The law also imposes certain requirements on plaintiff. He must make a "request" for "identifiable records" under "published rules", pay "fees".

There is no question ~~about compliance~~ but that plaintiff has met all these obligations. He made repeated requests, verbally and in riting. What he sought and seeks is without doubt, as the ~~mis~~ting record shows. On rejection, he appealed in the prescribed~~m~~ manner. He has for years kept sums on deposit with defendants to~~m~~ pay in advance the cost of making copies.

Once the~~m~~ requirements are met, the law directs that the agency "shall make the records promptly available to any person".

Defendants delay responses for long periods of time, a ~~year~~ half year not being exceptional. In this case, there was no action on plaintiff's appeal for three months, ha~~r~~dly "prompt", and then not until after filing of the complaint.

This action is brought under the Freedom of Information Act, 5 U.S.C.552.

Clearly, this law applies and plaintiff invokes it properly. Nowhere do defendants even allege the law does not apply or control. The closest they come is the "Second Defense" of the "Answer", not in any way argued or proven, that "The Court lacks jurisdiction of the subject matter". Even this is without question not the case, subsection (c) being explicit on that point. ~~XXXXXXX~~ Of it the House Report says:

> "The purpose of this subsection is to make clear beyond doubt that all the materials of government are to be available to the public unless specifically exempt from ~~the~~ disclosure ~~by the provisions of~~..."

This subsection says that, "Upon complaint, the district court of the United States in the district....in which the agency records are situated shall have jurisdiction to enjoin the agency from withholding agency records and to order the production of such agency records improperly withheld from the complainant."

This section also declarea:

> "This section doesnot authorize withholding of information or limit ~~it~~ the availability of records to the public, except as specifically stated in this section."

There are nine specific exemptions. Not one is applicable, not one is cited or in any way invoked by defendants.

But had any been, in the words of the Bisttol-Myers decision (p.10):

> "In order for an exemption to prevail
> (1) said records must be specifically (emph in original) stated in the exemption section in 'clearly delineated' language
> (2) the agency has the burden of proving that its claim to exemption meets such standards".

~~XXXX~~At this point this decision cites ~~(c)~~ the law to emphasize that it does not authorize withholding or limit the availability of records except as specified, and that "by clearly delineated language" the claim to the right to withhold must "come within one or more of the nine categories listed in subsection (b) of the section".

The law also imposes c

records

By means of sbe selective quotation, editing and the total omission of the most relevant regulations, defendants pretend that these official exhibits of an official and published proceeding are not "records" within the meaning of the law.

As plaintiff's exhibits show, the definitions do include what is sought, the defendants own regulations require the taking of pictures and the providing of copies, and these, the most relevant regulations, were withheld from this court by defendants.

Defendants' Motion to Dismiss the Action or, in the Alternative, for Summary Judgement, is based upon three allegations:

1)"the complaint fails to state a claim upon which relief can be granted;"

2) The National Archives is not a suable entity;

3) "plaintiff's complaint (and)motion for summary judgement...demonstrate there is no genuine issue as to any material fact."

No one of these allegations is either serious or accurate and all are part of an unending effort at official suppression of public information, public evidence in this particular case, evidence of an official proceeding and among its most vital evidence. In this case the Government seeks the snaction of the law for precisely that for which this law in particular was enacted by the Congress to prevent, as plaintiff's pleadings, on file, abundantly and repetitiously show, with quotations of the law, its legislative history, the Memorandum of the Attorney General himself on this particular law and, although misrepresented and misquoted by Defendants, their own regulations.

Taking the second point first, is The National Archives a suable entity?

Whether or not it is, there is no allegation that its co-defendant, the General Services Administration, is not a suable entity and the Complaint certainly applies to it. It was necessary for Plaintiff to include both GSA and its subsidiary in order to preclude another spurious claim, that Plaintiff should have filed against The National Archives. While Plaintiff's pleadings answer this allegation completely, it can here be addressed very simply and definitively. The National Archives was sued, with success, in the District of Columbia, and it was in that action represented by its present counsel, both of whom cannot be unaware of this.

Thus, it is apparent that this is a contrived, not a genuine defense.

Moreover, the Administrator of the General Service Administration has delegated his responsibilities with regard to that which is sought in this action to the Archivist, as the record leaves without question.

With regard to the first allegation, that "the complaint fails to state a claim upon which relief can be granted", this, too, is meretricious. In its simplest formulation,

the claim can be granted by following custom and practise, by doing exactly what defendants have done with regard to what is sought, giving the plaintiff the pictures he seeks. Other pictures of the identical evidence have been published. Those pictures were made with care to disclose none of the evidentiary values of the evidence, only gore, only the undignified and sensational. All plaintiff seeks is pictures not showing gore, not undignified, not susceptible of sensational use - pictures showing the damage to the clothing and nothing else.

As all the applicable regulations require, this is defendant's right under them and the law. Here plaintiff asks the Court to recall that in no single case, as the papers on file show, did defendants quote either law or regulations accurately or even faithfully, and defendants also failed to supply this Court with all the applicable regulations. They were supplied by pliantiff, who also provided this Court with that which is aplicable and was edited out by defendants.

Relief can be granted by complying with the law and regulations, by following custom and practise, by doing what defendants have already done, by simply providing the pictures plaintiff requests.

Rule 8(a) of the Federal Rules of Civil Procure states what is required of a valid claim for relief. These are:

"(1) a short and plain statement of the grounds upon which the court's jurisdiction depends..."

"(2) a short and plain statement of the claim showing that the pleader is entitled to relief, and

"(3)a demand for the relief to which he deems himself entitled."

The complaint meets each of these prerequisotes and on this basis alone defendants' motion must fail.

Defendants' third allegation is that there is no genuine issue as to any material fact, as stated by them. As stated by them, there are five "material fact". Where relevant, they are falsely stated in a way that cannot be accidental and in some cases, actually refited by them.

These contrived and misrepresented statements have been more than amply refuted in the papers filed by plaintiff. Here he reviews them briefly.

The first is false in asserting that "Plaintiff desires to inspect and photograph the shirt and tie worn by the late Presidnnt..." Plaintiff desires pictures of this clothing, no more, and has asked no more. Nor has he asked to photograph them himself. He has asked that the photographs be taken by the Government, the normal practise.

The second repeats this false statement. With the third, the rest of what it declares this much more: that defendants have the public evidence of which plaintiff seeks photographs and is irrelevant in the motion.

However, plaintiff asks this court to get the assurance that, with this action pending, defendants have not moved this evidence out of the jurisdiction of this court, to a point where it would be impossible for plaintiff to go to supervise the taking of the pictures to meet his needs, Under the contract alluded to and the applicable rgulations, this is plaintiff's right. Plaintiff has reason to believe this may have been done and he believes it would be improper if it were done.

The fourth is beyond comprehension. It contains no statement of what it is alleged to mean in terms of the motion and, in fact, establishes the validity of plaintiff's claim. Only if one turns to the Memorandum of Points and authorities can any meaning be imputed to this fourth point. There, following the constantly repeated falsehood that plaintiff has some deeply sinister purpose to which end he seeks to take the photographs himself -- and were this the case, which is most specifically is not, it would not be wrong because defendants have permitted plaintiff and others to make their own photographs of other evidence of the Warren Commission -- in the very [illegible] section, [illegible] added falsehood which is refuted by the fourth point itself:

"The defendants contend that plaintiff is not entitled to the relief he seeks because 1)he has failed to exhaust those administrative remedies to him..."

These "administrative remedies are that plaintiff make a request and appeal if rejected.

In the fourth point to which defendants are careful to attribute no meaning, they cite proof that, in fact, plaintiff did these things: These are defendants quotations from plaintiff's voluminous correspondence on this request alone:

"'Over the months I have made requests..." and "Herewith I appeal a subsequent

decision, to refuse me photographic copies of photographs in these files..."

Defendants were here careful to avoid informing this court that aside from asking for copies of existing pictures in defendants files, plaintiff also requested that certain pictures be made for him under existing regulations here on file that require it of defendants. The pertinent language is:

Here insert quotes.

But if one turns to the bottom of page 5 of defendants motion, there defendants quote their own rejection of both request and appeal. Defendants, in fact, while pretending otherwise to this court, their letter of September 17, 1960, which says that copies of the pictures had been denied plaintiff:"'...item 1 has been denied to you only in terms of furnishing you a personal copy of the photograph". Because what plaintiff ask is a copy of the photograph, this is a complete refusal and a violation of all aplicable law and regulation, inconsistent with the clear language of the Attorney General's memorandum and the legislative history, which all say that denyong a copy is complete denial, as what plaintiff has filed proves neyond question.

Defendants refusal to provide the pictures plaintiff requests is established, also beyond question, bu further quotation from this rejection of plaintiff's appeal at the top of the next page. Here, incredibly in the light of the nature of defendants argument, defendants not only admit all over again that plaintiff did make the proper request and appeal, but they even quote plaintiff's precise description of the photographs he seeks.

With no less incredibility, defendants then allege that because they have violated their own regulations,

"Plaintiff Has Failed to Exhaust the Available Administrative Remedies" (page 4). This, durely, is to redefine "available". The language of 41CFR section 10-60(c) here cited means and proves that defendants have violated the law, not that plaintiff has failed to exhaust his "available" remedies:

"'If the denial is sustained the matter will be submitted . . . to the Sasistant Administrator for Administration whose ruling thereon will be furnished in writing to the person requesting the records'"

Having failed to comply with their own regulations and the law, defendants

actually allege that this is somehow plaintiff 's fault. How we he to compel compliance, bt taking a club to the responsible officials? Their obligations are clear in their own citations, and it is they, not plaintiff, who is at fault. It is a fundamental principle of law that one may not be the beneficiary of his own illegal act.

And here plaintiff asks the court to take note of the fact that plaintiff's proper appeal was not acted on for so long that it was not even prepared until after more than three months has past, until after filing of the instant complaint. The law requires promptness.

In short, while seeking to obfuscate, defendants actually affirm the validity of plaintiff's complaint and pleading and acknowledge to the court that contrary to their false representation, plaintiff did comply with all applicable law and regulations while they did precisely the opposite.

Aside from what was later to be acknowledged as utter falsehood, and then not until after plaintiff had prepared his responses, until after the last working day prior to the expiration of plaintiff's time for response and filing, thefifth of these alleged "material facts" and to which "there is no genuine issue", does no more than affirm two things: that plaintiff did make the requests he says he made, that he did appeal, and that his appeal was completely rejected. Plaintiff has already set this forth in considerable detail. Thus, too, surely must be a new basis for claining the right to dismissal or summary judgement, plaintiff's compliance with all law and regulation and defendants' violation of both. It is hardly proof that "there is no genuine issue as to any material fact".

Insert

What the government alleges as the material facts are not.

This action is brought under 5 U.S.C.552 and plaintiff has complied with its requirements fully. It also requires that public information must be provided except in the case of certain specified exemptions, no one of which is alleged to be applicable by defendants. Uncontestedly, this court has jurisdiction under Subsection (c) which very clearly states that "Upon complaint, the district court of the United States...in which the agency records are situated shall have jurisdiction to enjoing the agency from the withholding".

insert on 5

In this connection, plaintiff is again constrained to call to the attention of this court what he believes is deliberate deception, misrepresentation, irrelevancies designed to mislead the court, and false swearing under oath that in plaintiff's view, it addressing one of the points of defendants' motion, is perjurious. At first and after request denied defendantss' exhibits were xxxxxthexexxxxxx to plaintiff, although it had been ertified to this court that xxx dxxxxdxxtxxxxttxxhxdxexhibitsxwerexsexvedxuponxplaintiffxwhenxtheyxwerexnotxxxxx Among these is an affidavit by Dr. James b. Rhoads, Archivist of the United States.

It alleges, falsely, that honoring plaintiff's proper requests would violate the rights of privacy of the survivors, that delicacy attaches, that plaintiff's request jeopardizes the security of the clothing, and that the entire system of Presidential Archives is endangered by plaintiff's simple request for seemingly innocent photographs of official evidence.

Unless the instant motion is a deliberate deception upon this court, the Archivist has sworn falsely, as in his concluding paragraph, numbered 9, which xxxxxxxxxxxx states: xxxxxxxxxxxx

"Plaintiff has never specifically requested permission to examine the above-mentioned clothing

"nor has he specifically requested permission to photograph the above-mentioned articles of clothing.

"Consequently, the National Archives has never denied such requests."

But the xxxx first and second items under defendants' "Statement of Material Facts as to Which There Is No Genuine issue, two of the five allegations and the only "statements of fact" among the five that are relevant, say exactly the opposite. The first says "Plaintiff desires to inspect and photograph the shirt and tie". The second says, "The articles sought to be inspected and photographed..."

If the allegations of the Motion were to be correct, then the affidavit would seem to be at the least designed as deception and possibly perjurious. If the affidavit were to be truthful, can the language of the motion be other than misrepresentative and designed to deceive this court and defraud Plaintiff?

At issue in defendants' motion is whether or not plaintiff exhausted his administrative

insert 5-2

remedies. For the Archivist to swear, after havinf himself, personally, rejected plaintiff's repeated requests requests for these pictures that "the National Archives and Records Service never denied such requests" would at the very best seem to be a deliberate ~~effrom~~ deception and attempted fraud and at worst perjury.

And if the eminent Archivists misrepresents the nature of plaintiff's request so much that technically he may not be guolty of perjury, is the offense less serious?

Indeed, for this affidavit to be part of ~~xxx~~ defendants' pleadings,it must meets the requirements of Rule 56(e) of the Federal Rules of Civil Procedures, which reads:

"SUPPORTING AND OPPOSING AFFIDAVITS SHALL BE MADE ON PERSONAL KNOWLEDGE, shall set forth such facts as would be admissable in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein".

Hence, in plaintiff's view, any requirement as to materiality of deception or false question as to swearing is further met.

insert 5-3

With further regard to this affidavit, it argues issues of law that are not properly presented in this manner in suppt of such a motion. It constitutes argument and opinion, not law in other areas, and in them ought not be considered. The time and place for such a presentation is in person, from the witness stand

Plaintiff has reason to believe that these records may have been removed from the jurisdiction of this court. If this is the case, he believes it culpable, for if it is the case, it was accomplished after the filing of this complaint. He asks this court to satisfy itself that this has not been done.

Pick up rule 12 and Rhoads aff.

Insert at top:

As plaintiff's motions and arguments show, the public information he seeks is defined as "records" by alw and regulations.

The irrrlevancies falsely argued in Dr. Rhoads' affidavir and in the motion would seem to rule out the possibility of a Motion to Dismiss under Rule 12(b) of the Federal "ules of Civil Procedure. "his says; that if the defense pleads " failure" to " state a claim upon which relief can be granted" and "matters outside the pleading are presented"m then "the motion shal be treated as one for summary judgement".

A motion for Summary Judgement requires that there he no genuine issue as to any material fact. As we have seen, what defendants allege is not even fact to begin with, and it evades the issues where it does not misrepresent them, as plaintiff's motions and addenda establish. The appendages argue against the motion and the mption invalidates what is represented as supporting it. Between them they do not tell this court what is at issue, they do not state the material facts. One the foregoing bases plaintiff asks dismissal of defendants' mptions.

However, the material facts are easily ascertained and they ~~xxxxxx~~ have already been set forth to this court by plaintiff. Plaintiff requested copies of an official of a published, official proceeding. The request is for what evidence ~~xxxx~~ meets the official and controlling definitions of "records". The providing of copies is required by both defendants' regulations and by the law. ~~Xxxx plaintiff appealed, his appeal was rejected.~~ Plaintiff's request was refused. Plaintiff appealed and his appeal was rejected. These are the genuine material facts, and as to them there is no genuine issue.

Wherefore, plaintiff begs this honorable court to issue a summary judgement in his favor.

Plaintiff filed a proper complaint setting forth the relief he seeks. This relief can be granted by this court under 5 U 5 U.S.C. 552, subsection (c), which also vests jurisdiction in this court. Defendenats have not claimed applicability of any of the exemptions of this law.

These are the genuine, not the contrived, material facts. About them there is no genuine issue. Defendants have not ever really faced or stated them. Wherefore, d plaintiff respectfully bges this court to grant the relief sought and to issue a summary judgement in his favor.