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

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT, and PLAINTIFF'S RENEWAL OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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 Plaintiff requested them, and had not yet been copied for Plaintiff when Plaintiff made the second request for them, to 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, under the rules of this Court, the attachment of an affidavit to a Motion to Dismiss converts it into a Motion for Summary Judgm ent and is therefore additional grounds for not granting it.

Plaintiff moves this Court to dismiss Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment on the gounds that:

It does not refute or even really respond to Plaintiff's Motion for Summary Judgment and Supplement thereto with valid citations of fact or law, 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

judgment 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 orerregulation, are not by them sustained and do, in fact, 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 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, the law and applicable regulations;

Defendants have not responded to or denied Plaintiff's proven claim, conceded dby Defendants, that Defendants have made the identical public information available to another and thereby, if there ever was any legitimate 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;

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 is confirmed to be defendants' practice with others and to deny it to Plaintiff is discriminatory and illegal; Plaintiff prays this Court to find in his favor and issue a Summary Judgment in which Defendants are directed and ordered to:

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

Of those views of the damage to the said clothing alleged to have been caused by a 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 therefor;

Additionally, because defendants do not make even pro forma denial thereof, Plaintiff prays this Court to find the so-called GSA-family contract null and void and to order that the public property referred

to in it and the official evidence of the said Commission 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.

Harold Weisberg, pro se

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Response to Defendants' Motion to Dismiss and Plaintiff's Renewal of Motion for Summary Judgment, together with the addenda 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 _____day of February 1971.

/s/
Harold Weisberg

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

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 has never been any genuine question as to any of the material facts in this case, 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) photogrpphs 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 alleged to have been damaged by a bullet, worn by the President at the time he was murdered.

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 photographs are, specifically, included in the ststutory definition of "records". Aside from Plaintiff's having specifically met the specific statutory requirements, 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 (c)). 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 <u>any</u> of these nine enumerated exemptions.

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 (Complaint Exhibit B), in the nine months prior to

the filing of the complaint Plaintiff made not fewer than 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; one after filing of the appeal; and one after rejection of the appeal. The appeal was ignored for two months, which vilates the requirement of the law that appeals be acted on promptly. The appeal was not forwarded, as required, "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 those 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 Archives of anything.)

9. Controlling 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 law;

10. 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. By return mail, under date of September 19, 1970, Plaintiff told defendants that their denial, as they knew, was a denial and had not been written until long after the filing of the complaint, but that,

upon the providing of the requested copies of the evidence, Plaintiff himself would move to dismiss. These facts are not denied by defendants.

12. While still refusing Plaintiff's 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 Plaintiff seeks but had extended additional courtesies to the said commercial interest. The law and regulations do not permit such discrimination. Defendants 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 of Plaintiff, he obtained from 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), 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, 1971, 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 practice.

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, ... photographs of these materials will be furnished to researchers .... In the event that existing photographs do not meet the needs of the researcher, additional photographic views will be made. ... Photographs reproduced from the existing negatives or prints will be furnished on request for the usual fees." (Exhibit I)

19. 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 photographs and take such additional photographs as he needs for his research, at Plaintiff's cost.

Plaintiff submits this statement of material facts as to which there is no genuine issue pursuant to this Court's local rule 9(h). The law, regulations and GSA-family 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. They will be supplied to defendants, on request, should defendants desire additional copies.

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. 2369-70

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 late President and the Administrator of General Services (Complaint Exhibits A and F).

2. This said letter agreement provided for the transfer of title to the United States 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, 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 pays 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.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

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 (c) of the law is titled "exemptions". There are nine, not one of which is even claimed here to be applicable 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 statutes;
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

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 dateof 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 2)

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 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 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 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 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 "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 new 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 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 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, 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 quotations, 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 inadvertantly 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 lawyers 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 by the Department of Justice, which did not even require the filing of the usual forms under the act.

~~As~~ 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 would 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," 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, 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.

Exhibits 3-5

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", 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 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 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 those 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 disregarded 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 C.A. 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.3, 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 those 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)

I 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 E)

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) ..."

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 ..." (Exh. E, T 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 evidence is "now in the custody of the National Archives" (the page including 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 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 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.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Plaintiff described with care several of the pictures he desires:

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

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

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

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

(Ex 13)

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

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

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

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

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

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

meaning of the published pictures of these exhibits, and

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

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

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

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

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

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

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

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

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

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

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

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

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

> I have measured the enlargements and the original prints. With the shirt, where the collar is 1 3/4" wide in the original print, it is but 3" wide in the enlargement ...

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

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

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

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

That there can be no doubt and that the false swearing cannot be accidental is again apparent in Dr. Rhoads' letter of April 15 relating to those photographs already existing in his files: (Exhibit 18)

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

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

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

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

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

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

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

The present effort to make it appear that the family is reason-

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

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

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

Two months later, nudged a bit by the filing of the appeal, the Acting Archivist replied instead of the Archivist. At least he said he "replied", to letters then more than five months without answer! This surely is a new interpretation of the requirement of the act, "promptness"! It finally informed Plaintiff that, for use of the provisions of 5 U.S.C. 552, "We have no form for this purpose. Any request which clearly identifies the document desired is sufficient." This should lay to rest any question of Plaintiff's compliance with the "identifiable records" wording of the law. (Exhibits 1 & 2)

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

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

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

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

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

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

of, but not compliance with, law and regulation.

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

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

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

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

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

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

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

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

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

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

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

After rejection of Plaintiff's appeal and Plaintiff's response of September 19, 1970, Dr. Rhoads wrote Plaintiff again on October 9, which was 11 days after he executed this affidavit. In that also self-serving letter which has the transparent purpose of preparing a deception of the Court, all defendants offered to do by way of making a picture is two things: (Exhibit 24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If any of defendants' agents or representatives has any serious

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hardly.

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

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

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

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

What was provided this Court is not a copy of FBI Exhibit 60. Nor is it either of the affidavit's descriptions (paragraph 8), that Plaintiff has "a photographic print of FBI Exhibit 60 in Commission Documents 107" or that this is an electrostatic copy of "a photographic print of FBI ,Exhibit 60 in Commission Document 107."

What is termed Commission Document 107 is the Supplementary Report

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

in independent research not worth trying. The very least that can be said of this is that defendants' word can be taken for nothing and that, when caught in one lie, that merely is inspiration for immediate improvisation of another.

It is immaterial whether the lies are to an unimportant person like Plaintiff or to a court of law. Government makes them, and to them there is no end. Plaintiff has long experience with them, including, as this Court knows, from the false swearing proven by examination of defendants' Exhibit 3 and from earlier litigation.

When a President is cut down in broad daylight on the streets of a major American city, when that assassination is investigated by the Federal Government and that investigation leaves the most enduring and disturbing doubts, do not those who, at great personal cost, are willing to undertake to examine the evidence (and have in this endeavor the sanction of the law and regulations and rights under both), have any hope of the protection of their rights by the Courts? Is Government, are defendants, to be permitted indefinitely to frustrate the clear meaning of the law, to do whatever is within their power to do to interfere with any independent study on this subject?

Can there be any public trust in the official investigation in the face of this official attitude and such a record?

And is there no authority in American society that can compel an end to official falsehood, deception, misrepresentation and, Plaintiff believes, perjury, just to block any independent study of the President's assassination and its official investigation?

Can any federal actions bring either the members of that Commission or the bereaved survivors into greater disrepute, now or in history? Almost without exception, the members of the Commission, all eminent men, were already overcommitted to the public service. Theirs was a thankless, painful assignment from which none could profit personally. Has any family had greater, more public, anguish and suffering? It is not possible for Government more to besmirch those eminent men or this so-bereaved family than by the suppression of evidence, legally-speaking, public information, and that by so many deviousnesses, misrepresentations, distortions, falsifications and, as best a non-lawyer can, Plaintiff alleges the possibility of perjury, official perjury, for the purpose of converting the Court into an instrument of suppression - and that not for the first time.

Is there nothing within the law or within its powers that this Court can do, besides granting Plaintiff the relief he seeks, to end, once and for all, these defamations of the innocent and the suffering ones? How long can the suppression be laid to those not responsible, the Commission, whose last act was to seek to prevent them and the family which engaged in a contract to prevent them? And are now blamed, in effect, by the Government from which we hear such alliterative pleas for "law and order," Orwell-style, and so many equally alliterative complaints about those, especially the young, who reject such dishonesty in national life and face the frustration with which Plaintiff is only too familiar in any effort they might make to right wrong?

Does not the record in this instant case taint the processes of justice as they self-characterize those who are its alleged and designated defenders, defendents' counsel in this matter?

To the catalogue of official infamy here enumerated, Plaintiff feels justified in adding trickery, intended to defraud him. Further exposition of all the silences of all the officials who knew about this alleged "error" the alleged "rectification" of which was withheld from Plaintiff until it could not reasonably be expected to reach him until after the last minute for the filing of these papers, at a time when it could with some certainty be expected to be beyond his physical capacity to in any way address it, ought not be needed. What preceded it should, Plaintiff hopes, be of interest to this Court, which dispenses justice, and should help add still another perspective on what is involved in what began as a simple effort by an ordinary man to obtain public information to which he is entitled under the law.

Plaintiff was twice compelled to be away from his home, out of town, on business, immediately following the filing of defendents' instant Motion on January 13. He also had a medical appointment in Washington on Tuesday, January 19. As of then, it had not been possible for Plaintiff to read the papers served upon him by mail. He had glanced at them, realized any response would require some time and adequate reply extensive effort and a longer amount of time.

Believing, perhaps naively, that the proper function of the United States Attorney is more than that of an advocate of one side and feeling that it would not be proper to request an extention of time without consulting him, Plaintiff telephoned Mr. Werdig. The secretary took the message and Plaintiff said he would await the return of the phone call at the office of the friend from which he placed it. A considerable time elapsed and Plaintiff had to leave for the drive home. He again phoned Mr. Werdig, whose secretary was perhaps then absent, for Mr. Werdig answered the phone. Plaintiff explained that he was not and had not been well, that he had not yet had the opportunity to study Mr. Werdig's Motion, that he wanted the opportunity to make full and adequate response, and sought Mr. Werdig's agreement to a request for an extension of time.

Mr. Werdig assured Plaintiff he need make no such request. He explained that the Court had not yet arranged its schedule of cases; that it would be at least a month before the Court could get around to that, and until then there would be no need for Plaintiff to request or for the granting of an extension of time.

Plaintiff, not knowing but believing there was a limit and that it was ten days, obtained the telephone number of the Court's secretary and phoned her, thereupon learning that there was, indeed, a time limit and that it had almost expired. Pursuant to this and not knowing the forms, Plaintiff wrote a letter to the Court, which, on January 27, graciously gave Plaintiff until February 16 to respond.

Meanwhile, when the attachments to Defendants' Motion were not with

the papers mailed him and some time elapsed and they were not thereafter provided, recalling the experience of the unreturned telephone call, Plaintiff requested a friend in Washington to remind Mr. Werdig that Plaintiff had not been provided with the attachments Mr. Werdig had certified to the Court had been served upon Plaintiff January 13. Plaintiff's friend, who was a witness to Plaintiff's conversation with Mr. Werdig, had the identical experience, his phone call not being returned, and the identical experience of Mr. Werdig taking the phone on his next call, with the identical explanation, that his secretary had not given him the message. The continued employment of such inefficient secretaries in the office of the United States Attorney is a mystery to Plaintiff. However, Mr. Werdig provided the assurance that the missing exhibits would be sent Plaintiff promptly.

When they were not, after some time, Plaintiff again asked the same friend to remind Mr. Werdig and, if necessary, go to his office and obtain them in person. It was then inadvisable for Plaintiff to drive on a superhighway for reasons of health. This friend informed Plaintiff that when he again spoke to Mr. Werdig, apparently not realizing what he was saying, Mr. Werdig told him that at even that late date these attachments had not been copied for Plaintiff. However, he gave his word that they would be and would be sent Plaintiff immediately. Again, this did not happen.

Therefore, on February 5, Plaintiff wrote Mr. Werdig (letter attached), and ultimately, on February 8, Plaintiff received them without covering letter. The Court will, Plaintiff hopes, be sympathetic to the plight and needs, especially as a non-lawyer who felt it incumbent upon him to make a point-by-point response and, for almost all of the time permitted for response, not having that to which he was called upon to respond. (Exhibit 25)

When Plaintiff reached a point in the preparation of the other papers he was preparing where he could examine those he had that day received, it became apparent that the copies Mr. Werdig sent had been cropped, that is, the complete page was not included. Thereby notations Plaintiff believes are of some significance were in part obscured and in part eliminated. Plaintiff immediately wrote Mr. Werdig, emphasizing again the serious nature of the obstacles Mr. Werdig was needlessly placing in Plaintiff's path, the existence of what were for Plaintiff serious problems without the addition of these, and asking for prompt sending of full and complete copies. In order that Plaintiff's letter reach Mr. Werdig promptly, Plaintiff suspended his work in the rural area in which he lives and drove to and from the post office so that the letter would go out that night.

So that this Court can understand this need of complete copies was no idle request by Plaintiff, Plaintiff calls to the attention of the Court that, aside from the addition of the number "5" and a notation cut off in copying, Defendants' Exhibit 1 has three other marks added

alongside the paragraph now alleged to contain an error. One is opposite that very sentence. This would seem to eliminate any probability of innocence or ignorance in defendants' use of this sentence and paragraph or in that by defendants' counsel.

If it is possible to explain this long delay in getting to Plaintiff even incomplete copies of defendants' exhibits certified as having been served when they were not and when they were not received until after Plaintiff's third request, what Plaintiff has herein shown to be the true meaning and significance make more sense than an allegation of carelessness or bureaucratic error.

If the inference that withholding after certification and delays were deliberate acts is unwarranted, Mr. Werdig could not have done more than he did to raise this question, especially when these exhibits contain false swearing under oath about what appears to Plaintiff to be material and ought so appear to defendants' counsel.

To this date Plaintiff has not received the full version of these exhibits. However, Mr. Werdig did phone plaintiff a little before 1 p.m. on February 11, the date stamped on the aforesaid letter from the Deputy Administrator for Administration of GSA.

Mr. Werdig informed Plaintiff on February 11 that the copies he had sent were made from his own copies, which Plaintiff believes. Mr. Werdig added he would immediately phone the Archives, get them to provide him with the words of the legends and would then provide this information to Plaintiff by phone. This Mr. Werdig did not do, nor did he phone to say that he would not or could not.

In the attached copy of Plaintiff's letter of February 8 to Mr. Werdig, (or in that of February 5, also) the Court will note other comments to which Mr. Werdig has made neither response nor denial, one that in this context seems relevant being this: (Exhibit 26)

> It will be impossible for me to make full response within the time I have, which, unfortunately, when I talked to you, you did not represent to me with any accuracy.

Plaintiff then said, in anticipation of the possibility it might not be possible to have everything neatly typed for the Court:

> ... I will want an extension of time long enough to permit the retyping of what by then cannot be retyped. I presume you will join me in asking for this for me.

Then following Plaintiff's unchallenged statement, that the long delay in providing the attachments, consideration of which properly belong in what Plaintiff had by then had typed, required an addition and redundancy and that

> Together with the rather considerable extent of irrelevancies I will have to address, otherwise the Court will not be able to evaluate them, this means a considerable addition to the length of what I must file. In turn, this is more than just a problem for me. It means a burden upon the Court that cannot but be prejudicial to my interests. Furthermore, this makes repetition inevitable. I cannot imagine a judge not finding this unwelcome or that you are not unaware of it.

These amount to fairly serious charges. Mr. Werdig neither

addressed nor disputed them. He has failed to answer either of Plaintiff's letters. If this does not mean he necessarily agrees with them, it does mean he did not challenge or in any way dispute inferences of both improprieties on his part and that they were deliberate.

When he phoned Plaintiff, Mr. Werdig pressed Plaintiff to request another extension of time, expressing himself as more than willing. Plaintiff said he preferred not to, fearing the Court might not receive this request well and that the result might be further prejudicial to Plaintiff's interest. Mr. Werdig then volunteered that he would speak to the clerk of the Court. When Plaintiff asked whether the Judge need not be consulted, Mr. Werdig said approximately, "With this Judge, yes," and he said he would do these things. The conversation closed with Mr. Werdig's assurances that Plaintiff had 30 days more time. Mr. Werdig kept repeating another 30 days and Plaintiff said that if he required any time, it would not be anything like that much, that all he would need was sufficient time for completion of the typing.

When Plaintiff told Mr. Werdig that Plaintiff would prefer to present to the Court what was retyped by the day set, Mr. Werdig said it would be better to file all the papers at one time.

From the time of Mr. Werdig's phone call until the end of the workingday, Friday, the last working day before the day the papers must be filed and almost constantly thereafter, Plaintiff remained by his phone. Mr. Werdig did not phone. So, Plaintiff is left with the impression strongly conveyed by Mr. Werdig, on Mr. Werdig's initiative, that Plaintiff will not have to file his papers by February 16. If, from the human kindness that wells from the great depths of his big heart, Mr. Werdig has made these generous arrangements, he has not so informed Plaintiff. And if he has led Plaintiff to believe that he would and did not, and were Plaintiff to be guided by this nobility of spirit (Mr. Werdig went out of his way to say of his office they are all good guys and never press or take advantage of anyone) and did not present his papers within the required time, Plaintiff cannot but wonder whether he would be in default and subject to such a judgment.

Plaintiff would have no need for either time or undue rush had Mr. Werdig done what he had certified to the Court that he had done and what is, in any event, required of him. This will be obvious to this Court upon the filing of these papers, when the extent of extra work required of Plaintiff by what amounts to the withholding by Mr. Werdig and the resultant disorganization and repetition will be apparent.

It is not Plaintiff's purpose to embarrass Mr. Werdig or to annoy this Court. But when, to the official harassment and falsifications and numerous impositions and long delays visited upon Plaintiff by defendants (only a small percentage of which is of direct relevance in this instant case), is added:

Mr. Werdig's assurances to Plaintiff (undenied when committed to writing) that, had Plaintiff heeded them, could have led to default by

Plaintiff in January;

and then the failure to provide the attachments certified as having been served;

and then three requests were required before they were provided to Plaintiff;

and then the most casual examination of them provides reason for one not of paranoid tendencies to suspect this was not accidental;

and then the incompleteness of the copies provided is considered;

and atop all of this, there is first the pressure for Plaintiff to ask for an extension of time when, clearly, Plaintiff felt it against his interest to do so;

and then the promise that Mr. Werdig would obtain this added time, even insisting upon more than Plaintiff said he would need;

and there is, thereafter, no word from Mr. Werdig, confirming or denying, his last word being the assurance that Plaintiff had all this time,

perhaps the Court can understand why Plaintiff is filled with the misgivings honestly set forth above and cannot but wonder about motive.

Now if the Court will further consider that, by the time that any lawyer had to anticipate that either Plaintiff's work was completed or he was in serious trouble completing it, there comes this letter from the Deputy Administrator for Administration of GSA, with no mail or working day remaining prior to the expiration of Plaintiff's time and with reasonable expectation that the letter could not reach Plaintiff over a holiday weekend until he had to leave to deliver these papers, possibly the Court can understand what may otherwise appear to be needless apprehension by Plaintiff.

But for Plaintiff to be able to dismiss this, in addition to all the foregoing, he would also have to forget his having told Mr. Werdig (letter of February 8) that, if his health mitigated against the drive to Washington, "I will mail them." For these papers to have had any chance of reaching the Court on time by mail, they would have had to have been mailed at the time Plaintiff <u>received</u> Mr. Johnson's letter.

Again Plaintiff feels he must apologize for the great length of his filing. However, he asks the Court, if the Court reads all these papers, to put himself in Plaintiff's position, to consider that not a single one of the allegedly faithful quotations of <u>anything</u> - law, regulation, contract or even correspondence - is full, accurate and complete; that the most directly relevant language of law and regulations has been withheld from the Court by defendants; that this Court was lied to by those who should have known they were lying and had to know they were lying; that this Court was given false swearing under oath; that Plaintiff's compliance with law and regulation had been so misrepresented that this Court was not told even that Plaintiff had filed an appeal and was led to believe that he had not; that the nature of Plaintiff's requests of defendant were grossly and prejudicially

misrepresented to this Court; and add Plaintiff's deep misgivings about Mr. Werdig's motives and intentions and the seriousness with which Plaintiff regards his studies (can the Court understand that the considerable time and effort required for the preparation of these papers - enough to write a book - is a representation of Plaintiff's sincerity and seriousness of purpose?), hopefully, the Court will realize that this length is only what Plaintiff felt was required of him.

So that the Court will not be under any misapprehension about Plaintiff's ~~doubts~~ doubts of Mr. Werdig's intentions or suspect paranoia or oversensitivity, Plaintiff adds that Mr. Werdig was Government counsel in Civil Action 2301-70, heard before another Judge of this Court. Mr. Werdig first arranged for there to be little time for the hearing by not appearing in that Court at the hour set and not informing Plaintiff or his counsel that he would not (apparently not informing the Judge, either). That action represented Plaintiff's efforts to obtain what is described as "spectrographic analyses." With little time for argument, knowing better, and producing no showing of any kind thereof, Mr. Werdig argued (transcript, p.11):

> In this instance, the Attorney General of the United States has determined that it is not in the national interest to divulge these spectrographic analyses.

The record shows Mr. Werdig produced no such "determination" by the Attorney General. He could not then, did not have it then, and cannot have it now. Under the circumstances he personally arranged, he made refutation impossible and thus prevailed.

The right of the Government to withhold information on this basis, recognized in the old law, was specifically eliminated in 5 U.S.C. 552. The Court will find this noted and explained throughout House Report 1497, 89th Congress, Second Session, entitled, "Clarifying and Protecting the Right of the Public to Information." The concern of the Congress on this score can be read from the fact that, aside from other and more general representations of the same thought, this is specific on a third of the pages of that report. This report makes clear that such subterfuges were the traditional Government excuse for hiding information from the public, hence were eliminated by the Congress to end improper suppressions.

Moreover, as Mr. Werdig should know and the Department of Justice certainly does know, there is no such exemption in 5 U.S.C. 552. Mr. Werdig cited the Attorney General's Memorandum in his addenda to his instant Motion. He need have read but two things in that Memorandum - but a single sentence if he were familiar with the statute. That single sentence, by the Attorney General himself, and entirely consistent with all the doctrine from the Congress as from the President and in that Memorandum, reads (iii):

> It leaves no doubt that disclosure is a transcendent goal, yielding only to such compelling considerations as those provided in the exemptions of the act.

There is no such exemption.

Plaintiff deeply regrets even the appearance of "trying the case on opposing counsel." He regrets even more that opposing counsel eliminated any practical alternative, save the unmanly and, if it is not too presumptuous, the unpatriotic: abject surrender and capitulation to wrong. It is not for such purposes that, with no resources save fatigue and debt, Plaintiff persists in his concentrated study and effort of now more than seven very long and painful years. Nor is it for such entirely unacceptable purposes that Plaintiff was so patient before filing this instant action or in filing it, both representing what for Plaintiff is and has been enormous and debilitating effort.

However, Plaintiff also believes that he has, as a matter of law, established that there is no genuine issue as to any material fact and that he therefore is entitled to judgment in his favor as a matter of law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

purposes as a substitute for what he asked.

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

So far is all of this evil suggesting and hinting removed from reality that Plaintiff is constrained to add that ~~not~~ one of his specific requests is for a photograph of an entire item of apperel.

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

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

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

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

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

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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

ADDITION TO PLAINTIFF'S ADDITION IN C.A.#2569-70

Defendants' latest communication to Plaintiff requires this new addition to the foregoing papers. It may serve a purpose other than imposing excessive length in that it may illuminate to the Court what Plaintiff believes is defendants' perfidy and what would appear to be deliberate trickery.

The communication referred to is a letter to Plaintiff, stamp-dated February 11, 1971, from W. E. Johnson, Jr., Assistant Administrator for Administration of GSA. It was received by Plaintiff February 13. It could not have been received earlier and, in fact, reached Plaintiff more expeditiously than does most mail from Washington. Now, the date of receipt is not a normal working day, being Saturday. Sundays there is never any mail, Monday is a holiday on which there will be no mail, and the following day is the last on which these papers may be filed by Plaintiff. As is well known to those who have dealt with him, which includes defendants, when Plaintiff, who lives in a rural area served by a rural carrier but once a day, goes to Washington, he has to leave before mail delivery. It follows that, if defendants had planned for this letter not to reach Plaintiff until too late for him to do anything about it, they could not have designed it better. (Exhibit 23)

What this letter relates to is the essence of the instant case. It allegedly corrects defendants' error of about five months earlier. It relates to Defendants' Exhibits 1 and 2.

Were this to be innocent, the normal working of an inefficient and uncaring bureaucracy little concerned about the law, the courts and the rights of citizens, as is possible, the context in which Plaintiff must view it is one he feels impelled to make a matter of official record and to call to the attention of the Court in some detail. It stretches even a willingness to do so to believe that all of what Plaintiff will report is entirely innocent, particularly in a case in which Plaintiff, a non-lawyer, represents himself.

Having no knowledge that defendants were about to file their instant action, and on the very day thereof, still hoping to avoid encumbering this Court without need, Plaintiff wrote the Assistant Administrator of Administration. It had then been quite some time since Plaintiff had filed his Motion for Summary Judgment and Plaintiff had heard from neither defendants nor this Court. A copy of Plaintiff's letter is

(Exhibit 24)

attached hereto. Aside from that to which Plaintiff in particular directs this Court's attention, there is in this correspondence what also relates to those matters addressed in these instant papers and necessarily prepared much earlier. One of these is whether Plaintiff had, in fact, exhausted his administrative remedies, described by defendants as "available" with what by now might be regarded as flippancy. In the foregoing, Plaintiff represented to this Court that defendants' allegation is neither serious nor truthful, that Plaintiff did, with some care and effort, comply with all requirements, including by proper appeal that was officially rejected. Nowhere in defendants' motion is there acknowledgment of the fact of this appeal or of its rejection, and if there is only what Plaintiff categorized as deception.

Twice in the first paragraph of Plaintiff's letter of January 13, 1971, to Mr. Johnson there is reference to Plaintiff's "appeal", that word being used, and to its official rejection. Despite defendants' misrepresentation made to this Court that Plaintiff believes is deliberate, made exactly the same day that Plaintiff wrote, nowhere in Mr. Johnson's letter does he dispute this description, that Plaintiff did appeal and was rejected.

And Mr. Johnson, the Court will recall, is the identical person to whom, under the GSA's own regulations, Plaintiff's appeal was required to have been automatically forwarded not later than about five months ago. It is defendants' argument that because Mr. Johnson has not complied with law and regulations, Plaintiff has not "exhausted his available administrative remedies."

Plaintiff, who had neither knowledge of nor any way of knowing that on that very date defendants were going to file their instant Motion, also addressed other matters that are essential in these papers. For example, of defendants' refusal to provide copies of the pictures requested:

> Its position has been that it refused my request because not to do so would result in sensational or undignified use of the evidence I seek and seek to study.

The proper GSA official, the Deputy Administrator for Administration, in no way, manner or form disputes Plaintiff's representation of defendants' alleged basis for refusing Plaintiff's requests or that they and Plaintiff's appeal were, in fact, refused.

Identically the same is true of Plaintiff's representation of what he really seeks, as distinguished from the improvisation falsely contrived to mislead this Court. Plaintiff again emphasizes, he had no way of knowing that his requests were at that very moment being misrepresented by defendants, described in this sentence by Plaintiff:

> I asked only for the pictures you already have and for you to take pictures for me with your own equipment.

Mr. Johnson's complete silence on this, too, in his letter stamp-dated February 11, 1971, Plaintiff submits, is acknowledgment of the truthfulness and accuracy of Plaintiff's representations to this Court

and, conversely, of the falseness and the deliberate falseness of what defendants have presented to this Court, in its own way thus reinforcing Plaintiff's claim that there never was any genuine issue as to this material fact.

Plaintiff's letter to Mr. Hohnson, although written for other reasons, is a clear proof that it was not Plaintiff's desire needlessly to burden this Court. Its chief purpose is set forth explicitly in two paragraphs, reading:

> If you will examine Item "(f)" in Mr. Vawter's letter, you will see that it reads: "permission for you to examine the photographs taken with CBS equipment by the Archives staff." And if you will think of this for a moment, you will understand that what this really says is that, contrary to the representation made to me in order to deny access to this public information to me, that any use would be sensational or undignified, the Archives did, prior to my repeated requests, permit to CBS that which it denies me, permission to examine the clothing, and more than I requested, the right to use their own equipment in taking the pictures denied to me. I asked only for the pictures you already have and for you to take pictures for me with your own equipment.
>
> I realize it is not my obligation to call this to your attention, but unlike the clear record of the Government, I have no desire needlessly to burden the courts, and I do not regard the law as a game to be played, involving whatever tricks a litigant thinks he can get away with. I regard this acknowledgment of having done for CBS - and for the largest possible audience - precisely what it refuses me for my research and writing, which can never reach so vast an audience, the Government has invalidated all of its alleged reasons and eliminated any question in fact.

Plaintiff then informed Mr. Johnson of Plaintiff's intention to amend his Motion for Summary Judgment to incorporate this admission by defendants.

Now it happened that, on exactly the date stamped on Mr. Johnson's letter, at a little before 1 p.m., Plaintiff received a telephone call from the Assistant United States Attorney whose name is signed to defendants' instant Motion and who seems to be handling the case, Mr. Robert Werdig, Jr. To this conversation Plaintiff will return. Here he asks the Court to note only that, with Mr. Werdig's knowledge of the serious problem for Plaintiff in completing these papers within the time set and with his knowledge that, in fact, Plaintiff was preparing these papers, Mr. Werdig made no mention of Mr. Johnson's letter or its contents, which could not be more relevant to defendants' earlier papers and to any response by Plaintiff. The letter from Mr. Vawter is defendants' Exhibit 2 attached to defendants' instant Motion. Mr. Johnson's letter, which could not possibly be expected to reach Plaintiff prior to the date on which these papers are due in this Court, suddenly - at this very late hour - claims Mr. Vawter's letter is in error.

Mr. Werdig could telephone Plaintiff and not mention this? And Mr. Johnson, the responsible official of defendant GSA, could not telephone Plaintiff? The Archivist, head of defendant National Archives, could not telephone Plaintiff?

And can it be believed that after Plaintiff, with motives that

certainly cannot be questioned, was frank and forthright with defendants on just this point, after (and so long after!) Plaintiff did amend his Motion for Summary Judgment, neither defendant notified their counsel, Mr. Werdig, or anyone else in the Department of Justice or the Office of the United States Attorney for the District of Columbia?

Before directly addressing Mr. Johnson's letter stamped February 11, 1971, (indicating earlier typing thereof) Plaintiff reminds this Court that, despite the contrary certification, defendants did not serve upon Plaintiff the attachments to their instant Motion; that after Plaintiff's first request therefor, they did not provide these attachments, which include Mr. Vawter's letter; that on the occasion of Plaintiff's second request, these exhibits had not yet been copied; that Plaintiff then made a third request; and that they did not reach Plaintiff until February 8, which is but three days prior to the date stamped on Mr. Johnson's letter. It seems reasonable to assume that, long before these exhibits were so belatedly sent to Plaintiff, defendants were aware of the "error" they now allege is in their rejection of Plaintiff's appeal.

Can it be believed that it required a month, which is the approximate time between Plaintiff's letter of January 13 and defendants' of February 11, to learn that so serious an error had been made? Or that it was not and should not have been learned in the previous four months following filing of Plaintiff's complaint?

Can it be assumed that a Court is allegedly so grossly misinformed as is now claimed by defendants and the Court is not promptly informed thereof?

Rather than helping defendants, this alleged "correction" is their petard on which they hoist themselves. Further, this letter perpetuates what has become a government tradition, not ever writing Plaintiff without falsehood and misrepresentation. Knowing this letter would reach the Court, Plaintiff alleges it had the added purpose of misrepresenting and intending to deceive this Court, as he will explain.

Mr. Johnson wrote:

> I have been informed by the Archivist of the United States that CBS personnel were not permitted to see or examine President Kennedy's clothing, and that no photographs or motion picture film of that clothing were taken by or for CBS.

This is all that in any way addresses Plaintiff's letter of January 13. Plaintiff has no independent proof of its truth or falseness, but Plaintiff did understand that such photographs were taken for CBS, which is precisely what Plaintiff's appeal of June 20, 1970, says.

For the purpose of misrepresentation to this Court, and whether or not truthful, it is entirely irrelevant to Plaintiff's requests and to his letter, this follows next in Mr. Johnson's letter:

> Photographs of the following exhibits were taken by the National Archives staff with CBS equipment: Commission Exhibit 319 (rifle), CE 142 (bag), CE 399 (bullet), CE 567 (bullet fragment), and CE 569 (bullet fragment). As indicated

by Mr. Vawter's letter of September 17, 1970, to you, these photographs will be shown to you in the National Archives on request, and copies of any you select will be furnished to you for the usual prices.

Now, the Court can see for itself that the last two sentences are deceptions, not the subject of Plaintiff's request, not the subject of his appeal, and are in no way mentioned or in any way referred to in Mr. Vawter's letter. That was in response to this language in Plaintiff's appeal (defendants' Exhibit 1)?

> It is my understanding that the Columbia Broadcasting System was permitted to make its own photographs of this clothing .... (emphasis added).

It is obvious that Plaintiff's appeal did not deal with any of these objects that defendants now, with no shame at all, say:

> As indicated in Mr. Vawter's letter of September 17, 1970, these photographs -

That is, the irrelevancies, the objects of which Plaintiff did not seek copies and about which he did not appeal -

- will be shown you in the National Archives, etc.

This is not what Mr. Vawter's letter either says or means.

Now how many ways dare defendants alice baloney and call it Chateaubriand?

Defendants did not "interpret" their rejection of Plaintiff's appeal in this way in their instant Motion. For example, the last items under "Statement of Material Facts" are alleged to claim that there is no genuine issue as to any material facts because, pretendedly, Plaintiff was offered access to these alleged photographs of the clothing and in no other sense, nothing else being in any way involved in this instant action. The first is Number 4. It begins with Plaintiff's request, "... copies of photographs of some of the President's garments ..." and in answer, designated "5", the identical paragraph from Mr. Vawter's letter, which deals only with photographs of the President's garments:

> ... to allow you to examine item 5 photographs in the National Archives Building and to furnish you with prints of the item 5 photographs.

Defendants and their counsel both interpreted this exactly as Mr. Vawter wrote it, the only way in which it could have been intended, as referring to pictures of the President's garments, nothing else being of concern in the appeal and its rejection.

This, the only possible interpretation, permeates defendants' instant Motion and attachments. Under Memorandum of Points and Authorities, it is included in "1)". Under "Argument" it is explicitly quoted in identically this manner and with the identical excerpt, "to allow you to examine item 5 photographs ... to furnish you prints of the item 5 photographs." (p.6). Here again, under the Argument that "Plaintiff Has Failed to Exhaust the Available Administrative Remedies."

What bothers defendants and drives them to this desperate falsehood is the position in which they are, regardless of whether or not they took photographs for CBS.

If they did not, then their entire case falls apart and they concede they refused Plaintiff's proper requests and proper appeal, for it is this alleged proffer of access to the photographs sought that defendants allege to have made, thus, they represent to this Court, "there is no genuine issue as to any material fact and, therefore, defendants are entitled to judgment as a matter of law."

The false pretense, seriously addressed to this Court, that "Plaintiff" has failed to "Exhaust the Available Administrative Remedies", thus becomes so fragile it would not sustain a dessicated butterfly of subminiature species. And on this basis, as he has represented to this Court, Plaintiff would be entitled to judgment in his favor, there being no possibility at all of any genuine issue as to any material fact.

On the other hand, if, as plaintiff cannot disprove, it is true that the Archives did not take such photographs as Plaintiff seeks for CBS, what then is the situation? What then can be said of the honesty with which defendants respond to requests for public information? The official attitude toward appeals under the law and regulations are thus portrayed in what light? And with regard to the uniform application of regulations, the impartiality of access, the seriousness with which those who operate the Archives and care for this irreplaceable archive, what does this show? And what of their concern for the provisions of the family contract?

Did anyone throw up his arms in horror at the thought that such photographs were taken for CBS? Is not the entire thrust of defendants' argument about the family contract that it <u>absolutely precludes</u> the providing of <u>any</u> such photographs of the clothing under <u>any</u> circumstances to <u>anyone</u>? From defendants' own representation, would this not be the next thing to an unimaginable national catastrophe, a serious offense at the very least? But someone in authority <u>did</u> affirm that such pictures as Plaintiff seeks <u>were</u> taken for another. And nobody in authority for a single instant questioned it? Not even when Plaintiff filed the instant complaint and, presumably, before making any representation to this Court, defendants and their eminent, learned and experienced counsel looked into the matters involved?

How perfectly this shows the spuriousness of the defendants' knowingly false interpretation of this contract, when nobody at all, from clerk through Archivist at the National Archives and through all the appeals mechanisms at GSA, including the office of the general counsel and that of the Deputy Administrator for Administration; when nobody at the Department of Justice and no one in the office of the United States Attorney, <u>doubted for a single instant that such pictures were taken for CBS or even questioned that they had been!</u> And yet they tell this Court that the contract prevents this?

This one incident ought to persuade this Court what Plaintiff's unhappy experience has been, that in order to suppress the vital evidence of the President's assassination from any unofficial examination, there is nothing of which the Government is not capable, no lie too nefarious to tell, no trick too demeaning to pull, and no interference

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	C. A. No. 2569-70

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 9(h) of this Court, Plaintiff moves the Court for summary judgment on the ground that the material facts, as to which there is no genuine issue, show that Plaintiff is entitled to judgment as a matter of law. Plaintiff made requests for the disclosure of certain identifiable records within the control of the Defendants; Plaintiff's request was authorized by 5 U.S.C. §552, and Defendants refused to disclose said records. The undisputed facts do not provide any basis for sustaining Defendants' refusal to grant Plaintiff's requests for access to said records; wherefore, Defendants, who have the burden of proof, should be enjoined from refusing to grant Plaintiff access to the records he seeks.

Attached to this motion, and in support thereof, are a Statement of Material Facts, as to which movant contends there is no genuine issue, and a Memorandum of Points and Authorities.

HAROLD WEISBERG, pro se

Date: _____

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing motion of Plaintiff for Summary Judgment with attached Statement of Material Facts and Memorandum of Points and Authorities was mailed, postage prepaid, this 19th day of November, 1970 to the U.S. Attorney, Room 3136-C, United States Court House Building, 3rd and Constitution Ave., N.W.,; the Office of the Attorney General of the United States, Washington, D.C. 20530; the U. S. General Services Administration, F between 18th and 19th Sts., N.W.; and the U.S. National Archives and Records Service, Pennsylvania Ave. at 8th St., N.W., Washington, D. C.

HAROLD WEISBERG

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	C. A. No. 2569-70

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

Pursuant to Rule 56, Federal Rules of Civil Procedure and Rule 9(h) of the local rules of this court, Plaintiff submits that the following are material facts as to which there is no genuine dispute:

1. In compliance with the Freedom of Information Act, Plaintiff has on numerous occasions requested that photographs of the President's clothing be taken for him by the National Archives, or that he be granted access to inspect said clothing, or that existing photographs of said clothing in possession of the Archives be made available to him.

2. Defendant National Archives has authority to grant Plaintiff's requests, as is admitted in paragraph 19 of Defendant's answer.

3. Defendant National Archives has denied Plaintiff access to the President's clothing, refusing to allow his personal inspection of said clothing, or to have photographs of it made for him, or to provide him with the existing photographs of said clothing already in the possession of the Archives.

4. Plaintiff has exhausted his administrative remedies.

5. Defendant National Archives has not claimed that the requested records fall within any of the specified exceptions available under the Freedom of Information Act.

Plaintiff submits that the above stated facts, as to which there is no genuine dispute, entitle Plaintiff to judgment as a matter of law.

HAROLD WEISBERG, pro se
Route 8
Frederick, Md. 21701
Tel: (301) 473-8186

Date: _____

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	C. A. No. 2569-70

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant has raised several legal issues in its answer. These are dealt with below.

I. COMPLAINT STATES A CLAIM UPON WHICH RELIEF CAN BE GRANTED

5 U.S.C. §552(a)(3) provides as follows:

> "Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person."

As such identifiable records have not been made promptly available to him by the Defendant National Archives, it is clear that Defendant's failure to grant Plaintiff's properly submitted requests gives rise to a valid claim under 5 U.S.C. §552(a)(3).

As to whether Plaintiff's claim is one upon which relief can be granted, the continuation of the above-quoted passage from 5 U.S.C. §552(a)(3) is instructive:

> "On complaint, 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, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant."

By way of relief, and in accordance with the above-quoted passage, Plaintiff has requested that Defendant be enjoined from withholding from him the agency records which he seeks.

Further, Plaintiff maintains that the so-called Better Agreement between Burke Marshall and the National Archives is illegal, in part or in entirety. However, should this "contract" be upheld, then Plaintiff asserts that he is entitled to relief under its provisions. That agreement states:

> "(2) Access to the Appendix A materials shall be permitted only to:
> .....
> (b) Any serious scholar or investigator of matters relating to the death of the late President for purposes relevant to his study thereof."

Plaintiff is a serious scholar and investigator, having authored four published books on the assassination since 1965. The records sought are relevant to his study of the death of President Kennedy (See attached Affidavit A).

II. THIS COURT HAS SUBJECT MATTER JURISDICTION

5 U.S.C. §552(a)(3) states that the U.S. District Court has jurisdiction in each of three circumstances: 1) in the district where the complainant resides, 2) or has his principal place

of business, 3) or in which the agency records are situated.

Plaintiff alleges on information and belief that the records he seeks are kept by the National Archives and Records Service and are situated in the District of Columbia. Plaintiff notes that no representation has been made to him by the responsible agency officials which would cause him to believe otherwise.

Plaintiff also takes notes of paragraph 2 of an affidavit executed by the Archivist (attached as Affidavit C), which admits that as of that date the clothing of President Kennedy was "on deposit in the Archives of the United States."

III. THE NATIONAL ARCHIVES IS A PROPER PARTY DEFENDANT

In paragraph 19 of its Answer, Defendant admits that it has authority to grant Plaintiff's requests. It follows, therefore, that the National Archives and Records Service is a proper party defendant.

Further, in an affidavit executed July 29, 1970, Dr. James B. Rhoads asserted:

> "As Archivist of the United States... my responsibilities include the custody and preservation of all documents and other articles on deposit in the Archives of the United States, including the clothing of former President Kennedy, consisting of a coat (CE393), shirt (CE394), and necktie (CE395)....." (See paragraph 2 of attached affidavit by Dr. James B. Rhoades).

Paragraph 4 of the Rhoads affidavit also states:

> "The agreement provides that, in order to preserve these articles against possible damage, the Administrator is authorized to photograph or otherwise reproduce them for purposes of examination, in lieu of the originals....."

As part of the relief sought, Plaintiff has asked that photographs of the President's clothing be made for him. It is clear from the above-quoted passage in the Rhoad's affidavit that the Archivist has authority to grant this request.

IV. DEFENDANT HAS EXHAUSTED HIS ADMINISTRATIVE REMEDIES

In early November, 1966, shortly after items of the President's clothing has been transferred to the National Archives by the so-called Letter of Agreement between Burke Marshall and Lawson B. Knott, Plaintiff made a formal request for access to the items of clothing so transferred. A copy of the Letter of Agreement itself was also requested.

Dr. Bahmer, Head of the Archives at that time, later wrote Plaintiff that Mr. Burke Marshall, representative of the executor for the Kennedy estate, had denied Plaintiff's requests. Even Plaintiff's request for a copy of the Letter Agreement was refused.

At a later date, after public use had been made of some of the items requested by Plaintiff, Plaintiff renewed his requests. Again, they were denied.

Plaintiff next sought information which would enable him to invoke the provisions of the Freedom of Information Act. On May 27, 1969 Plaintiff hasked the National Archives for the information he needed to order to exhaust his administrative remedies. Plaintiff repeated this request on July 14, 1969, and July 31, 1969. Finally, on August 13, 1969, the Archives sent Plaintiff copies of several sets of regulations which seemed designed for the use of lawyers. There was no reference to the use of forms

in making application for records under the auspices of the Freedom of Information Act.

More than a year later, on August 19, 1970, the Archivist wrote Plaintiff that their regulations "do not prescribe the use of a form in requesting documents under the Act."

Plaintiff is a writer. His writing is based in large part on research done at the Archives. Thus, the inordinate delays on the part of the Archives in responding to his requests affected his capacity to earn a living.

To expedite matters, Plaintiff wrote the Archivist asking that each time a request was refused it be forwarded through appropriate channels and treated as an appeal.

Although Plaintiff was assured this would be done, in fact it was never carried out.

However, Plaintiff also directed an appeal to the Director of Information in a letter dated June 20, 1970. After waiting more than two months without receiving any response to his appeal, Plaintiff filed this suit. (See Affidavit B) HW

V. DUTY TO DIVULGE

Plaintiff is entitled by the Freedom of Information Act to the records he seeks. The Act states:

> "Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fee to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person."

Plaintiff is "any person" under Subdivision (a)(3) of said Act and the defendants are agencies which must, by law, make "promptly available" records which Plaintiff identified and requested in writing.

Plaintiff is not required to have a substantial interest in the records sought and is not required to state any interest whatsoever in requesting access to records.

VI. BURDEN OF PROOF IS ON THE DEFENDANTS

The Defendants have the burden of justifying their refusal to grant Plaintiff access to the records sought. Section (a)(3) of the Freedom of Information Act removes from the agency the power of discretion as to whether or not access to the records should be granted:

> "In such a case the court shall determine the matter de novo and the burden is on the agency to sustain its actions."

VII. DEFENDANTS CLAIM NO EXEMPTION

The Freedom of Information Act lists nine specific exemptions to the general proviso that agency records and information must be made available to any person upon proper request. Defendants have not claimed that their refusal to grant Plaintiff's requests is justified because the records sought fall within the ambit of one or more of the nine specific exemptions provided for by the Act.

VIII. CONCLUSION

The relief requested by the Plaintiff is an injunction. This is a proper remedy under subdivision (a)(3) of the Act, which states that the appropriate District Court "has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant."

HAROLD WEISBERG, pro se
Route 8
Frederick, Md. 21701

Date: _____

Affidavit A

A F F I D A V I T

District of Columbia)
City of Washington) ss

Harold Weisberg, being duly sworn, deposes and says:

He lives at Route 8, Frederick, Maryland.

He is a professional writer and a book publisher, now 57 years old, whose professional writing career began in or about 1930. He has been a newspaper and magazine correspondent and has been a writer, editor, research analyst and investigator for the federal government, before and during World War II, when he was cited and honored for his work by the federal government. As a consequence of some of deponent's investigative reporting in the period beginning about 1940, much praise therefor having been forthcoming from Members of both Houses of Congress, the White House, members of the President's cabinet, and even the Director of the Federal Bureau of Investigation, certain actions were taken by the federal government, including the vesting of Nazi-front corporations and the assessing of fines and penalties, in one case totaling $160,000.

For the past almost seven years, his extensive writing and publishing has been in the field of political assassinations, especially that of the late President John F. Kennedy. The first of these books is titled WHITEWASH: THE REPORT ON THE WARREN REPORT. It went through four printings in the self-published original form and a like number in pocketbook reprint, the first printing alone in the latter form being of a quarter of a million copies. Beginning with his second book, WHITEWASH II, also mass-reprinted, most of the materials came from the National Archives, where he has been an accredited researcher since the spring of 1966. His last card of accreditation is No. 005-495. In all or in part, with materials from the National Archives, he has published an additional six books, four thus far in limited editions only, and has a number of others partly researched, partly written, or both. Unrestricted and uninhibited access to what he is entitled to under law and regulation is indispensable to this research and writing.

Deponent's writing and publishing is well-known to the federal government, including to the Defendants in Civil action 2509-70 in the Federal District Court for the District of Columbia. Defendants have bought copies of his books, including from him. Those of Defendants' employees directly involved in the files in which he conducts research have asked him to autograph copies for them, their friends and for other employees. Among the copies bought outside of normal commercial channels by the Defendant General Services Administration, directly from deponent, are copies for the Lyndon B. Johnson Library. Additionally, deponent knows copies have been bought in commercial channels for he has personally seen them.

Deponent avers that there has been sufficient federal government interest in his writing for copies of parts of manuscripts to have been obtained, not from deponent, and to have been officially responded to prior to publication, prior even to delivery of any of the said manu-

script to the printer. By remarkable coincidence, this coincides with the non-delivery of mailed copies of the manuscript sent to a literary agent. Other proofs of federal government interest in and knowledge of Deponent's writing is in Deponent's possession, including copies of clandestine intelligence against Deponent.

Deponent's book-publishing operation is known as "Coq d'Or Press". Despite the contrary contention in paragraph 2 of Defendant's "answer" to the complaint in Civil Action 2569-70, Defendant General Services Administration paid Coq d'Or Press by check for its purchases and can produce the canceled checks deposited to the account of Coq d'Or Press.

Moreover, counsel for Defendants, the United States Department of Justice, also has certain knowledge of the truth of Deponent's statements in his complaint in Civil Action 2569-70, namely, that Deponent is a professional writer, not only because it also has copies of Deponent's books, but for many other reasons.

In Deponent's wartime writing, cited above, he worked in close collaboration with said United States Department of Justice, gave said United States Department of Justice all of the benefit of his investigations and writing, including evidence of a criminal nature and directly related to the national defense, some of which said United States Department of Justice and its agents had not been able to develop on their own.

During this writing career, well known to counsel for Defendants in Civil Action 2569-70, Deponent worked closely with three Assistant Attorneys General of the United States. On one occasion, Deponent spent four months assisting two Assistant Attorneys General in charge of the Criminal Division in the field, living with them and his expenses paid by the said United States Department of Justice, for whom at this time Deponent served as a technical consultant. Deponent's personal relations with these Assistant Attorneys General of the United States (and many other employees) were of a close and personal nature and on a basis of trust. One Assistant Attorney General even entrusted an official armored automobile to Deponent, on several occasions sending him on personal missions that, strictly speaking, in an area where alcoholic beverages were illegal, were not in accord with local law.

There have been other occasions on which Deponent, as a writer, researcher and investigator, has collaborated with the United States Department of Justice and various of its subdivisions, including by giving them files he had obtained from a subversive organization. In another case, prior to United States entry into World War II, at the behest of said United States Department of Justice, with which in his writing and investigating Deponent was then working in close collaboration, Deponent became a voluntary and unpaid agent of an intelligence service of a friendly power, namely, the United Kingdom.

For long periods of time, Deponent was on the press list of the United States Department of Justice.

Deponent affirms that, quite contrary to their misrepresentation in Paragraph 2 of the aforementioned "answer", both Defendants, the National Archives and Records Service and the General Services Administration, as well as their counsel, the United States Department of

Justice, have long known Deponent to be a professional writer and publisher. Moreover, as an editor and as a writer-investigator, Deponent has also been known, in two different cases, to the office of the United States Attorney for the District of Columbia, serving as both a witness and a source of information for the said office of the United States Attorney for the District of Columbia.

_____
Harold Weisberg

I, _____, Notary Public in and for the District of Columbia, do hereby certify that Harold Weisberg personally appeared before me in said District of Columbia on the _____ day of November 1970, the said Harold Weisberg being personally well known to me as the person who executed the said affidavit and acknowledged the same to be his act and deed.

Given under my hand and seal this _____ day of November 1970.

_____
Notary Public

A F F I D A V I T

Affidavit B

District of Columbia)
City of Washington) SS:

Harold Weisberg, being duly sworn, deposes and says:

He is a professional writer and publisher, living at Route 8, Frederick, Maryland. Since the assassination of President John F. Kennedy on November 22, 1963, he has made an intensive study of and has written more extensively than any other writer about this assassination. He has also written about other assassinations. This work is incorporated in a total of eight completed books and a number of others in various stages of development. The first and best-known of these books is titled WHITEWASH: THE REPORT ON THE WARREN REPORT. His writing and his books are well known to various agencies of government, including the Defendants in Civil Action 2569-70 in the Federal District Court for the District of Columbia. It is also well known, including to all government agencies in any way involved in the official investigation of this assassination, that his beliefs are not in accord with the conclusions of the Presidential commission on this assassination, known as the Warren Commission, and that his opinion of the official investigation is that, at best, it was unspeakably and indescribably incompetent.

Deponent was the first author of any book to concentrate upon the so-called autopsy performed on the body of the President and what is relevant thereto. It occupies a major part of his first book, is one of the three parts of his second, and is the subject of two completed books of a projected three on this subject alone, under the general title, POST-MORTEM. The first of the POST-MORTEM books was written before August 1967, its completion delayed by the withholding from him of certain necessary data by the National Archives, one Defendant in said Civil Action 2569-70.

On ob about November 1, 1966, it was announced that there had been promulgated an executive order, by the then-Acting Attorney General, in which he proclaimed that the national interest required that all evidence in the physical possession of the government be transferred to the National Archives and there preserved intact with such other evidence as had been deposited there with the files of the then-defunct Warren Commission. At this time it was also announced that the representative of the executors of the estate of the late President had made certain "gifts" to the government, consisting of essential evidence relating to the assassination and presented as the personal property of the decedent. Included in this alleged "gift" were certain exposed photographic and X-ray film and the garments worn by the assassinated President at the time of the crime.

Immediately following these public announcements, deponent conferred with the then head of the National Archives, Dr. Robert Bahmer, and made formal request for access to this "gift" and the evidence of the assassination contained therein, especially the film and the documentation of the said "gift". At the suggestion of Dr. Bahmer, deponent immediately wrote Dr. Bahmer a letter along these lines which Dr. Bahmer said he would forward to the representative of the executors of the said estate. Thereafter, Dr. Bahmer wrote deponent that his request had been rejected by the said representative of the executors, Mr. Burke

Marshall, who is also the signatory to the "Letter Agreement" by which the so-called "gift" was consummated.

Even a copy of this Letter Agreement was denied deponent, the claimed reason being that its public use would be of a "sensational or undignified nature", words coming from the said Letter Agreement as it related to the objects included in the "gift" and thereafter regularly employed in letters to deponent from the National Archives. Some months thereafter, however, when this Letter Agreement was requested by a newspaper reporter without detailed knowledge of the fact of the assassination or its official investigation, notably one publicly sympathetic to the official account of this assassination and the chairman of the said Commission, the claim that any use of the said Letter Agreement would be "sensational or undignified" vaporized and this said reporter, in violation of the regulations of the National Archives, was given exclusive first-use of the said Letter Agreement. Regulations required that deponent be given equal access to it. However, it was not sent to deponent until some time after publication, thus denying deponent his rights to government records he had been first in requesting and had requested long before the said sympathetic reporter.

This is not the only such case involving denial of such records to deponent, but he cites it because it illuminates the spuriousness of the claim that withholding of what he seeks is to prevent sensational or undignified use. There was no change in the said Letter Agreement from the time of his request, therefore, no change in whether or not its use would be sensational or undignified. The sole difference is that the government could expect the use made thereof by this reporter to be in accord with the government's wishes and preferences. As a consequence, this first and extensive use having stifled journalistic interest in the said Letter Agreement, the reporter not having understood what it discloses, what it discloses is largely not understood today.

Customarily, the said National Archives ignores those proper inquiries made of it or, when made by those not of sycophantic predisposition to support the official position on the assassination, unduly delays responses or makes evasive or deceptive or openly false responses, to the end that deponent is seriously interfered with in his quest for information about the assassination of his President and his writing frustrated and delayed where it is not thereby prevented. One example is with deponent's request for a truthful and meaningful explanation of this cited denial of his rights and violation of the regulations. In four and a half years of regular requests, no such response has been made by the Defendant National Archives.

Similarly, when it became a matter of public knowledge that public use had been made of part of this evidence related to this "gift", of which deponent had had knowledge since before the time of the Letter Agreement and the announcement of the "gift", in January 1969 deponent made a new and separate request for this specific and indisputably "identified" paper. He was promised an immediate answer but it was not made. Thereafter, when both were in attendance upon a court within the District of Columbia, the Archivist, Dr. James Rhoads, informed deponent verbally that response would soon be forthcoming. It was a matter of about 32 days before a false and deceptive letter was,

finally, after much reminding by deponent, sent to him. Deponent immediately pointed out the deceptiveness of this so-called response and its evasiveness, the spurious claim that what he sought was a "private paper", apparently, from this misrepresentation, entrusted into the keeping of the National Archives because the Kennedy family is without means of securely storing anything. Deponent asked for the government's copy of this paper. He never got response. Deponent was then promised a copy of this paper from the agency of primary interest, which elected to give it to deponent through the National Archives, and so informed deponent. Months went by, and, after much prodding from deponent, when a total of a year and a half elapsed, the said National Archives again falsely claimed the government's copy to be a private matter and denied it to deponent.

Not until under date of August 19, 1970, did deponent receive an official acknowledgment of that of which he had been informed by the agency of origin, namely, that this document had been sent to the Archives to be given to him by that means. Hiding the fact of delay for about a half-year, the Archivist, evasively, said only, "We have an electrostatic copy of the Government copy of the 'memorandum of transfer' of the material relating to the autopsy of President Kennedy. This copy (emphasis added) is withheld from research under the terms of 5 U.S.C. 552, subsection (b) (6) as part of 'medical files and similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy' of the family of the late President Kennedy."

(It is noteworthy that this letter of August 19, 1970, begins, "This is in reply to your letters of March 13, 16, 19, 20, April 24, May 18 and July 2, 1970." Deponent believes this demonstrates the prolonged and unnecessarily- delayed response to his proper inquiries and the diligence of his efforts to obtain papers to which he is entitled. Among other things, these letters ask for this particular paper which had been given to the National Archives to be given to deponent. Surely it did not require 165 days for the National Archives to determine this paper, already ruled not to be subject to any of the restrictive provisions of 5. U.S.C. 552 by the agency of origin, was "part of medical files and similar files", which it is not, being no more than a receipt/memorandum of transfer of a number of items, including what is at issue in this suit that is in no way "medical".)

When it is understood that this paper covers the illegal giving away of government property, without any legal sanction of any kind and, moreover, in added violation of specific regulations, the magnitude of the kinds of deceptions regularly practiced by the National Archives to deter and interfere with the right to information, research and writing by deponent can be understood. The elapsed time is a not unfair indication of how the mere stalling frustrates deponent's rights and writing and the law under which he filed Civil Action 2569-70, which specifies that such requests will be handled promptly. With this abuse, the law is without meaning. It becomes a sham.

Moreover, this particular document relates very much to the subject matter of this suit, Civil Action 2569-70, and constitutes one of the records of the secret transferring of the official evidence - the publicly used evidence as well as secret evidence - of the Warren Commission.

Over the years, faced with constant interferences with his right to know under the law and with delays calculated to impede his research and his writing of that which the government prefers not be written, deponent made many requests of the National Archives that he be informed of what he must know to invoke the provisions of 5 U.S.C. 552 and to be supplied with agency instructions and regulations thereto relating. Combing the inordinately extensive files of this correspondence (made extensive by the National Archives' failure to respond or responding evasively, thus requiring endless extra and detailed letters by deponent, a few of the very many samples of which are contained in this affidavit) would be a great burden. However, without exhausting the possibilities, these illustrations are readily available to deponent:

On May 27, 1969, he asked the National Archives for that information he required "to be able to exhaust all administrative remedies."

On July 14, having received no answer, he reminded the Archivist that, as with all other agencies of government, deponent's request that he be informed of what he had to know to invoke the law had not been sent him.

On July 31, a similar request was repeated.

On August 13, 1969, the Archivist sent copies of several sets of regulations which seemed to deponent to be designed for the use of lawyers, which he is not, without any reference to the use of forms for application, etc. Finally, a year later, on August 19, 1970, the Archivist wrote deponent that their regulations do "not prescribe the use of a form in requesting documents under the act". This, it should be noted, is two months after deponent, frustrated by the futility of seeking to be able to use the law enacted to guarantee freedom of information, had addressed a still-unanswered appeal, as prescribed by the regulations.

Thereafter, on other occasions, deponent made clear to the Archivist that he lacked understanding of the special requirements of that agency with respect to the law, as recently as March 13 and April 24, 1970.

Time went on and the number of unfilled requests mounted. With deponent still uninformed about how he might use the law, he began asking, when from the record and the history of such unfilled requests he could anticipate their ultimate refusal, that, upon refusal, each request be forwarded through channels as his appeal. In no single case was this refused and in no single case was it done. It is not now physically possible for deponent to set down all such cases, but he does here affirm a relevant case.

He made one such request on November 11, 1969. Under date of January 22, 1970, more than two months later, and never having forwarded any single letter or request as an appeal, the Archivist wrote deponent:

"You have requested that we treat all your letters and requests as your appeal under the Freedom of Information Act (5 U.S.C. 552). Since your letters and the necessary responses now comprise a large file, it would be administratively difficult to do this ... submit or resubmit a numerical list of those desired records ..."

It should be noted that the only reason these requests accumulated is because no single one was forwarded as an appeal, as requested.

It should also be noted that the number of such letters of request is relatively small, and it is only the entire file of correspondence which can be described as "a large file". Most of this correspondence, by far, is not related to deponent's request for the forwarding of appeals.

The deceptive semantics of the "numberical list" is significant for only part of the Warren Commission files is identified by numbers and deponent had requested the forwarding of appeals for public records not of such numbered identification.

At the time of receipt of this letter, deponent was ill and preoccupied with other writing. What the Archivist requested of deponent also required an enormous amount of time, as deponent reported to him under date of March 13, 1970. After briefly reviewing the history and with the intent of submitting a list of all ignored or denied requests for information to be appealed, deponent did supply a list of some of these things. What is most relevant here are:

"It has been months since I asked for access to some of the late President's garments. Ultimately, I was refused. I again asked that pictures be taken for me, by you, and you again refused." (Marked on page two, attached.)

On the "memo of transfer", which included some of what is sought in this action, "It has been close to a year since I asked you for a copy of the government's copy. You have at no point indicated a) that there is a government copy, as I know beyond doubt there is, or b) whether or not you have it." (Marked on page three, attached.)

"... raw material of the panel report ..."(which includes what is at issue in Civil Action 2569-70 - marked on page three, attached.)

"My request for the Kennedy-family-GSA contract ... all attachments and related papers ..." (Marked on page four, attached.)

Notwithstanding this letter of March 13 and the specific items mentioned in it, under date of May 13 (which happens to be after deponent filed an action under 5 U.S.C. 552 against the Justice Department), was there any response. At the end of a letteroon other matters, the Acting Archivist wrote, "We note we have not yet received a list of the documents withheld from research concerning which you wish to appeal ..."

While it is true that deponent did not prepare a complete list of all such items, he had submitted a partial list of specific and identifiable items on March 13. Pending action on this, and in the fact of the undeviating failure of the Archivist to forward any single refusal through channels as an appeal, there seemed and to this day seems to be no purpose other than the waste of time and money to be served by completing the list, these specific requests having again been ignored.

Thereafter, the aforementioned appeal was filed on June 20, 1970. Deponent believes the additional lapse of more than three months was more than enough time for truthful and meaningful response.

On August 19, and with the apparent intention of making some use of it in Civil Action 2569-70, the Acting Archivist made this reference to the foregoing:

"You stated in your letter of March 13 that you intended to submit a numerical (Emphasis added) list of records concerning which you wish to appeal ... We have not received this list." This false emphasis on "numerical" has been noted earlier. And deponent's letter of March 13 does not make any reference to a "numerical list".

And not until three months after the filing of the appeal was there even acknowledgment by the National Archives. It makes no reference to this civil action, filed four weeks earlier, and apparently also has the intent of making a deceptive record to be used in this proceeding. Deponent's response, by return mail, under date of September 19, has never been responded to.

However, after the rejection of deponent's appeal, after deponent had appealed without result to the representative of the executors of the estate, and after he had challenged both the said representative and the Archivist to show how the pictures deponent seeks could be used in any way they could describe as either "sensational" or "undignified" or how the pictures made freely available by the Archives could be used in any other than an "undignified" or "sensational" way, deponent received a self-serving, really frivolous, offer from the Archivist dated October 9, 1970. Deponent had obtained from another source pictures similar to those withheld. The Archivist said, "If you will send us the print or prints ... we can prepare enlargements ... according to your specifications."

So, the only thing the Archives has been willing to do to help deponent learn what he can that is hidden in the evidence it is suppressing is to offer to take away the business of the independent photographic shop with which deponent deals.

From the foregoing it can be seen that the legally required system of appeals has been convered into a futility for precisely the purpose proscribed by the mocked law, to deny public information.

However, when it was more than apparent that every such means and device would continue to be used to suppress what should not be from those not in accord with the official position on the assassination, deponent tried a third approach. That which he seeks by this action has been used by the government in still another manner, in a so-called "panel report" prepared for the Attorney General, suppressed for a year, and then released both as a means of publicity and in court, in that order, in early 1969. Deponent thereupon asked both the Archives and the Department of Justice for all of the raw material used in the preparation of this published report, some of which, including what is sought in Civil Action 2569-70, being itemized within the report as part of its raw materials. Both rejected this request and both, strangely, claim not to have any of it, which has to be false, possession being admitted in Civil Action 2569-70 and being refused deponent. Appeals having been a futility within the Archives and the General Services Administration, deponent decided to appeal to the Attorney General, as prescribed by the pertinent regulations of the Department of Justice.

While deponent is not a lawyer, he had obtained and read The Attorney General's Memorandum on the Public Information Section of the Administrative Procedures Act, these being the official governmental instructions and interpretations of 5 U.S.C. 552. Deponent had also heard of the decision in American Mail Lines, Ltd. v. Gulick, (411 Fed 696 (1969)). In American Mail Lines, the court held that even the mention of the existence of a memorandum by the Maritime Subsidy Board constituted a waiver of any right to withhold the memorandum itself under the provisions of 5 U.S.C. 552. The court held of this memorandum that it thus lost its "status" as a paper that could be withheld "and became a public record", by mere reference to it.

Now what deponent seeks has been repeatedly and publicly used, and not merely by reference. It is evidence in two published official proceedings and has been widely published and caused to be published elsewhere by the government that now denies it to deponent.

The President of the United States and the Attorney General say in the cited Memorandum on 5 U.S.C. 552 that "only the national security, not the desire of public officials", determines what must be restricted. No question of national security is involved in what deponent seeks. With both the National Archives and the Department of Justice, which used it publicly, having denied having what deponent seeks, deponent was faced with the added question, which, if either, is telling the truth? He therefore took note of and followed the language of the discussion under subsection (c) of the Attorney General's Memorandum (page 24):

"Where a record is requested which is of concern to more than one agency, the request should be referred to the agency whose interest in the record is paramount, and that agency should make the decision to disclose or withhold after consultation with the other interested agencies. Where a record is requested from an agency is the exclusive concern of another agency, the request should be referred to that other agency. Every effort should be made to avoid encumbering the applicant's path with procedural obstacles when these essentially internal government problems arise. Agencies generally should treat a referred request as if it had been filed at the outset with the agency to which the matter is ultimately referred."

Deponent, who is the applicant, has no way of knowing which agency considers itself to have "paramount" interest. His efforts with the National Archives have been frustrated at every turn and the so-called "appeals" made into a mockery of the law. The delays alone, when the clear intent and the language of the Attorney General's memorandum both specify and require "promptness", violate the law and make deponent's effort to use it futile. His repeated requests for the forwarding as appeals of his proper requests were repeatedly ignored by the National Archives. His "appeal" likewise was ignored by the proper person, to whom he addressed that appeal, for three months - until after deponent waited more than a reasonable time, then filed Civil Action 2569-70. Deponent believes he has met all requirements and that any right to deny him access under the law on the spurious ground he had not exhausted his administrative remedies are waived by these delays, refusals to consider his appeals and their being ignored.

Otherwise, an agency can ignore an appeal indefinitely and the applicant can do nothing, the law thus being rendered a nullity and a shabby pretense of "freedom of information".

Now, with regard to deponent's application in proper form, its rejection and his proper appeal to the Department of Justice, his first appeal, likewise, was ignored. Deponent then addressed a second appeal to the Attorney General, who denied it under date of June 4, 1970.

Thus, deponent believes he has exhausted all reasonable administrative remedies, in all three possible areas of appeal. Deponent believes he has done more than the legislative history of this law or the specific language require of him. He believes he has exhaustedly exhausted all prospects of administrative remedy.

_____
Harold Weisberg

I, _____, Notary Public in and for the District of Columbia, do hereby certify that Harold Weisberg personally appeared before me in said District of Columbia on the _____ day of November 1970 and the said Harold Weisberg, being personally well known to me as the person who executed the said affidavit and acknowledged the same to be his act and deed.

Given under my hand and seal this _____day of November 1970.

_____
Notary Public