UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONSE TO DEFENDANTS' MOTION TO DISMISS AND IN SUPPORT OF PLAINTIFF'S RENEWAL OF MOTION FOR SUMMARY JUDGMENT

This is an action in which Plaintiff, a serious scholar of political assassinations 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, 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' 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 practice with others.

Plaintiff also alleges and will prove that, aside from not mentioning his first request, for copies of the existing photographs, and misrepresenting the nature of his second request, 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 even to 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.

Because of the collateral issues and the character and form of defendants' motion, this will be addressed further in addenda. Plaintiff here restricts himself, for the convenience of the Court, to the record, 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 and regulations.

Counsel for defendants is the Department of Justice. Prior to the effective date of what has come to be known as the Freedom of Information law, the Attorney General issued a "Memorandum on the Public Information Section of the Administrative Procedures Act" (hereinafter referred to as "Memorandum"), directed to "the executive departments and agencies" and containing the Department of Justice's 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 should not be persuaded is 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 document, 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 here to be appliaable by defendants. 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." In turn, 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 <u>specifically</u> exempt under the statute;
c) prove that plaintiff has not complied with the requirements of the law and applicable regulations; or
d) prove that the law does not apply.

Defendants do <u>none</u> 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 lacks 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, over a period of more than four years. His numerous and repeated requests of the past year are enumerated above and following. Defendants do not contest these incontrovertible facts. It is required that plaintiff 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 ...

This plaintiff 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 6) is erroneous. Defendants rejected this said appeal under date of September 17, 1970. While the rejection of the appeal is remarkable for its evasiveness and gross in its misrepresentation and omission, it nonetheless is unequivocal in refusing a "copy of the photograph." (Plaintiff requested more than one photograph.) (Exhibit A)

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):

> The GSA regulation, 41 CFR Section 105-60. 404(c), pertaining to the procedure for denying requests, requires:
> If the denial is sustained, the matter will be submitted ... (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 it should be sufficient to note that the Attorney General's Memorandum (p.28) itself emphasises this point:

> It should be noted that district court review is designed to follow final action at the agency head level. The House report states 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.)

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 no rights under the law, or that he has not exhausted his administrative remedies simply because defendants have denied them to him. Such a position is anathema to every American concept and subversive of every concept of law.

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 with being an attractive nuisance.

Thus, the Government: has not provided the identified public information the law and regulations require it to provide; 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. This is to concede the validity of Plaintiff's suit, to establish that there is no genuine issue as to any material fact, and to prove that Plaintiff is entitled to the relief he seeks.

Recalling that the first of defendants' three contentions (and by them so labeled), 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, 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 seem 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 material fact.

Defendants do emply 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 dealt with in greater length in response to the specific subterfuges and misrepresentations. 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 deceptinn upon this Court and reveals defendants' intent to defraud Plaintiff:

> The term "records" is not defined in the act. However, in connection with the 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 ... (Emphasis added.)

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 "pther 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 avail for use information in records and other materials in the custody of

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 relevance in what immediately follows, with nothing omitted here in quotation therefrom:

> "National Archives of the United States" means those official records that have been determined by the Archivist to have sufficient historical or other value to 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 to be said eminent counsel - were uninfommed 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, 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 copying, 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 Plaintiff's verbal request of early November 1966, his written request of August 4, 1967, or his series of written requests, following other verbal requests, beginning 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 pursuant to paragraph I92) ..."

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 of argument, the validity were not to be contested, this cited language from the contract is complete refutation 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 an 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.")

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 regulations with regard to precisely what 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 herein is sought of the National Archives is photographs of evidence identified as Exhibits 393, 394 and 395.

The second paragraph 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)

(This empowers no one else to determine for the researcher what his needs are.)

Both of Plaintiff's requests are perfectly covered by defendants' own 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)

That both defendants and defendants' counsel knew of these regulations which could not have been more perfectly designed to encompass in every aspect and detail Plaintiff's rebuffed and rejected requests and appeal, is beyond question. It is likewise beyond doubt that defendants knowingly and willfully withheld this regulation from this Court, as from Plaintiff. Now it happens that on numerous occasions, usually unanswered, Plaintiff 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 disclosed to Plaintiff when the wrong copies of correspondence were sent him by accident, Plaintiff's requests and the 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 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 was signed by three Department of Justice laywers whose names also appear on papers filed in Plaintiff's Civil Action No. 718-70 in this Court. It is as an exhibit in defendants' Motion to Dismiss in that other case that Plaintiff discovered this regulation when preparing these papers. 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 to his requests, were deliberately denied them. A copy is attached hereto.

Not being a member of the bar, Plaintiff may misunderstand the obligation 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.

But, in the remote event the foregoing was not known either to defendants, who promulgated these regulations, their internal counsel, 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, 1970, 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 remainder of this FBI Exhibit 60, they were freely and readily supplied

remainder 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 more admirably address the question of whether relief can be granted than this ruling of the Department of Justice itself 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 defendants, under this same law, solemnly assure this Court that the relief sought cannot be granted?

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

It and the foregoing citations of law and regulation completely refute 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' as contemplated 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 provide photographs of this evidence to plaintiff, the admission that exactly what Plaintiff requests was given to and done for the Columbia Broadcasting System, which is conceded in defendants' September 17, 1970, 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 Congress 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 practice, law and regulation, all of which require of defendants that they provide the public information requested by Plaintiff, to be ignored; and were the holding 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 to that which could properly be withheld waived any right to withhold:

In American Mail Lines v. Gulick, the United States Court of Appeals for the District of Columbia decided (on February 17, 1969) that, although without any use by the Government of what appellant sought, what was sought fell within one of the exemptions of 5 U.S.C. 552, Government use nullified the applicability of the exemption. It decided that the Government "must make all other identifiable records available," unle

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, 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 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 that cannot be denied Plaintiff.

(In this decision the Court also answers defendants' contention in their "Answer," that this Court 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."

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 photographs of identically this evidence than plaintiff seeks; by providing Plaintiff with copies of those photographs 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) in providing Plaintiff with the four limited views of this evidence that Department possessed - defendants no longer can have any right to withhold photographs 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 failue, more, the refusal, of Government to change its "policy and attitudes", to persist in suppressions that are outlawed, than the record in this instant proceeding. Their content and character 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, inflammatory 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, 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, what the Government wants believed.

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, that 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 inevitabl 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 Plaintiff, 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 improper purposes.

IS THE NATIONAL ARCHIVES AND RECORDS SERVICE A SUABLE ENTITY?

Defendants allege, "the defendant denominated U.S. National Archives 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 exhibits certified as served upon Plaintiff, Plaintiff is both unaware of it and has no way of being aware of it, the attachments having never been served, despite 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 Plaintiff's second request for these attachments, February 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 regulation, Plaintiff believes this separate allegation 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 unsubstantiated 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 these exhibits themselves, not 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 the defendant. Having been sued and lost, when represented by the same counsel as in this instant case, it would seem that the agency is suable.

Two actions were filed in Federal District Court for the Federal District of Kansas in 1969 and 1970 (identified as C.A. T-4536 and T-4761). In Kansas, the Government moved for dismissal, or, in the alternative, for summary judgment, on diametrically opposite grounds than here alleged, claiming, it would appear, that Plaintiff in Kansas 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 attached thereto was an affidavit from the Archivist 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). Exhibit 7

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 Congress 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 Kansas 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 U.S.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 judgment? 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 Kansas 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. (Rhoads affidavit, p.4, attached, and footnote, p.8) (Exhibit 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 investigator authorized to have access pursuant to paragraph I(2)(b) ..."

The identical interpretation appears, under oath, on the preceding page (p.3, attached), "4. Pursuant to said agreement access to the articles 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 ..." (Exhibit 9)

Can the same agency have one interpretation for one contract in Kansas and another in the District of Columbia, without toying with the courts?

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

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 photographs of these above-enumerated exhibits, and in the paragraph immediately preceding his reporting thereof, also says that all of this evi is "now in the custody of the National Archives" (the page in this language is attached hereto).

Parenthetically, 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 Plaintiff, a denial sustained separately by the Attorney General, on appeal. It 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 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, aside from harassment, 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 defendan 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 denominated that agency as a defendant? Did not, in fact, the sworn statements in the Kansas 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 and official frivolities and other liberties with the law, official game-playing with the courts?

Plaintiff has no interest in naming unnecessary defendants. His 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. 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 nonetheless 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 harass 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.