3rd part of Argument Fols what Lois has

III. Defendants' Citations, or Telling it like it Isn't

In any proceeding, to a degree the judge becomes the creature of captive of the litigants and is dependant upon the integrity of their words, citations of law, authority and most of all fact. With regard to motions like those of plaintiff's and defendants' now before this Court, it seems to plaintiff that this is more than usually true because so much depends upon the representations of what is fact and what the law and regulations are, particularly as they address the questions, is there any genuine issue as to any material fact? With both sides alleging there is not and each claiming that it is ~~in the case~~ with respect to of his motion that there is not, the Court is thus confronted with choices of which to believe or to decide to believe neither and set a hearing.

The disparity between the litigants may adversely influence the Court to lean more heavily on the given word of defendants because of their high station in both Government and national life. Relatively speaking, the defendants are of eminent position and plaintiff is unknown, perhaps regarded as iconoclast or off-beat because of the subject of his interest, the intensity with which he pursues it, and the passion it engenders in him, often reflected in his manner of expression. The choice here is between ~~those of high station and known~~ and an unknown, ~~between high~~ of low station ~~and low,~~ between Government and all its majesty and power and a single stranger ~~unknown~~ to the Court and of no special importance to it.

Most of all, before a Court of law, is this disparity marked when on the one side counsel is the United States Department of Justice and the United States Attorney and on the other an ordinary man trying to act as his own lawyer, only too aware of the maxim ~~xxxxxx~~ ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ that he who has himself for a client has a fool for a client. Plaintiff is aware that the mere length of plaintiff's presentation may tend to mark him as a fool, for the ~~xxxx~~ amount of work therein represented, especially to a man of no means or influence, is considerable. The Court may wonder why a nobody would exert this great effort, why he consider it worth such effort, or even if it is a rational thing to do. Only by reading all these words can the Court form an independent opinion,

and plaintiff is aware that even if the Court has an interest in the subject matter, the volume of these words can be a severe burden upon the Court. Plaintiff has heard, whether or not rightly, that the Court is not required to read the various papers presented to it and that brevity is therefor its own merit. Perhaps when the opposing counsel in this instant case are so markedly unequal, on the one side all the legal brains and resources and capabilities of the most powerful government in history, bearing with them the full accreditation of the highest federal reputation in the law, and on the other a non-lawyer, a mere minor scrivener, may this volume alone be an insurmountable liability to plaintiff.

But it is precisely these inequalities, plus the regard plaintiff has for the subject matter, the sanctity of the law and the integrity of society, that impels him to take this time, make this costly effort. If plaintiff is to prevail, as he believes he should and must, fact and law being as he, not those who represent the exalted, tell this Court, the only way he can overcome these liabilities is by running the risk of undertake a mountain of words in the hope that the Court will seek to mine the gem of truth.

There is no way in which plaintiff can surmount his handicaps except by making as complete a record as is within his capability. This he attempts. To that end, he herewith addresses the integrity of defendants' representations of fact, law and regulation, hoping that with no time for review his mind is still able to recall what has already been addressed and to be able to spare the Court needless repetition.

Moreover, plaintiff had laid serious charges against defendants and their counsel, ranging from simple omission (which, to a Court of law, plaintiff regards as a culpable thing if it is, as plaintiff believes, deliberate), through omission that amounts to deliberate misrepresentation, deception of the Court, an attempt to defraud plaintiff, and false swearing that can constitute perjury. Because these are such serious charges, it is incumbent upon plaintiff to put this Court in a position to make independent assessment of the credibility of defendants' presentation to this Court as well as defendants' intent. Therefore, in what follows plaintiff will compare what defendants' did represent to this court with the sources cited and the meanings given thereto

A

insert on 3 promptness.

The language of H. Rept 9 addresses the meaning of the law and the intent of the Congress on just this point:

"...if a request for information is denied by an agency subordinate the person making the request is entitled to prompt review."

Neither a three-month delay nor a delay until three weeks after the filing of a complaint meet this requirement.

This requirement is emphasized in the Attorney General's Memorandum, where it is quoted on page 28, and by the added language of this Memorandum,"Every effort should be made to avoid encumbering the applicant's path with procedural obstacles..."(p.24). as will be seen, it is required under defendants' own regulations.

insert on 3 B 1 length appeal

There are 12 paragraphs in plaintiff's appeal. Of these, nine refer to requests made and refused. Obviously, such selection and extremely limited quotation of it cannot possibly be faithful to it, least of in a representation of the "Material facts as to which there is no genuine issue".

Not a single statement in defendants' Motion is factual and truthful. ~~Defendants' "Statement of Material Facts"~~ has been shown

The first papers in support of the Motion is labelled as a "Statement of Material Facts as to which There is No Genuine Issue." Aside from its lack of faithfulness and fidelity, this representation omits, to the point of deceiving the Court, what is most material. The law imposes a burden on plaintiff, beginning with requesting the public information, then, if denied, making appeal, and so forth. Because defendants' alleged statement of the "material facts" makes no reference to these most material facts, the arduous efforts represented in plaintiff's requests, plaintiff presents a summary of them to the Court. Aside from verbal requests going back to the first of November, 1966, in that case made to the then-Archivist in person, these requests, beginning with December 1, 1969, and the relatively few responses, some months long in being made, total 25. Of these, plaintiff's letters to the Government total 16. Of the Governments nine letters, only four were written prior to the filing of the complaint. The single one of plaintiff's letters quoted was his appeal (and defendants are so unfaithful with that letter they even misdate it). One of defendants' letters only is quotated. Its self-serving character becomes obvious when it is recalled that there was no response of any kind to plaintiff's appeal under the law until this letter written about three months after the appeal was made and not until 21 days after the complaint was filed. That single one of defendants' letters is a falsity, as previously set forth, and is the grossest misrepresentation of everything, the previous correspondence on both sides and the appeal to which it pretends response and pretends non-rejection. The obvious purpose of the latter dishonesty being either to deceive this Court or to defraud plaintiff. Clearly, this Court was in the mind of the author or authors of that misrepresentation. This is no less grievous an offense because the law ((a)(3)) and all else relevant stipulate promptness in handling appeals, as heretofore cited. Nor is it less grievous to quote incompletely and out of context, to make the words quoted appear to mean other than what that actually say and mean by omission of the relevant, which is what here was done.

INSERT 3A

INSERT 3B → The first such omission hides from this Court the fact that plaintiff had also actually

appealed earlier and, in effect, on several occasions. The Archivist's personal acknowledgement of this has already been quoted, Plaintiff's formal appeal of June 20, 1960, was then edited to accomplish two deceptions which amount to frauds: to make it appear that plaintiff had requested and been refused less than is the case; and that he had been given access to this public onformation, which is false.

Thus, the first editing of plaintiff's appeal to this Court ends with three dots, This eliminated reference to earlier appeals, as acknowledged by the Archivist: that the truth of which has already been quoted from the Archivist's letter:

"...anticipating that these requests would be rejected, I asked that if rejected, ...be forwarded to you as my appeal under your regulations as a necessary prerequisite to invoking of 5 U.S.C.552..."

Plaintiff also anticipated delay in handling his appeal, so he informed defendants of what they also omit, that if there was no response within a reasonable time plaintiff would be forced to proceed with filing his complaint, He submits to this Court that after all the other delays, his waiting two months to file this instant action is evidence that he sought to avoid it and gave defendants more than ample time for response. To comply with law and regulation

The editing of the second quotation is designed to make to appear that plaintiff's requests were granted. As defendants presented it to this Court, it reads:

"I have been provided . . . copies of photographs of some of the President's garments . . . "

The omissions say the opposite, that rather than plaintiff's requests being complied with he was given nothing of any value no more than copies of the already published pictures. The first omission reads," with utterly meaningless", the second, "those showing no detail, nothing but gore, or those" (the magnification of which was impossible)

The first omission is designed to lend an air of truthfulness to defendants' contrived claim that plaintiff had not exahusted his "avilable" administrative remedies, the second to make it appear that he had been supplied copies of the photographs he requested whereas he had been uniformly and undeviatingly refused and rejected. The relevance of intent and this misrepresentation of what plaintiff actually wrote and said is clear in defendants'

false representations of being entitled to judgement in their favor because they claimed to have complied with the law, and that "there is no genuine issue as to any material fact." Could this have been claimed to this Court without denying it the ppoof of the flasity of both claims, by editing correspondence request as they were to edit law and regulations.

The intent to deceive and defraud is made more clear with selective quotation of the delayed response, which hides from the Court these two things: that plaintiff's requests for coopies of what was withheld was without deviation rejected, and that this response to the appeal was not made until 21 days after filing the complaint. This intent is clears in the language defendants' language on page six of their "Memorandum in Support", reading:

"Nothwithstanding the response of the Archives to plaintiff's requests, he alleges in the complaint:"

It is a minor point that even with regard to who made the response quoted - and it was not "the Archives" but the GSA Director of Public Affairs) What is deception is the quoting of a self-serving, ex post facto letter written so long after filing of the complaint, hiding this fact from the Court, and telling the Court that "Nothithstanding the response", plaintiff then filed the complaint, That is, making it seem that not until after receipt of the misquoted and misrepresented letter of response did plaintiff file the complaint, which actually was filed 21 days before this letter was written.

This deception is extended on the same page, in carrying the misrepresentation of the date of the rejection of appeal further, with the claim that certain of what are represented as plaintiff's requests were "disposed of by GSA" in this letter. Without misleading the Court on the dates, this spurious claim would not have been dared. That it is false in and of itself is not as serious as the misrepresentation of the relationship of the claim to what was "disposed of" to the date of filing the instant complaint. No such "disposal" was possible after filing of the complaint, short of compliance, which there had never been.

The misrepresentation in the GSA September 17, 1970 letter rejecting plaintiff's requests and of if at this point, especially in the meaning inferred to the long final quotation, has already be adundantly exposed. It refuses plaintiff's requests save for the one made ~~solely to accomplish~~ to obtain written acknolwedgement of what is hidden in the acknowledgement, that despite all the contrary representations to this Court, exactly what plaintiff asked and was refused was done for the Columbia Boradcasting System. (The "Item 5" reference ~~is~~. This kind of ~~melding~~ blending of schmalz and gore is not the raw material of genuine scholarship and study,) ~~especially not with the small size and other characteristics of the film used~~.

~~Thus there is further deception practised upon and hidden from this Courtx.~~ ~~This phrasing hides it prom the Court.~~ But the mere existence of this CBS film ~~xfxwkaxx pixixxx~~ is total disproof of the spurious claims that what plaintiff asks is prevented by the family contract, which thus, plaintiff again emphasizes, seeks to place the onus of suppression on the family.

Among the other things edited out to mislead this Court is plaintiff's statement, "I was denied copies" of what was sought, ~~and~~ Thus sudden was the failure of either the rejection of the appeal of the Motion and its addenda to either admit this or assume the burden of proof and prove such denial is proper and authorized under law and regulation, (the opposite ~~xxxxrary being~~ is the case.) The providing of copies ~~of~~ is required by both law and regulatio

There is an editing that is relevant because of the requirement of the law that requests be for "identifiable records". Thus plaintiff's letter is made by editing to read,

"It is the only such photograph in the Archives of which I have knowledge . . . I asked for it or an enlargement" etc.

~~There were and are other photographs of which pixxx~~ plaintiff knew and of which he did request copies. What was edited out of the consideration of this Court makes that clea

In addition to the foregoing, there is nothing in defendants "STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE" about which there is "no genuine issue". The first numbered is false in that it does not reflect what plaintiff seeks and in also misrepresenting what he does seek. He does not seek to make his own photogrpahs, as previously proven with direct quotation of the requests, and he does seek what is here hidden from the Court, copies of the existing pictures.

The second repeats this misrepresentation.

The third, like the second, could be honestly represented to the Court ~~without hurt to defendants' argument~~, but it is not. It repeats again what is not true, that plaintiff wants the articles rather than pictures, and that these "articles are on deposit by virtue of an agreement dated October 29, 1966." Title only was transferred on that day, in a dubious agreement, and the "articles" were earlier and had been on deposit by virtue of a suppressed "Memorandum of Transfer" dated 18 months earlier. Moreover, the "articles" are official evidence of an official function of Government, the President's Commission.

The two remaining number paragrpahs have already been dealt with.

There is genuine disagreement as to their is genuine by misrepresentation characteri-.

Defendants' "Memorandum of Points and Authorities"

This is an exceedingly selective quotation, misquotation and omission of the known and relevant law, regulations and other claimed authorities.

"Preliminary Statement".

Defendants' opening words are, "Plaintiff, and author..." Yet when plaintiff made this simple statement of fact in his complaint, fact well known to defendantd and their counsel, in what they styled their "Answer", this appears:

"2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations..."

If this may appear as a minor point and minor criticism, on several counts it is not. The first count is the truthfulness of defendants' and their counsel and what credence this Court has basis for giving their words to it. In a lengthy and detailed affidavit attached to Plaintiff's Motion for Summary Judgement, plaintiff set forth just how well and for how long both defendants and their counsel in particular, at both the Department of Justice and in the office of the United States Attorney, well Knew that plaintiff is an author. So, they here admit the falsity of their "Answer". But there was point this falsity of the "answer" Defendants claim there is validity to the family agreement, which would limit access to those with proper credentials, described as "Any serious scholar or investigator of matters relating to the death of the late President for purposes relevant to his study thereof". Thus, an objective can be attributed to the initial falsehood to this Court, another link in the chain of official suppression, an attempt to pretend that plaintiff did not, to defendants' known, judge's meet the claimed requirements of this said contract.

The misrepresentation in the words that follow, alleging that what plaintiff seeks in this instant action is that under the law he wants "to examine and photograph, at his expense, certain items of clothing worn by the President", has been dealt with in part. First, this eliminates again from the Court's consideration plaintiff's first

request, for copies of the existing photogrpahs. Second, when long ago plaintiff was denied permission to view-not to handle- some of the garments, which are official evidence, he changed this request to other than is here represented. ~~XXX~~ Plaintiff never asked to take his own pictures, never asked to be his own photogrpaher, never asked permission to bring his own photographer to take ~~xx~~ these pictures for him. The record set forth above is beyond equivocation, and it is entirely consistent with practise and regulations. Plaintiff asked that defendants take these pictures for him, and the only "examination" required under these conditions is only what is sufficient to direct the taking of pictures and which are or may not be necessary to determine to plaintiff's study and investigation.

Moreover, the sense in which "examine " ~~is~~ here ~~employed~~ defendants employ makes it appear that plaintiff has the desire or intent of handling the garments, a misrepresentation carried further in ~~Ex~~defendants' Exhibit 3, as outlined above, to make it appear that plaintiff's interest is morbid, the insulting language of this affidavit being (p.4) "...for the purpose of satisfying personal curiosity ~~r~~ather than for research purposes", ~~This was~~ bracketed with the ~~following~~ nasty inuendo,"any research purposes he may have in mind". (Emphasis added).

If there is any fact about this particular archive of which the affiant was entitled to have no doubt, it is the extent and seriousness of plaintiff's research and objectives. And if counsel who drafted this tricky language with which to attempt to prejudice the Court had read the aforesighted cited correspondence, they also could have been without any doubt and had to have been making conscious misrepresentation and prejudicial statements.

The contentions that follow are three in number, false and comtradictory. The first is that plaintiff "has failed to exhaust those administrative remedies available to him". That plaintiff did exhaust himself in this exhausting is already established. The truth is that defendants first ignored plaintiff's less formal appeals, then ignored his formal appeal for three months, then failed to comply with their own regulations, as of now for about an additional five months. These require that "if the denial is sustained, the matter will be submitted promptly...to the Assistant Administrator for Administration,

(Emphasis added)

whose ruling thereon will be furnished in writing to the person requesting the records". We return to this.

~~What defendants here claim, absent such written "ruling" as required by their~~ own regulations, is quite specific (p.6). It amounts to license and the sanction of the Court for them to violate their own regulations by the simple expedient of not making any ruling "Absent" this "ruling thereone plaintiff fails, first to state a claim under 5 U.S.C. and, second to establish he has exhausted available administrative ~~xxxxxx~~ remedies."

The plain and simple fact is that none of this is in any way under the influence or control of anyone besides defendants'. Everything plaintiff can do he has done and, as ~~set forth, has gone much further than either law or regulation require.~~

The ~~would~~ seem to be contradiction here with the wording of the Mtion, "that he states a claim upon which relief cannot be granted". Here it is said ~~xxxx~~ only that plaintiff "is not entitled to the relief he seeks" because he allegedly has "falied to exhaust those administrative remedies available to him", which ~~xxx~~ means that this relief is available upon the exhausting of those remedies. Moreover, as has been shown, the Department of Justice gave exactly this "relief" and defendants themselves gave exactly this "relief" to another, the Columbia Boradcasting System.

~~The second is phrased in this prejudicial and unwarranted manner:~~

"2 the refusal of defendants to permit plaintiff to do what he desires regarding these articles is an exercise of discretion committed to the defendants by ~~sta~~ statute and an agreement" with the family.

The intent to prejudice here is transparent. "Do what he desires"? Again, this in consistent with other such inuendos already cited, all intended to mislead the Court into the belif that plaintiff has illicit purposes or poses some jeopardy to the safety of the garments. Plaintiff "desires" no more than photogrphs, those existing and those he asks be made for him. Any contrary representation is deliberate deception.

Where the meaning of the statute and contract are addressed further by defendants, to the degree plaintiff may not have, he will. This is also true of the third contention,

"3) the articles which plaintiff seeks to examine are not 'records' as contemplated by Congress to be within the purview of 5 U.S.C. 552." Here, still again, plaintiff must assert record that his purposes are not to have the articles or in the sense used, to "examine" them. His request is for photogrpahs, no more, and on this score he again alleges the intent to deceive. what plaintiff seeks is shown elsewhere to in every sense be "records" within all legal definitions.

ctr→ Defendants' "II. Pertinent Statutes and Regulations" 28

Statutes and regulations are also quoted by defendants in "AII. Argument", in subsections A, and B and C. In subsection B, the family contract is quoted as having the effect of both law and regulation. Here plaintiff addresses these citations in their order of appearance.

First quoted in full, is what "The Public Information Act" allegedly provides:

"'(a)(3) . . . each agency, on request for identifiable records made in accordance with published rules . . . shall make the records promptly available to any person. On complaint, the district court . . . has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld . . .

(b) This section does not apply to matters that are -

* * *

(3) specifically exempt from disclosure by statute . . . " 5 U.S.C.552, Pub. L. 90-23 [Emphasis added]"

Just what is alleged to be "specifically exempt from disclosure by statute" is not stated but is emplied. Nothing plaintiff seeks has such specific statutory exemption. INSERT The law does provide eight other specific exemptions, each defined with care. Defendants do not claim exemption under any one of them.

However, this citation would appear to confront defendants with a certain looseness in language if not outright discrepancy. Here the language of the law giving this Court jurisidction is admitted. But in their "Answer" defendants, under "Second defense", alleged quite the opposite, denying the jurisdiction of this Court.

The full language of this provision is partly-quoted not so long it could not have been quoted in full on that count. If the Court can ignore the defendants' adding of wrong emphasis, what was omitted may be informative.

The very beginning, of what was not quoted, is, "(a) Each agency shall make available to the public information as follows:". Thus, this section of the law really says that

Insert on III-11

no par.

There is no law that exempts such photographs from disclosure. There is no law providing that Warren Commission evidence may not be photographed. There is no law saying that clothing including that of the President, cannot be photographed. There is no law saying that donations to the Government may not be photographed. The law under which this donation was made has no such provision. And there is a contract under that law, the said contract specifically providing that photographs will be made. Perhaps these things account for the total absence of any explanation of the claim to the third exemption provided by 5 U.S.C. 552. Particularly with the burden of proof on defendants under 5 U.S.C. 552 is the mere assertion of the exemption at best dubious. It also helps explain the continuous misrepresentation of what defendants have refused plaintiff, which is no more than photographs, and photographs are included specifically in all definitions of "records".

not for withholding information.

its purpose is to provide for information to be made available to the public, The emphasis added tends to distort this to those who do not read the entire section.

The third excision deletes the proof that is contrary to the pretense of the "Answer" and declares that this Court does have jurisdiction.

The fourth includes this language, which should not have been omitted:

"and the burden of proof is on the agency to sustain its action..."

A relevant provision not cited and tending to support the belief that quotation was selective and the emphasis added unfaithfully is what immediately follows the listing of the exemptions,

"(c)This section does not authorize the withholding of information or limit the availability of records to the public, except as specifically stated in this section

Defendants next citation is of 44 U.S.C. 3301. Again, false emphasis added and eppecially in the context of the distortion by the adding of false empahasis are the excisions significant: As quoted by defendants, this is what 44 U.S.C. 3301 says:

"As used in this chapter, 'records' includes all books, paper, maps, photographs, or other documentary materials . . . Library and museum material made or acquired and preserved solely for reference or exhibit purposes . . . are not included."

While it would seem that this acknowledgement, hidden by false emphasis, that the legal definition of "records" specifically includes what plaintiff seeks, photographs, there no genuine issue as to any material fact, the purpose of the distortion by emphasis and the content of what is removed from the consideration of the Court should be recorded. The purpose is simple: to misidentify this official evidence as something other than what it is and hence, somehow, immune. If, as defendants claim, the contract is valid, then none of the considerations are relevant, for that contract, except as quoted above, limits use to scholarship and investigation. The emphasis is to what is precluded and therefore deceptive as well as irrelevant.

Where defendants seek to make different use of this identical provision and there identifying it other than as 44 U.S.C. 3301, calling it "Section 1 of the Act of July 7, 1943, 57 Stat. 380", what is here omitted is included. The relevance of the

words of Section 3301 as they define records and hence in this instant action do not require the addition of emphasis. What was omitted reads:

> ", regardless of physical form or characteristics, made or recorded by an agency of the United States Government under Federal law or in connection with the transcation of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of data in them."

Nothing could possibly better describe as "records" what plaintiff seeks, which appears to have been enough reason for deletion in quotation. These even defines the clothing as "records," beginning with the beginning of the elimination, "regardless of physical form or characteristics."

Defendants second citation is prefaced by these words;

> "Although the Public Information Act does not specifically define the word 'records', predecessor legislation within the ken of the 90th Congress did."

What defendants did not desire to trouble this Court with is what the Attorney General's Memorandum says on this point, and that is (p.23) that

> "in connection with the treatment of official records by the National Archives, Congress defines the term"

and then the citation of what, after publication of this Memorandum, become 44 U.S.C. 3301.

Thus, in pretending a non-existant exemption on the fictitious ground that the photographs plaintiff seeks are not record, defendants edited their quotation of the law in what seems like a transparent misrepresentation and deception.

And, by elimination of the relevant reference to the Attorney General's Memorandum, also eliminated was what also appears at that point in it:

> "availability shall include the right to a copy..."

which is precisely what defendants deny plaintiff, copies, copies of photographs been all plaintiff seeks.

Based upon the carving of the law to make it seem that what plaintiff seeks is not records, defendants follow immediately with equally selective citation and eding of 44 U.S.C.2107 and 2108 (c). The significance of defendants' withholding from the Court the quite specific provisions of the next section xx another section of this same law, 2901,

~~2901,~~ which defines "Records as ~~they~~ relating to defendants and includes precisely what plaintiff seeks and directs ~~the providing of copies thereof~~, has ~~been~~ already been cited

What here is withheld from the Court with regard to section 2107 is what is relevant because of ~~the~~ defendants' claim that the family contract is valid and binding, and that is the ~~restrictions~~ "restrictions agreeable to the Administrator as to their use". The contract provides that access be granted to certain persons, the definition including plaintiff. Without citing this provision of the comtract, I (1)(b), this quotation amounts to a misquotation, for it has ~~the~~ meaning directly opposite that sought to be imparted to it.

What is eliminated from section 2108 (c) is the authorization to the Administrator to "exercise" with respect to such deposits "all the functions and responsibilities otherwise vested in him pertaining to Federal records or other documentary materials in his custody or under his control." This, again, perfectly fits the official-evidence description of that of which plaintiff seeks copies. One other sentence with that from which the foregoing is quoted also preceeds the selective quotation of this section by defendants. That stipulates that the Administrator "shall take steps to secure to the Government, as far as possible, the right to have continuous and permanent possession of the materials." This is not to suggest that the Government has disposed of them, but it is relevant in terms of the executive order of two days later, requiring that all of the evidence about the assassination be kept together as a unit, under the ~~Archivist~~ Archivist.

The spirit of the law is also suggested by the next (d) language, which authorizes the Administrator to "cooperate with or assist" any "qualified individual to further or conduct study or research" in such deposits.

But there is nothing sought that is contrary to the restrictions of the contract, were it to be valid, for that requesires access to plaintiff, hence the only purposes of the foregoing citations by defendants are not those pretended.

What next follows is reference to the published rules promulgated by the Administrator, again earlier dealt with. These are presented to this Court as the

"Significant portions of GSA regulations". In the light of what plaintiff has earlier quoted of these regulations, and their requirement of access and copying, including the duplicating of existing photographs and the making of those that do not exist, this would seem to be a somewhat exhuberant description. All reference to the directly applicable citations presented by plaintiff in the foregoing, all references to the regulations relating to this material in particular, and, of course, all references to the Attorney General's Memorandum or 44 U.S.C. 2901 are excluded by plaintiffs. Quotation, which is from the regulations plaintiff cited and not here presented to the Court, are calculated to carry the misrepresentation of the non-definition of "records" further and to perpetuate the misrepresentation of the provisions of the family contract.

"Appeals within GSA" is quoted from these regulations, without any explanation being made, thus for the apparent and false purpose of pretending that plaintiff did not make the appeals required by this regulation, which he did.

Likewise is there no relevance to the next quotation from these record regulations, "Donated Historical Materials," with the quoted parts saying only that "public use" is restricted by "all conditions specified by the donor..." This, again, is without elucidation, which can, perhaps, best be explained by the repetition of the donor's stipulation of access to those like plaintiff under I (1)(b).

The purpose including irrelvant citations of regulations and eliminating the relevant and entitling this the "significant" part of the regulations, all without explanation to the Court, even the inclusion of what means the opposite of the meanig sought to be imparted by earlier misrepresentations, is not inconsistent with the intent to misinform the Court and deny plaintiff his rights. It is consistent with plaintiff's serious accusations.

Defendants' "Argument".

This section is divided into three parts, each with a letter identification.

"A" alleges "plaintiff Has Failed to Exhaust the Available Administrative Remedies". This might better have been titled "Orwell-1971". The intent to deceive is apparent for even the defendants' selection of regulations on the preceeding page specifies an appeal is required. Therefore, in order to falsely allege failure to exhaust administrative remedy, plaintiff's appeal is carefully described as other than plaintiff's appeal. The intent to deceive and misrepresent begins with the opening general reference to the requirement of the regulations and "procedures to be followed when a request... was denied." At no point is this Court told that plaintiff did appeal. Perhaps it is the sincere official devotion to perfecting this misrepresentation that led to the misdating of plaintiff's appeal as of June 6, 1970, whereas it was actually made June 20. The appeal is referred to as no more than a casual "letter", the consistent reference to it, from plaintiff. But plaintiff did, in it, label it as his appeal ("Herewith I appeal...") from rejected requests. When combined with the misrepresentations and misinterpretations and omissions already cited from both the appeal and its rejection, there can be little doubt of defendants' intent.

Even the conclusion of this section hides the fact of plaintiff's studious and careful compliance with the regulations, saying not that there had been an appeal and it had been denied but that "There has been no denial of plaintiff's requests contained in his letter of June 20, 1970", which in itself is false.

Insert

The requirement imposed upon defendants, that the appeal be forwarded promptly to the Assistant Administrator for Administration and his obligation to rule in writing is quoted at this point, with a wrong sense imparted to it, that this is somehow plaintiff's doing and fault and therefore, because plaintiff was denied his rights, he failed to exhaust his "available" remedies. Truly, Orwellian. So there will be no doubt, plaintiff again quotes the language of the House Report, as brief as any of the relevant citations:

"...the person making the request is entitled to prompt rebiw by the head of the agenc

really

If defendants believed this to be the case, their first response to plaintiff's complaint, rather than the invitation to the unnecessary hear ing that their "Answer" was, would have been a motion to dismiss on the ground the issue was moot, the request complied with.

Knowing that plaintiff did appeal, defendants later (p.6), invoke another provision of these unexplained regulations appearing however, on page four. That is the requirement imposed by their regulations upon defendants,

> "If the denial is sustained, the matter will be submitted promptly ~~xx~~ by the Director of Information to the Assistant Administrator for Administration, whose ruling thereon will be furnished in writing to the person requesting the records."

As quoted on page six, two things are omitted. First is the requirement of processing the appeal within the agency, that is, that the Director of Information of GSA will send it to the Assistant Administrator ~~xx~~ for Administration; and second, that this ~~will~~ be done "promptly". Consistent with these omissions and ~~xxx~~ defendants' failure to comply with their own regulations, is the deliberate misrepresentation of what this means. It is made to appear as plaintiff's fault. It is actually alleged, albeit with less heavy-handedness, that because defendants violated their own regulations to deny plaintiff his rights under them, ~~xxxxxxxx~~ "Plaintiff Has Failed to Exhaust the Available (sic) Administrative Remedies."

Following the edited quotation from the regulations, where the responsibilities imposed up on defendants and the requirement that they act "promptly" are eliminated, this section concludes with the stringing together of several falsehoods. Having deceived this Court with the false pretense that plaintiff did not appeal, defendants here perpetrate further deception in alleging "there has been no denial". To this they add that because the Assistant Administrator for Administration just didn't do what the regulations require of him, "plaintiff fails, first, to state a claim under 5 U.S.C. 552 and, second, to establish he has exhausted available administrative remedies."

This is pure Orwell. But it need not rest on defendants' attempt to deceive alone. If defendants had supplied a single one of the pictures plaintiff requested in all those letters, repeated in his June 20 appeal ~~xx June 20,~~ is there any doubt that defendants would have given this Court copies of the covering letters or a transcript of the lying charges against plaintiff's deposit account? ~~Plaintiff~~ Plaintiff did exhaust his remedies. He did appeal. He was rejected.

Yet all this deception is not enough for defendants. They also misrepresent the law. The law imposes the burden of proof upon defendants , not plaintiff. It is not, under ~~the~~ this law, incumbent upon plaintiff "to establish ~~he has exhausted~~ available administrative remedies." It is incumbent upon defendants ~~that they do this.~~ prove plaintiff did not.

And they do not, because it is not so.

"B" is titled, "Defendants' refusal to Permit Examination and Photographing of the Articles is a Discretionary Act Created by Statute and Agreement With the Donors." Beginning with this misrepresentation, almost all is irrelevant and contrived to appear legitimate. All the citations of what superficially seems relevant and authoritative is not. The title is the misrepresentation that is designed to mislead the Court. The misuse of "Examination" has already been exposed. Plaintiff neither asked nor wants to toy with such grim evidence. "Photographing" here is misused as earlier, where it was more explicitly but not less false and repeatedly alleged that plaintiff wants to do the photographing personally. The facts are clear and set forth above. Plaintiff has in the sense here used by defendants not asked what they say. He has asked, as misued here, for no more than the taking of photogrpahs to suit his needs. This, despite all the pseudo-scholarly citations, is specified by both regulation and the contract.

Further bearing on defendants' intent to mislead the Court is the fact that what plaintiff really asked, not what is here misrepresented as his requests, was done for another, the Columbia Broadcasting System, so that even if these were valid citations of plaintiff's requests and of regulations, contract, etc, they are irrelevant and immaterial because defendants have already established practise contrary to the representation here made.

Moreover, this cannot address and does not mention the question of plaintiff's requests for copies of the existing pictures that defendants refused.

Here again there is the suggestion that the family is the cause of the suppression called "denial," and this section is heavy on that. But the reality is that the family itself stipulated "access" to those described in a manner so closely fitting plaintiff's qualification that the point is shunned by defendants. The only exemption is "to prevent undignified or sensational use." As has been seen, defendants raise heither this point nor that of plaintiff's meeting the definition. They feel safer hinting at the deception. Knowing that the burden of proof is upon them and not making claim that defendant is not qualified for access or that he will make

undignified use of the evidence he seeks, there is a lack of genuineness is selective quotation that amounts to misrepresentation of the contract. The inference of intending prejudicial misuse does not appear to be without warrant. Such reference to the alleged provisions of the contract by those who would not accept plaintiff's reiterated challenges to show either that plaintiff would use these pictures in such a fashion or even that those he asked were capable of such misuse should eliminate any doubt on this score.

And entirely opposite the description of "proscriptions" of the contract (p.7), aside from the "access" stipulated in I (1)(b), section VI specifies that one of its purposes is to "provide" for "use" of the described material, official evidence.

If consistency is a virtue, defendants can lay claim to being virtuous. In the last section they persist in selective misquotation, albeit not too imaginatively. "The Kennedy Clothing is not a 'record' within the meaning of 5 U.S.C. 552", they entitle this part. They begin with an even more bobtailed version of 44 U.S.S. 3301, presenting it thus:

"...specifically indicates 'Library and museum material . . . acquired and preserved solely for reference . . . are not included' in the definition of 'records'."

Photographs are not of this character. Nor, for that matter, are the objects of official evidence of which plaintiff seeks photographs. However, defendants are determined to foist off such an interpretation. With full repetition of section 3301, the citation of a few of the carefully-deleted provisions will limn this design.

However, in even this briefest version, the language of the statute precludes honest use of such incompatible words as "specificially indicates". Defendants version requires for its applicability that this "material" (which is not what plaintiff seeks, photographs being that) must have been "acquired and preserved solely for reference", which the contract negates. It simply isn't true.

The first listing of what is encompassed by "records" doesn't indicate but specifies "photographs". This is followed by language that encompasses the originals of the evidence," regardless of physical form or characteristics."

What was eliminated after "reference" is even more categorically refuted by the contract, and since only two words are involved, the dominating consideration was not likely space. Those two words are "or exhibition". Quite clearly, the garments were not "received" by an agency of the United States Government ...solely for reference or exhibition purposes, both being specifically banned in the contract. None of the rest of this section, already cited, is congenial to defendants' distortions and misrepresentations. While plaintiff does not seek the clothing, wanting only certain pictures, the language of this statute does not in any sense define the clothing itself as not "records", particularly when it is official evidence "made or received by an agency of the United States Government in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the orgabizations, functions, policies, decisions

legitimate successor as evidence of the organization, functions, policies, procedures operations, or other activities of the Government or because of the informational value of data in them."

All of this preceeds the out-of-context language beginning "library and museum material..." and was omitted by defendants.

This passage is quoted in the Attorney General's Memorandum, (p. 23) as is what follows,

this [illegible] of what [illegible] Memorandum that immediately follows the quotation of this statute:

"It is evident from the legislative history of Public Law 89-487 upon the concept that availability shall include the right to a copy, that the term 'records' in subsection (c) does not include objects or articles such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles, equipment, whatever their historic value or value as evidence. . . ."

Obviously, the photographs are not "objects" within this definition. Nor, for that matter, is the clothing.

Now, what this provision can fairly be interpreted as covering is such things as the White House, the Iwo Jima statue, George Washington's desk, General Pershing's automobile, or the first space capsule. None of these does plaintiff seek, however,

This appears to be the basis for the allegation of lack of jurisdiction in the "Answer", for defendants here argue, for all the world as though plaintiff did ask for the White House, or General Pershing's car, or the Iwo Jima statue, that not the photographs plaintiff seeks but the clothing is a structure, furniture, painting, sculpture, three-dimensional model, vehicles, equipment" and thus it is "obvious" the photographs are "not such 'records' which this court has jurisdiction to compel the defendants to produce or not withhold."

Having the word of defendants and their eminent counsel, the Department of Justice, that photographs are bulldozers, which is at least as binding legally as that cabbages are kings, plaintiff respectfully suggests this subsection might more aptly have been titled "The Lincoln Memorial is not a 'record' within 5 U.S.C. 552."

However, it seems nonetheless appropriate to call the attention of the Court to the description of the donation from the contract, Complaint Exhibits A and F and now defendants' Exhibit 3 as part of Dr. Rhoads' affidavit (p. 12). The description the Court will note, is not of a jacket, a shirt and a tie but:

"Clothing and personal effects of the late President identified by the following exhibit numbers relating to the President's Commission on the Assassination of President Kennedy:
Commission Exhibits Nos. 393,394.395.
FBI Exhibit Nos. C26,C27,C28, C30, C33, C34, C35, C36."

This is no more the description of mementos than of bulldozers.

The Department of Justice has another way of informing this Court more honestly whether the above-tabulated exhibits are, within the meaning of the law, "records". The Attorney General issued an Executive Order of October 31, 1966 (Complaint Exhibit E). The third paragraph describes what is to become part of "the entire body of evidence":

"The items acquired hereunder are more particularly described in the appendix annexed to and made a part of this notice."

On page 13971 of that issue of the Federal Register, in this annex, appears:

"FBI exhibit Nos. C26-C28, C30, C33-36" followed by the description "Clothing and personal effects of President Kennedy."

This, as previously noted, superceded the family contract by two days.

If the photographs of this evidence that plaintiff seeks could ever have been covered by the descriptions of structures, furniture, vehicles, equipment and the like, as assuredly it never could, the Attorney General himself took any possibility away by executive order on October 31, 1966, On that date the items of the comtract became part of the "entire body of evidence", the records of the President's Commission. Stored at the National Archives, they are there required to be available to those who qualify, of whom plaintiff is one.

What plaintiff believes the foregoing itemization of all of defendants' citations and comparing them with what they pretend to quote with fidelity (is there any other manner in which citation is permitted to a federal court?) and what they allege to interpret faithfully is any other kind acceptable or proper to a federal court?, with a few additions of what was smoothly omitted from the consideratio of this Court (and can it be believed that the Department of Justice does not know the law it administers?) show that there is no single fair, honest or complete recitation of any single provision of any law or regulation defendants cited to this court;

there is not a single fair or honest interpretation of any of the laws or regulations by defendants cited to this Court;

There was considerable omission from what defendants presented for the consideration of this Court as the relevant law and regulations.

Plaintiff, a writer, not a lawyer, believes that when it is the function of the Department of Justice to assure all citizens of all their rights, one of the most basic of which is that to public information, without which the rights bestowed in the First Amendment of severely restricted, such transparent tampering with the law and so obvious an attempt to nullify it (by no means an isolated case under 5 U.S.C. 552) represents a conscious effort to defraud plaintiff and deceive this Court.

With no single exception, all defendants' citations, in their unaltered, complete form, establish that, as plaintiff alleged, there is no genuine questiom as to any material fact and he is entitled to judgement in his favor as a matter of law.