledgment of the request the affiant swore was not made, answers whether or not the request was "specifically" made, and is a complete retraction. It

(The Court is also asked to note the opening of this letter, which is relevant to defendants' spurious claim that Plaintiff has not availed himself of the "available" administrative remedies. It acknowledges, "You have requested that we treat all your letters and requests as your appeal under the Freedom of Information Act (5 U.S.C. 552)." Certainly the then current request was included, but it did not happen.)

Plaintiff replied on January 27, 1970, directly to affiant, beginning with the request that he, Dr. Rhoads, personally examine the prints of the official and published copies of two pictures

> because these pictures are utterly without meaning. They do not disclose, to careful examination, what is testified to. My purpose is simply to be able to do this. I regard this purpose as quite proper. ... I also suggest you might want to consider what you are really saying in this sentence, "We do not prepare special photographs of President Kennedy's clothing for researchers." If the originals are without meaning and you will not make those that can have meaning, are you not seeing to it that no one can have any meaningful access to this most basic evidence? ... On CE 394, my sole interest is in the slits that are the subject of testimony ... It is of these that I would like 8x10 enlargements, as large as can be made with clarity. ... With CE 395, the same. ... /W/ith regard to the tie/ if there are any other views already recorded in photographs, I would like to be able to examine them. ... It should be obvious that any proper assessment of this evidence ... requires consultation with at least one other view, that from the side. I spell this out for you because I am anxious to avoid any unfair inference that the government is hiding anything, of which there are already too many such inferences. (Exhibit 14)

This reduces to fiction the word sworn to deceive the Court, about any question of Plaintiff's intentions, and makes ridiculous the affiant's gratuitous and irrelevant argument about what is sufficient for Plaintiff's study, which is none of affiant's business in fact, regulation, law or under the contract. Reference here was to the published pictures of these two exhibits which appeared to be of no worth as evidence and great value as gore, in both respects contrary to the specific provisions of that contract. (Exhibit 15)

Affiant, personally, responded under date of March 12, 1970, saying two things:

> We are preparing the enlargements of Commission Exhibits 394 and 395 ...

meaning of the published pictures of these exhibits, and

> We have two photographs of CE 394 that we prepared that we can show you. We do not furnish copies of these two photographs.

The refusal, again, is absolute, the request is specific, and the Court is asked to note that of the three objects in evidence of which photographs are and were sought by Plaintiff, defendants refer to pictures of one only and again refuse copies of this.

With respect to the false swearing in paragraph 9 of Dr. Rhoads' affidavit, what follows is from Plaintiff's letter of March 14, 1970, written prior to receipt of Dr. Rhoads' letter dated March 12. The Court is asked to note that this is Plaintiff's second written and

undenied reference to his verbal requests (there are others), the first quoted above from Plaintiff's December 1, 1969, letter to Dr. Rhoads:

> It has been months since I asked for access to some of the of the late President's garments. Ultimately, I was refused. I then asked that pictures be taken for me, by you, and again you refused ... your own confirmation of the total absence of the essential one with regard to the tie, a side view. ... Your silence on this after so long a lapse of time ... I again ask that you do this, which is entirely in accord with your own practice ... The only uses to which the pictures you have can be used precludes scholarship, for they are meaningless, and constitute an unseemly and unnecessary display of the late President's blood. That is not what I want. However, you insisted I use this, pretending it is other than it is. You have yet to dispute my statement to you that the pictures you supplied are utterly without meaning. ("Only" and "precludes" emphasized in original.) (Exhibit 16)

The Court is asked to note that, with repetition of this challenge and with repetition of it to the representative of the family, there was never any denial that these photographs were meaningless and useless for study. This was never, ever, denied by anyone, and nonetheless, in his affidavit, Dr. Rhoads gratuitously informs this Court that, in his opinion, which is contrary to 100 percent of the written record (paragraph 8), "The plaintiff already has photographs in his possession which should be adequate for any research purposes he may have in mind."

Falsehood here again is sworn to in an effort to deceive the Court and defraud Plaintiff. It is entirely disproved by the foregoing correspondence and what will be quoted. Neither law nor regulation nor contract vest Dr. Rhoads or anyone else with the right to decide for any researcher what he needs or for what research. This is couched in deliberately prejudicial words, calculated to suggest that Plaintiff's purpose is not research and is illicit: "any research purposes he may have in mind." This is a totalitarian, not an American, concept. It is not for Dr. Rhoads to dictate what research anyone may or may not do, what anyone may or may not study. His function is to facilitate all research, not suppress it.

It should be abundantly clear that Dr. Rhoads' sworn statement is false and that Plaintiff was put to the waste of considerable time and cost trying to explain both his purposes and the failure of any available pictures to meet those purposes specified alone.

With regard to "the two photographs of GE 394 [that is, of the garment itself] that you have prepared but do not furnish copies of," Plaintiff wrote Dr. Rhoads on March 16, "would you mind telling me why you do not furnish copies?"

On March 19, Plaintiff informed Dr. Rhoads, personally, of the arrival of the enlargements, describing them as (Exhibit 17)

> ... unfortunately, (are) a complete waste for they disclose nothing but gore and, as I tried to tell you, gore is something in which I have no interest at all. I have examined these enlargements with an engraver's lens. It is not possible to identify the slits, for example, in the collar ... My interest, as I believe I explained with some care and detail

> in correspondence and in person, is to be able to examine this evidence in connection with the verbal evidence.

An idea of what the Archivist considers "enlargement" follows:

> I have measured the enlargements and the original prints. With the shirt, where the collar is 1 ¾" wide in the original print, it is but 3" wide in the enlargement ...

This represents considerably less than the automatic drugstore enlargement of the most amateurish snapshots by the rankest amateurs with the cheapest camera. Even a simple two-time enlargement is twice this "enlarged" size.

> ... the fact that I can magnify this greatly with a lens supports the belief that what I asked of you is possible and presents no unusual problems. If you cannot supply me with a picture that even shows the damage to the shirt, I fail to see how you can refuse to take such a picture for me. And there remains the same question about the damage to the knot of the tie, we have only one view of it and there should be at least two, preferably three, one from the front, one from the side (which is what I asked), and one from the back.

Thus, this still not being all that is relevant, no basis exists for Dr. Rhoads' sworn opinion of the "adequacy" of what is available for Plaintiff's study.

The Court is asked to keep in mind Plaintiff's constant reiteration of specific requests of a nature that clearly precludes any sensational or undignified use; that these, where relevant, are explained, with the need and purposes explained; the constant rejections of these requests, represented under oath as never having been made; and that in a suit for access to what is specifically asked and absolutely denied.

That there can be no doubt and that the false swearing cannot be accidental is again apparent in Dr. Rhoads' letter of April 16, relating to those photographs already existing in his files: (Exhibit 18)

> We prepared the photographs of the shirt and the coat to show researchers instead of the clothing. We do not furnish copies or enlargements of these photographs for the same reason we do not take special photographs of the clothing for researchers - to avoid any possible violation of the agreement with the Kennedy family.

As previously pointed out, this is quite contrary to the actual provisions of the contract, which is appended to this affidavit. That stipulates:

> Access ... shall be permitted only to ... Any serious scholar or investigator of matters relating to the death of the late President Kennedy for purposes relevent to his study thereof. (p.7)

It does not say "for purposes the Archivist decides are relevant to his study thereof."

Quite opposite the representation in this letter and in the affidavit of which it is part (p.9), the contract fubther provides that

> ... the Administrator is authorized to photograph or otherwise reproduce any such materials for purposes of examination in lieu of the originals by persons authorized to have access pursuant to paragraph I(2) or paragraph II(2).

(As we have already seen, "access" requires providing copies.)

The current effort to make it appear that the family is reasson-

sible for the suppression is not new, as this letter shows. In any form, it is utterly false and an unspeakable defamation, especially under the circumstances.

The only possible "violation of the agreement with the Kennedy family" lies in refusing to take these pictures, which is what Plaintiff repeatedly asked, despite the contrary false swearing. Complaint Exhibit G shows that the family interposed no objection and again gave the Archivist fully authority.

As was not uncommon, there was no response to Plaintiff's March 19 letter, as there usually was no response to the points raised in the earlier ones. Wherefore, on June 20, Plaintiff filed his formal appeal, to which he will return in comment on defendants' Exhibits 1 and 2, just received.

Two months later, nudged a bit by the filing of the appeal, the Acting Archivist replied instead of the Archivist. At least he said he "replied", to letters then more than five months without answer! This surely is a new interpretation of the requirement of the act, "promptness"! It finally informed Plaintiff that, for use of the provisions of 5 U.S.C. 552, "We have no form for this purpose. Any request which clearly identifies the document desired is sufficient." This should lay to rest any question of Plaintiff's compliance with the "identifiable records" wording of the law. (Exhibits 19 & 194)

In belated response to Plaintiff's complaint about the utter meaninglessness of the copies of the published pictures provided, their lack of even bad amateur quality, is adequately reflected in this language:

> If 5x7 prints showing enlargements from negatives we prepared from prints of Commission Exhibits 394 and 395 will be satisfactory, we can furnish those to you. Our photographer feels that 8x10 prints would not be satisfactory.

If the Court knows anything about photography, it will understand that an "8x10" enlargement of a 4"x5" Speed-Graphic size negative is almost the smallest size that can be described as an "enlargement" and a 5"x7" "enlargement" is virtually none at all. The Court is also asked to note the built-in guarantee of a still less clear photograph being offered when it is not being offered from an original negative but from "negatives we prepared from prints of" the existing and useless photographs.

And after all these many months of silence about these pictures of the damage to the tie that did not even exist,

> We will also prepare photographs of the damaged area of the knot of the necktie in CE 395 which we will show you in the National Archives Building <u>without furnishing prints to you</u>.

Thus, two months after filing of the appeal, still a refusal, still a proof that the affidavit swears falsely, and at that of but a <u>single one</u> of the <u>three views</u> necessary to any serious study. Coming so late, so long <u>after</u> Plaintiff filed his appeal and <u>nine months after</u> Plaintiff's first recorded request, this was a self-serving pretense

of, but not compliance with, law and regulation.

Exhibit 895 is unrelated to the tie in any way. If this is a typographical error, all that is offered is photographs of the printed and meaningless photograph of CE 395. It does not even promise to take a single picture of the tie itself and is thus at best a deception. And of that still refuses copies!

The conclusion of this letter, with great magnanimity, bestows upon an American the right to write "for purposes of comment or argument ... but we cannot undertake to answer ..." Thus, defendants' arbitrary rulings, their violations of their own regulations and law, are not subject to reason or appeal. So that the full meaning of this arbitrariness will not be lost upon the Court, the language quoted about "Exhibit 895" seems to say that the defendants will "prepare photographs ... without furnishing prints to you." If this is other than a designed deception, self-servingly concocted two months after Plaintiff filed his formal appeal, how can the Court regard the above-quoted language that is repeated, as in the Archivist's letter of April 16, 1970, "we do not take special photographs of the clothing for researchers"?

If one statement is true, must not the opposite be a lie? (This correspondence also documents other of defendants' false statements, some smeared to for months after Plaintiff produced proof of their falsity, as, for example, in his August 26 response.)

Still trying to lay a basis for practicing deception on this Court, and what is a rarity in defendants correspondence with Plaintiff, the Archivist avoiding signing the letter, defendants wrote again on September 11, 16 days after the complaint was filed. Referring to the utterly worthless and meaningless copies of the printed photographs, again: (Exhibit 20)

> If the enlargement of the back of the shirt is satisfactory, we will prepare similar enlargements of the front of the shirt and of the necktie (CE 395) if you want these.

This offer of nothing is, again, self-serving and a further attempt to fool the Court.

Its remoteness from anything that could result in a clear picture (and in a collection of unclear ones, this is by far the worst - this was so poor even the stripes on the President's shirt could not be distinguished - and, as Plaintiff had already pointed out, the damage was indistinguishable) is explained:

> The print was made from a negative we prepared from a print in the exhibit files of the Warren Commission.

Plaintiff's return-mail reply of September 15 suggesting the self-serving character of the letter and of the print said, without any denial then or since: (Exhibit 21)

> The print you sent me is valueless on several counts. Despite your contrary pretenses, you persist in making available for use only pictures that can be used for nothing but undignified and sensational purposes, pictures that show nothing but gore. This, I repeat, is not my interest. It is also perhaps the most indistinct print I have ever seen ... My exclusive interest is in evidence. This picture is totally valueless as evidence, for

> it makes impossible even the certainty of the outlines of the hole. Were I to try and trace this hole, even that would be impossible. Why you have clear pictures you cannot deny me without violation of the law, and especially after I have gone to court, with all that considerable trouble and expense, I regard this as a particularly shabby and unbecoming trick ... (emphasis in original).

After rejection of Plaintiff's appeal and Plaintiff's response of September 19, 1970, Dr. Rhoads wrote Plaintiff again on October 9, which was 11 days after he executed this affidavit. In that also self-serving letter which has the transparent purpose of preparing a deception of the Court, all defendants offered to do by way of making a picture is two things: (Exhibit 22)

Try and take business away from my local photo store by offering to make enlargements of those pictures I had obtained from the Department of Justice; and this maximum reduction to the absurd:

> If you are interested in obtaining a further enlargement of the bullet hole in the particular photograph of President Kennedy's shirt which is published as Commission Exhibit 399, we will attempt to make this enlargement.

An enlargement of nothing is more nothingness. This is a spurious offer, made without serious intent and capable of no use except as an imposition upon the Court in a suit then long since filed. The unchallenged record, repeated and repeated and repeated, is that this "published" photograph is totally meaningless and valueless as evidence, which perhaps explains defendants' insistence upon offering copies of it and nothing else.

If this gives the Court the idea that what Dr. Rhoads regards as "research" is repetition of what the FBI ordains, of what are proper materials for independent and serious study, it does not mislead the Court. Defendants have persisted in refusing to provide Plaintiff with so much as a single photograph that shows the alleged damage to any garment that is the most basic evidence of the crime - with so much as a single picture that can be used for serious scholarship - or with any picture that can be used for any but undignified or sensational, quite improper and unscholarly, purposes. There is not at any point from any person even the slightest pro forma denial of Plaintiff's constantly repeated protests at being fed the gore and the persistent refusal to provide anything else.

This should also provide the Court with an evaluation of the purposes and seriousness of the gratuitous irrelevancy in this affidavit, about the "adequacy" of what was provided Plaintiff for "study", how "adequate" it is, and then that contemptible insult also designed to mislead the Court, "for any research purposes he /Plaintiff/ may have in mind."

The seriousness with which the defendants take the contractual provision, to prevent "undignified or sensational use", is now clear, with the providing of only that, from even defendants' own tacit acknowledgment, which can be used for no other purposes.

Plaintiff submits that both the falseness of this swearing and the intent to swear falsely are beyond question. Almost without exception, the written record cited is between Plaintiff and the men who swore falsely. His own and his counsel's use of it make it as material as anything can possibly be.

Plaintiff further submits that this record and this affidavit, false as it is, also leave no doubt that there is, in fact, no genuine issue as to any material fact, which entitles Plaintiff to judgment in his favor as a matter of law, on this record alone.

There is more misrepresentation and deception in this affidavit to which Plaintiff returns, but directly related to this cited record from the affidavit are the two earlier-numbered Exhibits, 1 and 2.

The Court is reminded that the copies so late in being provided Plaintiff are not complete copies, the first page alone having parts of three sides removed and with them notations that were added. The remaining notations, though the copying of copies or of copies of copies, are unclear. However, the misleading character of the reference to "Items" as though by Plaintiff here becomes clear. It was not by Plaintiff and is not faithful.

Plaintiff's appeal (Exhibit 1) began with reference to his earlier requests above-cited. The marginal note is incomprehensible in Plaintiff's copy, but it is sufficient to record that this reference and incorporation by reference did not go unnoted. The third paragraph, after which defendants added a check mark, so it, too, was not unnoted, begins (emphasis added):

> Herewith I appeal a subsequent decision to refuse me photographic copies of photographs in these files.

The part of the left marginal note that remains on the clipped copy given to Plaintiff seems to say, "what does he want?" So, on this basis, too, it was not unnoted. Underneath this note and another that is incomprehensible is the mechanism for misrepresentation, an arrow drawn to the fifth paragraph. In the right-hand margin of the fifth paragraph is the encircled number "1". That paragraph refers to but one of the copies or photographs, both plural in Plaintiff's appeal. Where this fifth paragraph of Plaintiff's appeal offered defendants alternatives, "I ask you for it or for an enlargement of the area showing the damage to the shirt," these words were underlined ("It" twice) and magically became the non-existent "Item 1" previously referred to. But the truth hidden from and misrepresented to the Court is that the first of the specified listings is in the plural, for "copies of photographs in the file."

Plaintiff submits that the cited correspondence alone is detailed and specific and that it is not subject to innocent misrepresentation. The effect and Plaintiff believes the intent was to defraud Plaintiff, to perpetuate the suppression, and to mislead and misinform this Court.

If any of defendants' agents or representatives has any serious

doubts marginally expressed as "what does he want?", not letter was written, no phone call made, asking Plaintiff. If the person making this notation had been supplied with Plaintiff's relevant written and specific requests (no question of whether Plaintiff's requests meet the "identifiable" requirement of the law has even been made or can be made), there would have been no doubt. What seems like a not unreasonable interpretation is that some lower-echelon employee may have withheld Plaintiff's written requests, even though basis and incorporated by reference, from defendants' appeals-level agent. This is not to suggest that withholding such basic information need be innocent or accidental. It could be expected to have and did have the effect of continuing suppression by leading to wrongful denial of Plaintiff's appeal. It also seems not unreasonable to believe that this and any other higher-echelon questions received verbal answers from the lower echelon.

Plaintiff's appeal, in the sixth paragraph, precisely accurately, as the foregoing direct quotation of relevant correspondence shows, says,

> There is no existing photograph of the left side of the knot of the tie. I have asked that it be made for me and have been refused.

Aside from the reading the Court may get from the total absence of <u>any</u> photograph of the <u>only</u> side of the tieknot alleged to be damaged as a reflection of the calibre of the investigative and photographic work done for the Commission by the Department of Justice, which rendered these services for the Commission and provided the official interpretations thereof, under this paragraph is written, "has he been denied this?" Above the word "refused", and refusal could not have been more concise and direct, is written the word "no". This became non-existent "Item 2".

What became "Item 3", the first full paragraph on page two reads:

> I also want a photograph from the original negative, not a photoengraving negative, of the back of the shirt, preferably the largest clear enlargement of the areas of damage and including the top of the collar, from the Archives pictures rather than those included in FBI Exhibit 60 or CE 394.

This request has been quoted above, together with the Archivist's firm rejection, saying that he will not do it under any circumstances. Therefore, someone has written in the margin, "new request", and the rejection of the appeal is made to say this and the adjacent requests "have never been denied you by the Archives." The basis given is <u>not</u> the above-cited correspondence, which is beyond refutation. Defendants were firm and repetitious in rejecting Plaintiff's proper requests out of hand. It is "consultation with the Archives staff." Who this or these people are is not indicated, but it may safely beassumed by the Court that reference is not to the custodial staff. The staff dealing with this archive has these cited letters. The question of intent of these unidentified people in so grossly misinforming somebody ought

to be raised. ~~There is~~ no question but that these requests were made and were rejected, by the Archivist, personally.

There should be no need to carry this further. It again eliminates any genuine question. Who lied to whom may be immaterial, but someone did. And on the basis of documented lying Plaintiff's proper appeal was rejected. This, too, in and of itself, in Plaintiff's belief, proves that there is no genuine issue as to any material fact and on this basis alone also Plaintiff is entitled to judgment in his favor.

However, this lying, while not under oath, is of a different character than that of which in the past Plaintiff has been the recipient and victim. This lying was written after the complaint in this instant action had been filed. Defendants' rejection of Plaintiff's appeal, the Court may remember, was not even written for three months. Moreover, with the above-cited written record explicit and definitive as it is, this falsehood was presented to this Court as the truth. Any proper examination of Plaintiff's written requests alone could not but disclose the falsehood of these statements, to defendants, their counsel, and now to the Court.

Unless appeal, too, has been converted into a mockery, how can it be acted upon except by consultation with the existing, written record, particularly when the appeal begins with citation of that record? And law and regulations require request prior to appeal?

The copy of the rejection of this appeal just given Plaintiff as an authentic copy of that given the Court has the bottom cut off. Therefore, Plaintiff cannot know all of those to whom it was referred. One item may address the frivolity of saying that, because defendants' automatic internal forwarding of the rejection of the appeal was not acted upon for some five months, Plaintiff had not exhausted his "available" administrative remedies. Aside from the foolishness of arguing simultaneously that Plaintiff's rejected appeal had not been rejected and he had not exhausted his remedies because defendants violated law and regulation, one of the visible abbreviations seems to indicate that the rejection was, in fact, forwarded to the proper and required office - which to this day has done nothing - and that was September 17, 1970.

The preferred, if not the proper, form for telling this Court that these alleged administrative remedies had not been exhausted is under oath. And a lengthy affidavit /Exhibit 37 was executed, one of some 13 pages. Neither in it nor in any other sworn-to form is there any such false representation, for Plaintiff did, in fact, attempt to use all available administrative remedies. His unsuccessful efforts to obtain this public information are years long. They were patient, extending even to the Department of Justice and the representative of the family. But presenting an added false representation to this Court under oath risked the second possibility of an accusation of perjury. Plaintiff presumes there is a limit to the possible perjury of which

defendants are capable, in even so noble and uplifting a cause that is so spiritually rewarding, so truly dedicated a public service, as suppressing the basic evidence of the assassination of a President.

With what is not in this affidavit that should be, what else, then, is there in it?

For the most part, a concatination of the irrelevant, the prejudicial and the redundant.

One page more than half of the entire length of the affidavit, the aforesaid contract, was already before this Court as Plaintiff's Exhibit A in the original form and as Exhibit F in the form in which defendants "leaked" it to deny Plaintiff his rights from first-request and of first-use to it. Did this Court require a third copy, made from the same remote-generation copy as Plaintiff's Exhibit A copy?

Hardly.

The reason was to lend unwarranted air of authoritativeness to the affidavit, to suggest the opposite of truth to the Court, namely, that it was therein quoted and interpreted accurately.

This time and cost might better have been spent in providing the Court a photograph of the last attachment rather than the electrostatic copy of one distorted and inaccurate set of the pictures involved, those predigested for the Commission in the form if FBI Exhibit 60. The Court is asked to note that this was presented to it as accurate and understated many months after Plaintiff notified the Government of the fact of error and distortion in it. (Plaintiff's silence on this score is hardly an evidence of a predisposition toward the unsignified and sensational, and here we have another reflection of what the Archivist describes as "adequate" for "research.")

Unless the electrostatic copy provided the Court is entirely unlike that belatedly given Plaintiff, Plaintiff asks this Court to examine that copy and ask itself if the Court can learn anything from it aside from the identification of the FBI and the added, printed claims that, invisibly, there is a "Nick Exposing White Lining of Tie" and that, equally invisibly, there are allegedly holes made by entering and exiting bullets?

So little concerned were defendants with what the Court would learn & or so anxious that the Court not learn - that not only did defendants not provide the court with a photographic copy, they even Xeroxed a printed copy of a copy made for an entirely different proceeding, established by the internal evidence. This is a remote-generation copy of what was prepared for the Warren Commission, as the marks of the spiral binding on the left, the shadows and other such things show.

What was provided this Court is not a copy of FBI Exhibit 60. Nor is it either of the affidavit's descriptions (paragraph 5), that Plaintiff has "a photographic print of FBI Exhibit 60 in Commission Documents 107" or that this is an electrostatic copy of "a photographic print of FBI Exhibit 60 in Commission Document 107."

What is termed Commission Document 107 is the Supplementary Report

to the Commission by the FBI, expanding on its original report, Commission Document 1. Commission Document 107 is printed. It is not merely a a file of collected evidence. The printing of pictures requires introduction of lithographic screen. What Plaintiff has is both the composite picture that is part of CD 107, in the form of a photograph, not a photograph of that page, plus photographs of the individual components of that composite picture. What the Court was given is an electrostatic copy of unknown generation of the printed page, including a reproduction of this composite picture.

This is neither a new economy wave nor an accident. It is an added effort to deceive the Court and constitutes a misrepresentation, aside from a non-representation by virtue of meaninglessness. Had a clear photograph been provided this Court, it or anyone at some future' date would be able to detect that the upper left-hand inset, represented as a true enlargement of the hole in the back of the shirt, in fact, is not. It amounts to manufactured evidence, manufactured to lend credibility to the official accounting of the crime. If this is accidental, as is not impossible, then the Court and the country have a reflection of the dependability of the FBI's work for the Commission and representations of its credibility. The enlargement is exactly reversed. Defendants selected this form of this montage rather than copies of the published pictures they pushed on Plaintiff - omitted them entirely - for whatever reason - because the FBI's representation of the tie is utterly false and carefully contrived. It here is calculated to make Plaintiff's quest seem frivolous to this Court. FBI Exhibit 60 makes it appear that there is damage to the center of the front of the tie, which has to be true for the official story to be true. But this, in fact, is not true. There is no damage to the front of the tie. The only damage is a tiny slit described as a nick on the extreme left-hand edge. This is manufactured evidence, for which no innocent explanation is possible.

But with this sample of what defendants conceive as information and what is the due of the federal courts as "evidence", perhaps this Court can better evaluate the irrelevant and immaterial (and incompetent) oath of that eminent scholar, the Archivist of the United States, as to what is "adequate for any research purpose he /the plaintiff/ may have in MMMMx mind."

It ought to be obvious that defendants' and Plaintiff's concepts of what are research materials and true scholarship do not coincide.

With all the existing, clear, photographs of this picture, with the originals from which the first negative was made and with that first negative itself in the possession of counsel for defendants, that defendants would give a court so unclear and meaningless a copy illustrates Plaintiff's problem and defendants' duplicity. Defendants have provided a prime sample of Plaintiff's need, for any genuine research, of other pictures as well as of the principles of scholarship and law embodied in their "Argument" (p.5) that the law and regulations permit

them to regurgitate such photographic garbage: "Defendants submit there is no responsibility upon them to produce documents subject to individual determinations as to 'meaningfulness'. The Act requires production of 'identifiable records' not 'meaningful records'."

As previously shown, this legal argument is invalid and was dared only because defendants withheld the relevant law and regulation from this Court. Defendants are that desperate.

But in their desperation, at this point, as Plaintiff confesses having missed in the deluge of falsification and irrelevancies that with which he was ~~inundated~~ with inadequate time for analysis and response, what defendants here admit is that:

> The Act requires production of "identifiable" records ...

This is to concede all. This is to acknowledge all over again that there is no genuine issue as to any material fact and that Plaintiff is entitled to judgment in his favor as a matter of law.

It is to concede, further, the intent to impose upon this Court, to harass and defraud Plaintiff - to suppress, by whatever means and at whatever cost.

While Plaintiff sincerely believes that there neither is nor ever was any genuine issue as to any material fact and that the immediately foregoing is a complete admission of this by defendants, Plaintiff is lost in a strange discipline, unfamiliar with its customs and practices (which by now appear to him to be more like folkways and mores from defendants' example). While certain that lengthy documents are not welcome to busy judges, Plaintiff is also certain he cannot, from knowledge or experience, anticipate what will or will not influence a judge's thinking or understanding, what they may or may not require. In addition, as set forth elsewhere, defendants have converted this from a simple civil action under the law into a political cause and an historical record. Therefore, Plaintiff feels it incumbent upon him to make at least a cursory record of what there yet is in this affidavit.

For the most part, it is irrelevant and immaterial. But it is also deceptive, misrepresentative and confronts history with the identical dishonesties that it presents to Plaintiff and this Court.

While there is no question but that this affidavit is a false swearing and about the material, the question of perjury is one upon which only a court might pass. Certainly a non-lawyer such as Plaintiff cannot offer an expert opinion. However, were one to view this total misrepresentation combined with suppression of public information in a conspiratorial frame, there can be a hint of anticipation that the possibility of a perjury allegation might arise. It is in the last sentence of the first paragraph of Dr. Rhoads' affidavit, added to a proper establishing of credentials and innocuously put.

It is also put inadequately and incompetently. That sentence reads:

> The following statements are based upon information acquired by me in connection with my services as Archivist and Deputy Archivist.

This formulation covers everything that follows it. Its inadequacy consists in its failure to segregate hearsay, for what the janitor tells the Archivist is "information acquired" in the Archivist's official capacity; and its avoidance of acknowledgment of first-hand knowledge of that which is most relevant. Plaintiff's correspondence was mostly with Dr. Rhoads personally, in general, and as the quotations above show, specifically in this case.

But not only could Dr. Rhoads not acknowledge first-hand knowledge of the relevant correspondence, because it was so grossly misrepresented and falsely sworn to, he had to avoid even the indication before this Court that he, in fact, had first-hand knowledge. Thus, the seemingly innocent formulation that suggests his knowledge, as one would normally expect from the top executive, came from subordinates and that he, personally, even though swearing to it, had no personal knowledge and was, in fact, disassociated from such first-hand knowledge.

If this seems like an overly-paranoid suggestion, then Plaintiff notes the total absence in this affidavit of any reference to the correspondence, to the specific nature of Plaintiff's requests, explanations' and descriptions and to their equally specific and unequivocal rejection. Yet they are the essence of what defendants pretend is/at issue.

As his knowledge is relevant in this case, Dr. Rhoads' knowledge is first-hand, and that his affidavit does not tell this Court.

Paragraph 2 concedes the Archives has "custody" of all the Warren Commission records, including the clothing that is in evidence. The misrepresentation slipped in here as to what Plaintiff seeks has heretofore been noted.

Paragraph 3 embodies a self-serving meaninglessness that is also a deception, saying of the GSA-family contract, "the validity of which has never been challenged by the Government of the United States." With that Government one of the two parties to the contract, this is like saying that Hitler never challenged the legitimacy of his regime or its crimes. The contract's legitimacy has been challenged, as by Plaintiff, and it has been challenged in court, there with success, a fact withheld from this Court by defendants and in this affidavit, sworn to by the respondent in that action.

Paragraph 4, designed for other purposes, again ends any question and proves separately Plaintiff's claim to judgment in his favor and that there is no genuine issue as to any material fact. Affiant's own interpretation of this contract is that it requires "access to the articles of clothing" to "serious scholars or investigators of matters relating to the death of the late President for purposes relevant to their study thereof." The Court is asked to note that this affidavit does not claim these words give it authority to decide for any (the word omitted by affiant in this quotation) scholar or investigator what his study shall or shall not include. This paragraph also concedes that the only basis

under this contract for denying access is "to prevent undignified or sensational reproduction," of which there is and is proven and conceded by defendants not to be any question with respect to Plaintiff's requests, as previously set forth. Neither this affidavit nor defendants, here, anywhere or ever, claim that Plaintiff does not meet the requirement of "serious scholar or investigator of matters relating to the death of the late President." With the burden of proof upon defendants under the law, they do not even suggest it, leave alone make the claim. Further, this paragraph of the Archivist's own interpretation of the contract requires of him what he refused to do on Plaintiff's request, as set forth in the foregoing direct quotations from the correspondence, "photograph or otherwise reproduce for purposes of examination." These purposes have heretofore been shown to require the providing of copies under both law, regulation and the defendants' own specific regulations for this special archive. The final clause acknowledges the defendants are required to provide for the "use of the said materials", precisely what they deny to Plaintiff and in this action.

Paragraph 5, in truthfully representing that "the letter agreement provides that all 'duties, obligations and discretions' of the Administrator under the agreement ... have been delegated" to the Archivist, would seem to counter the contrary arguments in defendants' own motion, which claims the Archives is "not a sueable agency." It also concedes the requirement of the agreement that the Archivist photograph the clothing.

Paragraph 6 is more than casually deceptive in alleging what is irrelevant, having to do with "rights of privacy", the "degree of sensitivity (that) attaches to discussion of events and personalities", "the rights of persons discussed in the papers to be fully protected", "secure storage", "indexing" (the latter two not the practice with this particular archive, lamentably in each case) and the alleged jeopardy to the willingness of prominent personages to donate their papers to the Archives. None of these is herein an issue. None is alleged to be relevant, but all are suggested as being relevant, whereas not a single one is. It is a polished gem for the hurrying eye, a clever deceit for the time-pressured mind, but utterly without point in this instant action. Notwithstanding the clever semantical exercise, defendants still again find it impossible not to concede that the purpose of such an archive is exactly what they deny Plaintiff, "use". Nor is there, as is hinted, any question of "confidential restrictions" with regard to the evidence. The extreme to which this is carried is embodied in the argument that, "If this confidence is destroyed, the validity of the whole concept of the National Archives and Presidential Libraries will be placed in question ..." This is to pretend the opposite of the fact, that the contract requires withholding, or the political overtone, that the family is responsible for the suppressions. The contract requires "access", and the defendants, refusing to honor these provisions, violate them and

then say it is the doing of the family. The words here are smooth, seemingly reasonable but of incredible defamation of the living and the ones they lost.

Paragraph 7 embodies that authoritarian pose of the Archivist, that he has the right to decide for Plaintiff or anyone else what his research should or should not be, should or should not include, what its purposes can and cannot be and the more incredible right, attributed to neither law, nor regulation nor contract, to decide, not knowing what Plaintiff's purposes or needs are, what is "adequate for research purposes." This is the concept of "research" and "adequacy" that prompted defendants and particularly the Archivist to give this Court a deliberately false, manufactured piece of "evidence" representing that the damage to the tie was in the center of the front of the knot, the same fabrication' presented to the Warren Commission by those who represent defendants, whereas, to the knowledge of all, there was no damage there. This is "adequate"? This is "research?" Nay, this is official propaganda, a characterization not diminished by its misrepresentation as "evidence" to this Court, as it was to the Commission that was thereby victimized by this fakery to hide reality, to make the false appear to be true.

With this action under the "Freedom of Information" act, can any concept of study, research, investigation, or even "freedom" be more debased than by the assertion of the claim to the non-existing right of Government so to dominate and control what people may know? Only the hobnails are missing.

It is conspicuous that neither here nor anywhere else, in these instant papers or any other, infamy alleged but non-existent index, is there any listing of even the existing pictures of this most basic evidence. Thus, they are not listed to establish this "Vote ja!" assertion of "adequacy". With none of the photographs essential for any serious study of this evidence provided Plaintiff by defendants and with their refusal to take those that are required, theabsence of a listing of the "adequate" is significant, as is the need to give this Court so contemptuous a display for its integrity and purposes as that deliberately indistinct Xeroxed fraud and deception labeled "FBI Exhibit 60."

The use of such language here as "avoid any possible violation of the letter agreement" is a separate fraud, in the light of the actual meaning of the agreement, stripped of the deceptive added emphasis. "Access" is therein stimulated, as is photographing. But were this not the case, with the expressions by the family representative in Complaint Exhibit C, there is no such genuine official apprehension. This is a political, not a contractual, pleading, still another repetition of the phony pretension that the family requires the suppression.

The libelous suggestion here, that Plaintiff has "the purpose of satisfying personal curiosity rather than (for) research purposes," has already been exposed. This is no honest interpretation of either the fine detail of Plaintiff's descriptions of what he seeks and why (a requirement not imposed upon him by law or regulations) and his unending protest about the continuous forcing upon him of what served morbid

purposes as a substitute for what he asked.

Nor is there in the minds of defendants any question about whether Plaintiff is a "serious scholar or investigator." His public record is above question in this regard. Defendants do not know and have not raised this objection because they dare not. This is what reduces defendants to nasty innuendos and libel, hardly evidence to a court of law and anything but the meeting of the "burden of proof."

So far is all of this evil suggesting and hinting removed from reality that Plaintiff is constrained to add that none one of his specific requests is for a photograph of an entire item of apparel.

The rest of the innuendos in this paragraph are contrary to the provisions of the contract. What they do in effect is to argue that the contract makes impossible any kind of access. Defendants are thus in the strange position of simultaneously arguing that the contract they claim to be valid is invalid. Either way, they are lost.

Paragraph 8 has other lies already exposed, like the false pretense "plaintiff" asked "to take his own photographs."

Paragraph 9, again one of lies, being under oath and material, also, like those above, may be perjurious. One is, "plaintiff has never specifically requested permission to examine the above-mentioned articles of clothing." This has already been shown to be false, as is true of what follows in that paragraph.

Thus, all the long-denied attachments, falsely certified as immediately served upon plaintiff, denied after he requested them, can have a reason for this strange and irregular history of denial to Plaintiff until after his second request, too late for them to be incorporated where they belong in Plaintiff's presentation to this Court. Like all other attachments and quotations, these exhibits prove exactly the opposite of what they are claimed to show, where they are not false or irrelevant, and like everything else, their net effect is to validate Plaintiff's Motion for Summary Judgment in his favor because they, too, prove that there is no genuine issue as to any material fact.

The truly pathetic plight of those who would subvert the law is that with even the immaterial, there remains no genuine issue as to any fact, and again it is as plaintiff represents and represented.

It is the combination of insatiable lust for suppression and legal bankruptcy that forces so mighty a Government into so demeaning a position and, as an alternative to compliance with law and its own regulations, subjugates Plaintiff and thereby this Court in an intolerable torrent of the incompetent, irrelevant and immaterial after flooding both in a tide of misrepresentation, deception, misquotation and outright falsehood, in the hope that Plaintiff would drown therein and the Court be tempted to be unheeding because of the bulk of the papers so establishing.