opposition

PLAINTIFF'S ~~RESPONSE~~ TO DEFENDANTS' MOTION ~~FOR~~ TO DISMISS OR, IN THE ALTERNATIVE FOR SUMMARY JUDGEMENT, and PLAINTIFF'S RENEWAL OF PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT

INSERT 1A

Plaintiff moves this Court to dismiss defendants' Motion to Dismiss or, in the Alternative, for Summary Judgement on the grounds that: ~~they~~ It does not refute or even really respond to plaintiff's Motion for Summary Judgement and supplement thereto with valid citations of fact or law, ~~thereby confirming~~ or even allude to it aside from the general and unsubstantiated reference in the motion itself, thereby establishing the truth of plaintiff's pleading that there is no genuine issue as to any material fact and that on this basis alone, plaintiff is entitled to judgement in his favor as a matter of law;

Each and every one of the claims and allegations in defendants' said motion is false and without merit and, where accompanied by citations of law or regulation, are not by them sustained and do, in fact, ~~support~~ prove each and every one of plaintiff's relevant claims and allegations;

At no point and in no manner do defendants address or even refer to plaintiff's claim that he is entitled ~~to copies of photographs of official evidence~~ to the public information he seeks, namely photographs of official evidence in an official proceeding;

Defendants seek to perpetrate a fraud upon plaintiff and this Court by editing and misquoting law and regulation and by not presenting to the court for its consideration what defendants know to be the fact ~~and~~, the law and applicable regulations;

Defendants have not responded to or denied plaintiff's proven claim, conceded by defendants, that defendants have made the identical public information available to another and thereby, if there ever was any legitimte reason for withholding it from plaintiff, have waived any right to withhold it and must grant " " equal access to plaintiff under applicable law and regulations;

1A —

~~Defendants have not responded to or denied that the so called letter agreement between defendants and the representative of the estate of the late President should be declared an illegal contract, and thereby eliminate any genuine issue as to any material fact about plaintiff's claim;~~

1A/1

With respect to defendants' Motion, the "Statement of Material Facts as to which there is no genuine issue", the "Memorandum of Points and Authorities", there is serious factual disagreement as to the facts, therefore the motion should not be granted.

These factual disagreements exist because they have been contrived by defendants; because the allegations are not genuine; because the record allegedly cited is carefully distorted; because the citations of law and regulation are neither complete nor accurate; all being an attempt to deceive the Court by representing to the Court the opposite of what the law and regulations require and provide, and what the factual situation really is, to the end that the Court be misled and the law converted into an instrument for illegal suppression.

Secondly, defendants' motion ought not be granted because despite contrary certification to this court, the affidavits and exhibits represented to have been served upon plaintiff were, in fact, not served upon him, nor were they supplied when plainitff requested them, and had not yet been copied for plaintiff when plaintiff made the second request for them, to end the end that with the time limitation imposed by the Court it is not physically possible for plaintiff to respond to them.

Plaintiff also believes that undef the rules of this Court, the attachment of an affidavit to a Motion to Dismiss converts in into a Motion for Summary Judgement and is therefore additional grounds for not granting it.

Law, regulation and a certain letter agreement require the taking and providing of this said evidence for plaintiff or any other "serious scholar or investigator of matters relating to the death of the late President for purposes relevant to his study thereof.";

Because there is no genuine issue as to any material fact, because applicable law and regulation require it; because it has been is confirmed to be defendants' confirmed practise with others and to deny it to plaintiff would be discriminationary and illegal; plaintiff prays this Court to find in his favor and issue a Summary Judgement in which defendants are directed ~~xxx~~ and ordered to:

Make photographic copies of the existing pictures of the clothing of the late Preisdent that is the official evidence of the Warren Commission (President's Commission on the Assassination of President Kennedy) for plaintiff, as his expense, at the rates prevailing at the time of plaintiff's first request therefor;

~~make xsuch xphotographs xas xare xnot xplaintiff xshall xdirect xof xthis xoffice xat xvideo xcx~~

Of those views of the damage to the said clothing alleged to have been caused by a ~~bxx~~ bullet that are not included in the existing pictures, make photographs for plaintiff, ("for purposes relevant to his study thereof",) with plaintiff present to see what photographs are taken and permitted to examine but not handle the said evidence to the degree necessary for this purpose, such photographs also to be paid for by plaintiff at the rates prevailing at the time of plaintiff's first request therefore;

Additionally, because defendants do not even make pro forma denial thereof, plaintiff prays this ~~xxxxxxxx~~ Court to find the so-called GSA-family contract null and void and to order that the public property referred to it in and the official Warren Commission ~~evidence~~ (evidence of the said) referred to in it, namely Commission Exhibits 393,394 and 395, be kept in and preserved by the National Archives, together with all other official evidence of the assassination of President Kennedy and the files of the (said) Presidential Commission, under existing law and regulations, with the added proviso that all possible photographs thereof that can have any evidentiary value in the future be made and duplicated and that all possible precautions be taken to avoid any possible further damage thereto, ~~xxx xdamage xhaving xaxread~~

Harold Weisberg, pro se

I herby certify that service of the foregoing Response to Defendants' Motion to Dismiss and Plaintiff's Renewal of Motion for Summary Judgement, together with the addenda ~~attachments~~ thereto, have been served upon defendants by mailing copies thereof to Robert M. Werdig, Jr. at the Office of the United States Attorney for the District of Columbia this ~~xx~~ _____ of Freburary, 1971 signed

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

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

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

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

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

4. Exemptions are provided in the law for such public information as is not required to be made available to applicants (subsection (e)). What plaintiff seeks in this instant action is not encompassed by any of these exemptions and defendants have neither here nor ever claimed or alleged the applicability of any of the none enumerated exemptions.

insert

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

6. Aside from verbal requests going back to, at the very latest, the first of November 1966, the first written request dated not later than August 4, 1967 ~~(EXHIBITXX~~ (Complaint Exhibit B), in the ~~yearxofx19~~ nine months prior to the filing of the complaint plaintiff made not fewer than ~~six~~ 10 such requests in writing alone, plus extensive correspondence with Mr. Burke Marshall, representative of the executors of the estate of the late President, plus a written appeal of June 20, 1970, as prescribed by defendants' applicable regulations under the law. After the filing of the complaint, and in a continuing effort to avoid the need for this litigation, there ensued further correspondence. These facts are not denied by defendants.

7. Defendants made but three written responses prior to the filing of the said appeal, all rejecting plaintiff's proper requests; ~~two~~ one ~~each~~ after filing of the appeal; and one after rejection of the appeal. The appeal was ignored for two months,

which violates the requirement of the law that appeals be ~~handled~~ action promptly. The appeal was not forwarded, as required ~~by regulations~~, "to the head of the agency", for "prompt review" to this very day, more than seven months after the filing. Appeal was also made, in an excess of caution, to the Department of Justice, which rejected the appeal. None of these facts are denied by defendants.

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

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

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

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

D) Defendants did, in fact, deny plaintiff's requests for these photographs of the evidence not ignored in their rejection of plaintiff's appeal, saying his requests were "denied only in terms of furnishing you a personal copy". (There is no such thing as a "personal copy" in the freedoms of any kind)

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

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

11 10. By return mail, under date of September 19, 1970, plaintiff told defendants that their denial, was a denial and as they knew, had not been written until long after filing of the complaint, but that, upon the providing of the requested copies of the evudence, plaintiff himself would move to dismiss. These facts are not denied by defendants.

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

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

14. In the approximately half a year since the filing of the complaint, defendants have neither offered to provide copies of the withheld pictures nor to take those pictures of the evidence requested by plaintiff (Complaint, Paragraphs 9, 14) and, in fact, as recently as in the papers filed in this Court on January 13, 1970, persisted in refusing to do either. These facts are not denied or in any way contested by defendants.

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

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

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

18. But over and above all other applicable law and regulation, defendants promulgated their own "Regulations for Reference Service on Warren Commission Materials", under which it provides that "still pictures will be furnished...Copies will be furnished on request for the usual fees.", and that with regard to "three-dimensional objects",... ~~to the extent possible~~, photographs of these materials will be furnished to researchers ...In the event that existing photographs do not meet the needs of the researcher,

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

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

Use Government's form at tip page as before

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE WITH REGARD TO THE GSA-FAMILY CONTRACT.

Pursuant to this court's local rule 9 (h), plaintiff submits that with respect to the GSA-family contract, these are material facts as to which there is no genuine issue:

1. Under date of October 26, 1966, a certain letter agreement was signed by the representative of the executors of the estate of the later President and the Administrator of General Services (Complaint, Exhibits A and F).

2. This said letter agreement provided for the transfer of title to certain official exhibits of the President's Commission and to certain other evidence considered by the said Commission, in the form of film and prints thereof, to the United States through GSA. These items, then, were in the possession of the United States.

3. Two days thereafter, the Attorney General, on October 31, issued a certain executive order (Complaint Exhibit E), stating ,

> I have determined that the national interest requires the entire body of evidence considered by the President's Commission on the Assassination of President Kennedy and now in the possession of the United States to be preserved intact." (Emphasis added)

4. "Preserved intact" means preserved "complete or whole", that is, in a single unit and at a single place.

5. That place had already been designated as the National Archives (Commission Report, xv).

6. This said letter agreement included what amounted to stolen property, property of the United States, for the disposition of which there existed no legal authority and which passed out of the possession of the United States in violation of law. Such a contract, for the return to the United States of that which had been stolen from it, and with the attaching of provisions that could not have been attached without this theft, is null and void and amounts to a fraud upon the people of the United States (Complaint, Paragraphs 23, 25,42).

7. Under law and regulations, exposed film belongs to the purchaser of the raw film. This said raw film was purchased by the United States. Where the various kinds of medical film are concerned, especially X-rays, even though the patient pay for the X-raying, the exposed film remains the property of the hospital, as set forth in such standard sources as the "Pittsburgh Code" and as is well known. In addition, regulations of the United

States Navy, in one of whose installations the said film was exposed, requires all such records to be preserved and permanently filed, as is stated on the authorizing ~~form~~ form

Insert on 9, under title

9A

This is an action in which plaintiff, a serious scholar ~~in the field~~ of political assassination and a serious investigator into the assassination of President John F. Kennedy, a man whose published work is by far the most extensive in the field, seeks, ~~xyxxxxxxxxxf~~ pursuant to the provisions of the Public Information Act, 5. U.S.C. 552, to obtain public information denied him by the National Archives and the GSA. What he seeks and has been refused is not as represented in defendants' Memorandum of Points and Authorities. Plaintiff seeks but a single thing: photographs. These photographs are of but two kinds: those already existing, copies of which have been refused him; and photographs that have, from the official record, never been made of the damage reflected in the evidence, namely, the clothes worn by the President, identified as CEs 393,394 and 395. Contrary to defendants' ~~xxxxxxxxxxx~~ opening allegation, plaintiff has never asked that he be permitted to make these photographs or to handle the clothing himself. He has requested that they be made for him, at his cost, by the staff of the National Archives, which is, in all other cases, the regular procedure. He desires to examine, without handling, these official exhibits, only to the extent necessary to explain what pictures he wants taken for him and to see if others that seem, in the words of the family-GSA contract, necessary "for purposes of his study", are necessary or can be dispensed with.

Plaintiff alleges and will prove that his request is not in any way exceptional; that it is required by law and regulation, besides this contract; is the norm with all similar evidence and related materials in the Archives; and has been the practise with others.

Plaintiff also alleges and will prove that, aside from not mentioning his first request, for ~~xxxxxxxxxxx~~ copies of the existing photographs, and mispreresenting the nature of his second requests, for photographs to be taken, defendants' motion and addenda are so separated from a faithful representation of reality as to constitute, in effect, whether or not in law, an effort to defraud him and at the very least to mislead this court. This deception extends to even the omission from what is represented as faithful quotations of law and regulation, plus this contract, of that which proves they mean the opposite of the meaning attributed by this misquotation and its interpretation.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONSE TO DEFENDANTS' MOTION TO DISMISS AND IN SUPPORT OF PLAINTIFFS RENEWAL OF MOTION FOR SUMMARY JUDGEMENT.

Because of the collateral issues and the character of defendants' motion, this will be addressed further in addenda, but here restricts himself, for the convenience of the court, the citations of the spirit, purpose and intent of the law, and the provisions of law and regulation as they relate to his rejected requests for public information under the law.

Counsel for defendants is the Department of Justice. Prior to the effective date of what has been come to be known as the Freedom of Information law, the Attorney General issued a"Memorandum on the Public Information Section of the Administrative Procedure Act", directed to "the executive departments and agencies" and containing the Department of Justices interpretations of the meaning of the various provisions.

A statement issued by President Johnson (ii) opens with the expression that "a democracy works best when the people have all the information that the security of the Nation permits", to which he adds, "I have always believed that freedom of information is so vital that only the national security, not the desire of public officials or private citizens, should determine when it must be restricted." The President concluded "with a deep sense of pride that the United States is an open society in which the people's right to know is cherished and guarded", something he would not be persuaded the official record in this present action.

Similar emotion was expressed by the Attorney General (iii-iv), ""Nothing so diminishes a democracy as secrecy...Never was it more important...that the right of the people to know...be secure...";

"This law was initiated by Congress and signed by the President with several key concerns: - that disclosure be the general rule, not the exception; - that all individuals have equal rights of access;-that the burden be on the Government to justify the withholding of a documents, not on the person who requests it;..."

To this he added that the law required "...that documentary classification is not stretched beyond the limits of demonstrable need."

Subsection (e) of the law is titled "exemptions". There are nine, not one of which

is even claimed to be applicable by defendants here. Thus, with the "burden...on the Government to justify the withholding", language coming from H.Rept 9, which says, "The burden of proof is placed upon the agency", and the language of the House Report is embodied in the statute (subsection (c)), "and the burden shall be upon the agency to sustain its action," under 5 U.S.C. 552 it is incumbent upon defendants to do one of four things:

a) provide copies of that public information plaintiff requests;
b) prove what is sought is specifically exempt under the statute;
c) prove that plaintiff has not complied with the requirements of the law and applicable regulations;
d) prove that the law does not apply.

Defendants do none of these things.

The requested copies of the identified public information has not been provided, and defendants affirm this.

There is no claim, in either this instant motion of January 13, 1971 or in what defendants styled "ANSWER", filed October 27, 1970, that this law does not apply. The closest thing to that is the ridiculous assertion of the "ANSWER", abandoned upon assertion, that (Second Defense), "The Court lack jurisdiction of the subject matter". Subsection (c) could not be more specific or applicable, in the absence of any allegation of inapplicability of the statute, in saying that complaint must be made to "the district court of the United States, in the district in which the complainant resides or has his principal place of business or in which the agency records are situated." This subsection is likewise specific in stipulation that under either of the above-quoted conditions, the district court "shall have jurisdiction."

With the law applying and controlling, and with the requirement of the law that the agency prove beyond question that what is sought is exempt, defendants nowhere claim the right to withhold under any of the exemptions.

Defendants, who must prove that plaintiff did not comply with the requirements of the law, do not. They do not even allege it. They attempt to infer it, and in so doing concede the applicability of the law.

It is required that plaintiff make requests for identifiable records. Plaintiff

has met both tests, redundantly, ~~and without~~ over a period of more than four years. His The numerous and repeated requests of the past year are enumerated above and following. Defendants do not contest these incontrovertable facts. It is required that plaintiff insert make appeal under the regulations.

41 CFR section 105-60.404(c) requires:

"After notification that his request for identifiable records has been denied, the person submitting the request may appeal the denial. The appeal shall be submitted to the Director of Information..." plaintiff This he did, under date of June 20, 1970, as defendants acknowledge in their quotation of the said appeal, albeit the quotation is selective and deceptive and the date attributed to it (June 1) is erroneous. Defendants rejected this said appeal, under dated of September 17, 1970. While the rejection of the appeal is remarkable for its evasiveness and gross in its misrepresenation and omission, it ~~nonetheless~~ nonetheless is unequivocal in refusing a "copy of the photograph". (Plaintiff requested more than one photograph.)

There remains but a single added step in the appeals process, and that is entirely outside the control or influence of any plaintiff. As defendants concede ("III. Argument. B.", p. 6): section

"The GSA regulations, 41 CFR 105-60. 404(c), pertaining to the procedure for denying requests, requires:

> "If the denial is sustained, the matter will be submitted. . . ~~(illegible)~~ (sic) to the Assistant Administrator for Administration whose ruling thereon shall be in writing to the person requesting the records.'"

Defendants then say, "There has been no denial of plaintiff's requests... and no ruling by the Assistant Administrator..."

From the time of the appeal to the time of the filing of the papers from which the foregoing is quoted, there had elapsed approximately seven months! The claim here is to the right to nullify and vitiate the law by inaction, by ignoring it. Entirely aside from the fact that this is an unworthy frivolity to present to a Court, a contempt for the law unbefitting the Government, there is statutory requirement that will be dealt with in greater length in the other addenda. Here is should be sufficient to note that The Attorney General's Memorandum (p.28) itself emphasizes this point: "It should be noted that district court review is designed to follow final action at the agency head level. The House report thates that 'if a request for information is denied by an agency subordinate, the person making the request is entitled to prompt review by the head of agency.'" (Emphasis added)

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The Government cannot seriously claim to be entitled, under the law, to profit from its own violation of

the law. This is counter to all principles of all law. It cannot allege that because it has deliberately and grossly violated the law, the requirement here being that explicit and that clear, and has wrongly and abusively denied plaintiff his rights under the law, that plaintiff has ~~either~~ no rights under the law, or that he has not exhausted his administrative remedies simply because defendants have denied them to him. Such a ~~concept~~ position is ~~anathema~~ anathema to every American concept and subversive of every concept of la

~~In short, what the Government claims is the right to suppress~~

In short, what the Government claims is the right to suppress, despite the contrary purposes and intent of the law, and the specific language thereof, and pretends to this Court that this is what the law and regulations authorize. This is akin to charging the raped ~~woman~~ woman with being an attractive nuisance.

Thus, the Government has not provided the identified public information the law and regulations require it to provide, ~~and~~ has failed to allege any defect in plaintiff's requests and appeal, or that the law does not apply, or that its exemptions do apply, ~~which~~ This is to concede the validity of plaintiff's suit, to establish that there is no genuine ~~question as to any material~~ issue as to any material fact, and to prove that plaintiff is entitled to the relief he seeks.

~~[illegible] and by [illegible] so labelled,~~ that "plaintiff is not entitled to the relief he seeks", is "1) he has failed to exhaust those administrative remedies available to him which are matters of public knowledge", it would seem, in the light of the foregoing recitation of the written record, ~~and~~ defendants' own regulations and applicable law, that language of the streets would not be inappropriate in description of this "contention" that, if intended to be believed by the Court, would seemed to have been intended to deceive the Court. However, and assuming that "available" remedies "which are matters of public knowledge" do not assume the right to take a club to the Assistant Administrator for Administration of GSA, is one of them, it would appear not to be an exaggerated representation of this "contention" to describe it as without substance, completely refuted by the record, law and regulation, and not in any sense either a serious defense or a genuine issue as to any ~~matter of~~ material fact.

Defendants do employ two subterfuges to avoid the requirements imposed upon them by law and regulation: that what plaintiff seeks is not"records" and that he is not

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Defendants do employ two subterfuges to avoid the requirements imposed upon them by law and regulation: that what plaintiff seeks is not"records" and that he is not entitled to "copies". These will be dealth with in greater length in response to the specific subterfuges and misrepresentation. Here, for the convenience of the Court, plaintiff cites sufficient to show what the law and regulations are and what they require.

All that plaintiff has requested is photographs of the official evidence, no more.

What follows is quoted not from the statute itself but from The Attorney General's Memorandum (p.23), for that puts the statute in a context that makes defendants' false representation of it (II. "Pertinent Statutes and Regulations", both p.2 and p. 3) a deliberate deception upon this Court and reveals defendants' intent to defraud plaintiff:

"The term 'records' is not defined in the act. However, in connection with the

(Emphasis added)

treatment of official records by the National Archives, Congress defines the term in the act of July 7, 1943, sec. 1, 57 Stat. 380, 44 U.S.C. (1964 Ed.) as follows:

"* * * the word 'records includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics..."

Thus it is clear, and was clear to defendants who represented otherwise to this Court, that the photographs identified and requested are, without doubt or the possibility of doubt, defined as "records" within applicable law. The same is true, for that matter, of the evidence itself, the clothing, for the term "records" includes "other documentary materials, regardless of physical form or characteristics", and the said clothing is, as identified, official evidence. Plaintiff has not requested the clothing, but the specific inclusion of what he seeks (photographs) in the act is beyond question.

Defendants' footnote (p.3) is so much less informative than it could and should be that it amounts to deceiving the court on this very point. It refers, in two different partial citations, to "the act of July 7, 1943" and to incorporation in 44 U.S.C., 1968 revision, or after appearance of The Attorney General's Memorandum. The language quoted is now section 3301.

Also omitted is section 2901, which is in chapter 29, "Records Management by Administrator of General Services". Section 2901 says, "As used in...sections 2101-2115 of this title - 'records' has the meaning given by section 3301 of this title;"

Thus, quite specifically as applied to defendants, "photographs" are, within the meaning of the law, "records", and there never was any doubt or question thereof.

Further, section 2901 defines "servicing" as "means making available for use information in records and other materials in the custody of the Administrator," again encompassing both the photographs and the clothing in "making available".

Each of the two subdivisions under "servicing" and "making available" requires the "furnishing" of "copies to the public":

"(1) by furnishing the records or other materials, or information from them, of copies or reproductions thereof,... to the public; and (2) by making and furnishing authenticated or unauthenticated copies or reproductions of the records and other materials;".

There is further specificity in what immediately follows;

with nothing omitted here in quotation therefrom:

"'National Archives ~~and~~ of the United States' means those official records that have been determined by the Archivist to have sufficient historical or other value to ~~warrant~~ warrant their continued preservation by the United States Government, and have been accepted by the Administrator for deposit in his custody."

If the improbable, if not the impossible, should be true, that defendants and their learned and experienced counsel - it ought fairly be said eminent counsel - were uninformed of the law as it directly and specifically relates to defendants, they assuredly were not unaware of the Attorney General's own words (p.25) on precisely this question of "Copies", the capitalized heading from which this excerpt is quoted:

"A copy of a requested record should be made available as promptly as is reasonable under the particular circumstances."

The right of the public to copies of public information and the requirement of the law that copies be provided, permeates The Attorney General's Memorandum and is regularly repeated where relevant, ~~this~~ emphasizing both the right of the public and the requirement imposed upon the Government. For another example, under "AGENCY RULES GOVERNING AVAILABILITY" (p. 14), there is this sentence:

"Subsection (b) requires that federal agency records which are available for ~~public inspection also must be available for sopying, since the right to inspect records~~ is of little value without the right to copy for future reference."

This official interpretation clearly covers both parts of plaintiff's requests, the first, for copies of the existing photographs, and the second, for photographs to be made showing that which is not depicted in any existing photographs.

Whether it be ~~xhexxexrbal~~ plaintiff's verbal request of early November, 1966, his ~~writing~~ written request of August 4, 1967, or his series of written requests, following other verbal requests, beginning ~~in~~ December 1, 1969, it would seem that any reasonable delay that might be sanctioned by the language "as promptly as is reasonable under the particular circumstances" has long since expired.

Even if the legality of the GSA-family contract is conceded, which plaintiff does not, that does not sanction the withholding of this public information from plaintiff. (Complaint, Exhibits A and F). Brief quotation, elaborated upon in other addenda, establish this.

Under I., (2) reads, "Access to the Appendix A material [the President's clothing] shall be permitted only to:", followed by (b):" Any serious scholar or investigator on matters relating to the death of the late President for purposes relevant to his study thereof." Under III., (1), "...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 persuant to ~~paragraph~~ paragraph I(2)..."

Should the Court hold the GSA-family contract to be invalid, then there is no relevance in defendants' argument and there can be, with regard to it, no genuine issue as to any material fact. However, even if, for the sake or argument, the validity were not to be contested, this cited language from that contract is complete refuation of defendants second contention, that "plaintiff is not entitled to the relief he seeks because...2) the refusal of defendants to permit plaintiff to do what he desires (sic) regarding these articles is a discretion committed to the defendants by statute and an agreement..." Aside from the fact that it is by no means either a fair or honest representation of plaintiff's request that defendants take photographs of "these articles" to describe such a normal request to this Court as " to do what he desires regarding these articles", which betokens at least a suggestion of something wrongful or hurtful and is quite contrary to fact, the cited provisions of this agreement are specific in stipulating that "access...shall be permitted" to "any serious scholar or investigator...for purposes relevant to his study..." (This does not even authorize defendants to determine "relevance".)

(MJOV) 28

For reasons not disclosed in any of the papers filed with this Court by Defendants and in no way inconsistent with the desire and intent to suppress, Defendants have additional and pertinent relations with regard to precisely what

That both defendants and defendants' counsel knew of these regulations, which could not have been more perfectly designed to in every aspect and detail encompass ~~defendants~~ plaintiff's rebuffed and rejected requests and appeal, is beyond question. It likewise is beyond doubt that defendants knowing and willfully withheld this regulation from this Court, as from plaintiff. Now it happens that on numerous occasions, usually unanswered, plaimtiff requested of defendants just such information as this so that plaintiff could pursue his rights under the law. Moreover, for a long period of time, ~~as was inadvertently~~ by accident, disclosed to plaintiff when the wrong copies of correspondence ~~was~~ were sent him, plaintiff's requests and proposed responses were sent to a particular lawyer whose identification was thereby disclosed to plaintiff, in the office of the general counsel at GSA. So ~~the~~ defendants' legal authorities would also seem to be involved in withholding from plaintiff the most applicable regulations, regulations requiring that defendants provide what plaintiff seeks. It does not seem unlikely that they are no less involved in the withholding from this Court.

It also is not possible that defendants or defendants' counsel were either unaware of or forgot about this regulation, for at the time plaintiff was attempting, without success, to obtain copies of these photographs, the Department of Justice represented GSA in another case that did not go to trial. The Motion to Dismiss in that case ~~is~~ was signed by three Department of Justice lawyers whose names also appear on papers filed in plaintiff's Civil Action 718-70 in this Court. It is as an exhibit in defendants' Motion to Dismiss in that other case that plaintiff discovered this regulation, ~~just now in~~ when preparing these papers. ~~attached hereto~~ In that case, obviously, something in these regulations suited defendants' purposes. In this instant case, no less obviously, they do not. Therefore, both the Court and the plaintiff, who believes he should have been sent them in response t his requests, were deliberately denied them. A copy is attached hereto.

~~A copy is attached hereto.~~ Not being a member of the bar, plaintiff may misunderstand the obligations of a lawyer as agent of the Court. If applicable in this case, it does not seem that the agents of this Court served it faithfully - especially in connection with a law promulgated to guarantee Americans their rights.

of the National Archives

was requested and refused, what is sought in this instant action, "Regulations for Reference Service on Warren Commission Items of Evidence". The Court is reminded that what is sought herein is photographs of evidence identified as Exhibits 393, 394 and 395.

The second paragrpah reads:

"2. Still photographs will be furnished researchers... . Copies will be furnished on request for the usual fees. (Emphasis added)

There is a separate paragraph 5. covering "Three-dimensional objects". It says that

"To the extent possible, photographs of these materials will be furnished to researchers as a substitute for visual examination of the items themselves. In the event that existing photographs do not meet the needs of the researcher, photographic views will be made...Photographs reproduced from existing negatives or prints will be furnished on request for the usual fees. (Emphasis added) (The empowers no one else to determine the researcher what his needs are.)

Both of plaintiff's requests are perfectly covered by defendants' pre-existing regulations. These require that "photographs reproduced from existing negatives" be furnished him and that the additional photographs he requested be made "will be made". (Emphasis added.

15A

But, in the remote event the foregoing was not known to either defendants, who promulgated their internal counsel, these regulations, or the said learned, experienced and distinguished counsel, the Department of Justice, the Department of Justice had established its own precedent on precisely this subject, by furnishing plaintiff with copies of those photographs in its files of precisely this evidence, the clothing. In response to plaintiff's request, the June 12, 19 response of the Department of Justice reads, "In accordance with your request, enclosed herewith is a photographic copy of a portion of Exhibit 60 (i.e., the FBI designation) showing the tabs of the President's shirt." When plaintiff subsequently requested the photographs that comprise the remained of this FBI Exhibit 60, they were freely and readily supplied by the Department of Justice, which did not even require the filing of the usual forms under the act.

Only one thing can

Nothing could more admirably address the question of whether relief can be granted than this ruling of the Department of Justice itself, and the specific regulations

[redacted]

The question is not and never was could relief be granted. The question is, how can the Department of Justice, representing itself, under this law, freely provide plaintiff what he seeks that was in its possession and simultaneously, representing under this same law, defendants solemnly assure this Court that the relief sought cannot be granted?

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That one things is the regulation designed to cover just such requests as plaintiff made - the regulation withheld from the Court and from plaintiff. Archives' own

In American Mail Lines v. Gulisk, the United States Court of Appeals for the District of Columbia decided (on February 17, 1969), that although without any use ~~of what plaintiff sought by the~~ by the Government of what appelant sought, what was sought fell within one of the exemptions of 5. U. S. C. 552 ~~many use~~ Government use nullified the applicability of the exemption. It decided that ~~xxxxx~~ the Government "must make all other identifiable records available", unless exempted by another exemption, "or face judicial compulsion to do so." The Appeals Court held that even though without use what was sought, a memorandum ~~that~~ was exempt under the intra-agency status exemption, because of its use by the Government, "...the memorandum lost its intra-agency status and became a public record, one ~~that~~ which must be disclosed to appellants."

In this instant case, defendants do not claim exemption under any of the ~~nine exemptions of the law. Absent such claim for any exemption, use of what is sought alone makes it what it was in any event, a public record (public evidence before an official ~~xxx~~ investigation)~~ that cannot be denied plaintiff.

(In this decision the Court also ~~address~~ answers it defendants ~~allegation~~ contention in their "Answer", that this court ~~was~~ is without jurisdiction, saying that, "...the judicial process is available to compel disclosure of agency records not made available" (emphasis in original)... Otherwise, Congress would have created a right without a remedy."

It and the foregoing citations of law and regulation completely refute ~~as~~ and expose as a mockery of the law and its processes the third of three contentions advanced by defendants, that "plaintiff is not entitled to the relief he seeks because ...3) the articles which plaintiff seeks to examine (sic) are not 'records' ~~within the~~ as centemplated by Congress to be within 5 U.S.C. 552."

Were none of the foregoing true, if day were night and up were down, if, by law or regulation it were possible for defendants' to deny access or refuse to ~~xxxxx~~ provide photographs of this evidence to plaintiff, the admission that ~~exxxxly~~ exactly what plaintiff requests was given to and done for the Columbia Broadcasting System, September 17, 1970 which is conceded in defendants'/rejection of plaintiff's appeal, would still require that defendants do what plaintiff asks. Aside from the general concept of equality under the law in what is called a government of laws rather than of men, there is the specific interpretation on exactly this point by the Attorney General in his Memorandum . It is the second of what he designated five "key concerns" of the Comgress as reasons why "this law was initiated by Congress and signed by the President (iii-iv), "That all individuals have equal rights of access."

Now, were all of the foregoing recitations of practise, law and regulation, all of which require of defendants that they provide the public information requested by plaintiff, to be ignored; and ~~if~~ were holding the ~~interpretation~~ of the Attorney General himself, that"all individuals have equal rights of access", to be discounted; there remains the controlling decision in American Mail Lines v Gulick. Here the court held that even casual and offhand reference ~~that~~ To that which could ~~otherwise~~ properly be withheld ~~with propriety~~ waived any right to withhold:

Insert direct quote.

By ~~making~~ that of which plaintiff seeks photographs official evidence in an official and published function of government; by publishing and fostering the most widespread dissemination of other photogrpahs of identically this evidence than plaintiff seeks; by providing plaintiff with copies of those photogrpahs of gore and no more - even by reference in these instant proceedings - and, of course,

by virtue of the ruling by the Deputy Attorney General of the United States(under whose jurisdiction within the Department of Justice interpretation of the Freedom of Information law rests) ~~who provided~~ in providing plaintiff with the four limited views of this evidence that Department possessed - defendants' no longer can have any right to withhold photogrpahs of the evidence requested by plaintiff.

Plaintiff suggests to this Court that what is missing here, what brings this issue before the Court, is the absence of the fifth of the Attorney General's representation of those "key concerns" of the Congress in enacting this law, "- that there be a change in Government policy and attitude".

In plaintiff's view, nothing most perfectly illustrates the failure, more, the refusal, of Government to change its "policy and attitudes", ~~are~~ to persist in suppressions that are outlawed, than the record in this instant proceeding. Their content and character ~~and~~ are consistent with a drumbeat of official propaganda. The government makes and causes the widest possible distribution of certain pictures of official evidence, public information, records-however it be designated- that are in the worst possible taste, inflamatory in nature, calculated to cause added and needless grief and pain to those already over-inflicted with both - but to reveal nothing whatsoever of the evidence and, simultaneously, it first ignores requests for other pictures of the identical evidence, restricted to pictures of the evidentiary aspect of this evidence alone, ~~and~~ then refuses them, and ultimately goes before the Court with what may with kindness be described as an inadequate and knowingly misleading, deceptive and misrepresentative representation of law and regulation in an effort to continue this suppression of evidence, public information or records.

The sole reason for this course of conduct is to suppress that which is not in accord with this evidence ~~that the government suppresses~~ what the Government wants believed interprets it.

Because any court record is an official record and a record for history, the nature and content of defendants' instant motion and the addenda thereto require that plaintiff make the opposing record, tnat he respond to every wrongful allegation, every false statement and interpretation, every misrepresentation, each omission.

The official "solution" to the assassination of the President was an ex parte proceeding. Circumstances made that kind of proceeding inevitable. However, once the government compels the use of the courts in an effort to learn what the evidence is, whether or not that evidence is consistent with the official "solution", those who, like plintiff, seek the truth to the degree it can now be ascertained and established by man, may not in good conscience, cannot in the national interest, permit to go unchallenged any dubious representation of anything in any way connected with either the crime or the official "solution".

Thus, plaintiff feels it is incumbent upon him to append addenda addressing what he believes is unfaithful in the Government's motion and addenda thereto, with a direct confrontation of each claim, allegation, assertion and innuendo, so that therein truth may not be debased or abused, so that no wrongful record may be established without adequate representation of another side, and so that the processes of this Court may not be used for unworthy and ~~ulterior~~ improper purposes.

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IV

IS THE NATIONAL ARCHIVES AND RECORDS SERVICE A SUABLE ENTITY?

Defendants allege, "the defendant~~s~~ denominated US. National Archives ~~and~~ Records Service (sic) is not a suable entity".

This allegation is not again referred to in any of the other papers served upon plaintiff. There is no citation of any law or other authority for the allegation. If it is in any manner supported in the affidavits and other exxibits certified as served upon ~~defendantxxx~~ plaintiff, plaintiff is both unaware of it and has no way of being aware of it, the attachments having never been served, despite ~~thexx~~ defendants' certification to this Court that they were, and plaintiff's repeated requests for them not having been responded to in any way by the time it became necessary for plaintiff to commence the final preparation of these papers. As a matter of fact, as of the time of ~~xx~~ plaintiff's second request for these attachments, Feburary 4, 1971, the copying of these attachments for plaintiff had not even been commenced.

On the basis that the allegation is not in any way supported, either by affidavit or by citation of law or regukation, plaintiff believes this separate allegations falls for lack of proof, and should be ~~so~~ regarded and not considered by the Court.

Meanwhile, plaintiff is left to make response to nothing but an unsybstantiated allegation, not knowing what there is for him to respond to. To the degree it is possible for him to do so under these circumstances, he herewith does.

In Louisiana v Shaw (No. 825-68A), heard in the Court of General Sessions in the District of Columbia, in January and February, 1969, with plaintiff present, what was sought included access to ~~the~~ these exhbits themselves, not ~~pixxxxxx~~ merely photographs of them, in addition to other items of Warren Commission materials. The Archivist himself was named as respondent, did respond, was represented by the same counsel as in this instant case, and this claim was not there made. In that case, decision was against ~~thex~~ defendant. Having been sued and lost, when represented by the same counsel ~~xx~~ as in this instant case, it would seem that the agency is suable.

It should be noted that in the Kansas action, the GSA was named as a defendant but the Archives was not. The footnote on the page quoted, with GSA already denominated a defendant, includes the language, "...agency records which the Comgress determined should be filed against the appropriate agency..."

Can it be that with one Government, one Commission, one set of evidence involved, and with the same Department of Justice counsel for defendants, the law has one meaning in Kanasas and the opposite meaning in the District of Columbia? Or is it, as plaintiff believes and therefore alleges, that whatever expedient seems convenient for purposes of suppression is improvised and presented as fact to the courts, even under oath, in order to accomplish the suppression?

Can it be that under 5. US.C. 552, in Kansas, the National Archives must be denominated a defendant and in the District of Columbia, because it is denominated a defendant, that action must be dismissed or, as an alternative, the Court should issue a summary judgement? Even the motions, by the same counsel, are identical in both cases.

Bearing on this same point, and again with similar overtones, the Archivist swore to the Court in Kanasas that, with respect to this identical evidence, "all 'duties, obligations and discretions' of the Administrator [(that is, of GSA)] were delegated to the Archivist. This would seem to require the inclusion of the National Archives as a defendant, 5 U.S.C. 552 (a)(3) requiring that any action be filed against the "appropriate agency", not any individual. (Affidavit, p. 4, attached Rhoads and footnote, p. 8)

The overtone here is in the sentence following what is quoted and is the attested confirmation of the Archivist that under the GSA family contract, his own interpretation with regard to that which plaintiff seeks is, "... I have determined that (a) serious scholars or investigators authorized to have access pursuant to paragraph I(2)(b) ...." Can the same agency have one interpretation for one contract in Kansas and another in the District of Cilumbia, without toying with the Courts?

The identical interpretation appears, under oath, on the preceeding page (p. 3,

+r to 2A2 Next page

attached), ~~XXXXX~~ "4. Pursuant to said agreement access to the artciles of clothing is limited to...serious scholars and investigators of matters relating to the death of the late President for purposes relevant to their study thereof..."

[Here tr from bottom preceeding page, Can the same, etc.]

This said contract as well as the written interpretations thereof (Complaint, Exhibits A, C, and F) are explicit in placing the items of evidence in question under the control and possession of the National Archives.

Two actions were filed in Federal District Court for the Federal District of Kansas in 1969 and 1970 (identified as C.As T-4536 and T-4761). In Kansas, the government moved for dismissial, or, in the alternative, for summary judgement, on diametrically opposite grounds than here alleged, claiming, it would appear, that plaintiff in Kanasas was required to sue the agency. The language used therein (p.8, attached hereto) is that "plaintiff has not named any of the agencies whose materials he seeks as defendants in this action." Also attched thereto was an affidavit from the Archibist of the United States attesting to the fact that these materials, including those at issue in this instant case, identified as CEs 393,394 and 395, are, in fact, materials of the National Archives (p. 2 of this affidavit attached hereto).

INSERT 2+2A2

The Deputy Attorney General of the United States, in his letter of July 6, 1970, previously referred to in connection with the said Department's voluntary furnishing to plaintiff of its photogrpahs of these above-enumerated exhibits, and in the paragraph immediately preceeding his reporting thereof, also says that all of this evidence is "now in the custody of the National Archives" (the page including this language is attached hereto).

12 Parenthetcially, and in an effort to make it possible for this Court to evaluate Government representations in this matter, this same page denies plaintiff other materials requested by plaint, a denial sustained spearately by the Attorney General, on appeal, says, "These investigative reports are withheld pursuant to 5 U. S. C. 552(b)(7). The disclosure of these reports might be a source of embarrassment to innocent persons..." At the very time this was written and the plaintiff's appeal therefrom was denied, causing plaintiff to go to considerable trouble and prepare a complaint preparatory to the filing of an action, these identical pages were being and thereafter were declassified and made available to everyone who might request them. The transparent purpose here was to deny plaintiff the possibility of first use and to enable use of a nature desired by the Government.

If plaintiff failed to denominate the National Archives as a defendant in this instant action, did he not have to anticipate the "Kansas improvisation" as a defense, the contention opposite that one in this instant case, that his suit should fail because he had not demoninated that agency as a defendant? Did not, in fact, the sworn statements in the Knasas action and the pleadings of counsel (who are also counsel in this instant action, the Department of Justice) require that plaintiff denominate that agency as a defendant? Does not the contract defendants invoke?

Is not the alternative official false swearing to a material fact official and frivolities and other liberties with the law, official game-playing with the Courts?

Plaintiff has no interest in naming unnecessary defendants. His sole purposes in denominating the National Archives as a defendant were to preserve his rights under the law and to comply with the law, as interpreted by the Government, to a district court and to comply with this official int rpretation of the law. If, in the District of Columbia, the federal law is other than sworn to and pleaded to in Kansas, if his rights under and compliance with this law are not in any way jeopardized with the National Archives removed as a defendant, then plaintiff has no objection to it.

Not being a member of the bar, plaintiff nontheless wonders about the situation in both the District of Columbia and in Kansas if this is the true situation, District of Columbia signatures having been affixed to the Kansas pleadings and the oath having also been executed in the District of Columbia.

It seems apparent to plaintiff, as he hopes it will appear to this Court, that aside from any liberties taken with the Courts, there is a concerted effort by defendants and their counsel to harrass plaintiff, to the end that what he seeks continue to be suppressed, something plaintiff hopes does not have and cannot attain the sanction of the courts, and that his studies, investigations and writings be impeded and interfered with.