ARGUMENT

I. Introductory Statement

Because this instant action may have significances not immediately apparent, plaintiff elects, whether or not strictly required of him as a matter of law, to address <u>each</u> and <u>every</u> point, quotation, argument, suggestion or innuendo by defendants and their counsel. The court is respectfully asked to bear in mind that what is sought in this action is access to <u>the most basic public evidence, official exhibits</u>, in the investigation of the assassination of a President. Despite defendants' elaborate efforts to convey a contrary impression, neither here nor on any prior occasion has plaintiff sought more than this simple thing: access to this official, public evidence.

As a matter of fact and reality, although there was a Presidential Commission appointed to investigate and deliberate, the actual investigation was conducted by the Department of Justice, which is defendants' counsel in this instant action. <u>The Commission never at any time had so much as a single investigator of its own.</u> Of the investigation, 100% was done by the executive branch of the government. <u>This investigation began a week before the Commission was appointed.</u> Almost all of it was by the Department of Justice.

The Director of the Federal Bureau of Investigation testified to this before the Commission (Hearings, Vol. 5, pp. 98-9):

> "When President Johnson returned to Washington he communicated with me within the first 24 hours, and asked the Bureau to pick up the investigation of the assassination because, as you are aware, there is no federal jurisdiction for such an investigation. . . I immediately assigned a special force. . .to initiate the investigation and to get all the details and facts concerning it...and I would say we had about 150 men at that time working on the report in the field, and at Washington, D.C. . . ."

Here the director refers to the <u>immediate</u> manpower only. Actually, a much larger number of FBI agents and technicians was involved in the investigation.

The director was less than forthright in this testimony, for without awaiting instructions from the President, he launched his agents into the investigation <u>immediately</u>. They participated in the first and all

Exhaust the Available (sic) Administrative Remedies."

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

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

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

And they do not, because it is not so.

"B" is titled, "Defendants' Refusal to Permit Examination and Photographing of the Articles is a Discretionary Act Created by Statute and Agreement With the Donors." Beginning with this misrepresentation, almost all is irrelevant and contrived to appear legitimate. All the citations of what superficially seems relevant and authoritative is not. The title is the misrepresentation that is designed to mislead the Court. The misuse of "Examination" has already been exposed. Plaintiff neither asked nor wants to toy with such grim evidence. "Photographing" here is misused as

earlier, where it was more explicitly but not less falsely and repeatedly alleged that plaintiff wants to do the photographing personally. The facts are clear and set forth above. Plaintiff has in the course here used by defendants not asked what they say. He has asked, as misused here, for no more than the taking of photographs to suit his needs. This, despite all the pseudo-scholarly citations, is specified by both regulation and the contract.

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

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

Here again there is the suggestion that the family is the cause of the suppression called "denial", and this section is heavy on that. But the reality is that the family itself stipulated "access" to those described in a manner so closely fitting plaintiff's qualification that the point is shunned by defendants. The only exception is "to prevent undignified or sensational use." As has been seen, defendants raise neither this point nor that of plaintiff's meeting the definition. They feel safer hinting at the deception. Knowing that the burden of proof is upon them and not making claim that plaintiff is not qualified for access or that he will make undignified use of the evidence he seeks, there is a lack of genuineness in selective quotation that amounts to misrepresentation of the contract. The inference of intending prejudicial misuse does not appear to be without warrant. Such reference to the alleged provisions of the contract by those who would not accept plaintiff's reiterated challenges to show either that plaintiff would use these pictures in such a fashion or even that those he asked were capable of such misuse should eliminate any doubt on this score.

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

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

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

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

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

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

What was eliminated after "reference" is even more categorically refuted by the contract, and since only two words are involved, the dominath consideration was not likely space. Those two words are "or exhibition". Quite clearly, the garments were not "received" by an agency of the United States Government ...solely for reference or exhibition purposes, both being specifically banned in the contract. None of the rest of this

section, already cited, is congenial to defendants' distortions and misrepresentations. While plaintiff does not seek the clothing, wanting only certain pictures, the language of this statute does not in any sense define the clothing itself as not "records". Particularly when it is official evidence "made or received by an agency of the United States Government in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, procedures, operations, or other activities of the Government or because of the informational value of data in them."

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

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

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

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

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

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

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

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

> "Clothing and personal effects of the late President identified by the following exhibit numbers relating to the President's Commission on the Assassination of President Kennedy:
> Commission Exhibits Nos. 393, 394, 395.
> FBI Exhibit Nos. C26, C27, C28, C30, C33, C34, C35, C36."

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

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

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

On page 13971 of that issue of the Federal Register, in this annex, appears: (Exhibit 28)

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

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

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

What plaintiff believes the foregoing itemization of all of defendants' citations and comparing them with what they pretend to quote with fidelity (is there any other manner in which citation is permitted to a Federal Court?) and what they allege to interpret faithfully (is any other kind acceptable or proper to a Federal Court?), with a few additions of what was smoothly omitted from the consideration of this Court (and can it be believed that the Department of Justice does not know the law it administers?) show that

there is no single fair, honest or complete recitation of any single provision of any law or regulation defendants cited to this Court;

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

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

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

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

The Department of Justice, as counsel for defendants in this instant action, alleges plaintiff is not entitled to what he seeks, contending it is precluded by law, regulation and this said GSA-family contract, and that the relief plaintiff seeks cannot be granted, thus counselling defendants not to provide plaintiff with copies of the pictures he seeks.

The Department of Justice, as counsel to the Secret Service, counsels the Secret Service not to provide plaintiff with that public information it has that is relevant to the photographs plaintiff seeks, photographs of evidence covered by a Secret Service document and formerly in Secret Service possession.

Having counselled everyone else to give plaintiff nothing, the same Department of Justice promptly and without any question or dispute gives plaintiff everything relevant it has for which plaintiff asks, four such photographs. So anxious was the Department to provide these photographs to plaintiff that with respect to the last three it did not require either the execution of the prescribed forms or even payment of the cost of copying.

While neither the execution of the forms nor payment by the press for copies of photographs is required by law or practice, plaintiff asks this Court to take note that in no other case would the Department respond to any of plaintiff's requests without insisting upon the execution of the forms, accompanied by advance payment, and that in another case before this Court, C.A. 718-70, when the Department belatedly complied as an alternative to trial, it would not provide any copies until payment was made in advance and even after later issuance of a Summary Judgment never did fully comply.

To consideration of these unusual events should be added still another.

The filing of a Motion to Dismiss or, in the Alternative, for Summary Judgment, to the best of plaintiff's knowledge, is the closest

thing to a completely automatic act by the Department of Justice in cases brought under this law. Yet in this instant case, and especially knowing that plaintiff was without professional counsel, the Department, acting as counsel for defendants, failed to file such a motion. Instead it filed an "Answer", which is an invitation for a full hearing. Not until long after plaintiff filed his Motion for Summary Judgment did defendants' instant motion get filed. That was about five months after filing of the complaint.

Had this case gone to trial - and from the various motions and addenda prepared and filed by the Department of Justice - it would have been made to appear and is made to appear that everyone <u>besides</u> the Department of Justice is suppressing evidence, that the Department <u>alone</u> freely made its copies available to plaintiff, and that the family (which would be widely interpreted as meaning the senior male member surviving) and the former chairman of the President's Commission above all were responsible for the suppression of this evidence.

If all of this is subject to sinister interpretation and suggests an irreconcilable conflict of interest and possible ulterior purposes, two other factors should be considered: that most of the withholding was and is by and at the direct order of the Department of Justice; and that neither the senior surviving male member of the family nor the former Chief Justice is a political friend of either the Administration or its Attorney General or his Deputy.

So, while the narrow question before this Court is simple, except for the extensive efforts of defendants, meaning, really, the executive branch of the Government, to complicate them, and there is no <u>genuine</u> issue as to <u>any</u> material fact, the overtones are broad and serious. They include the reputations of prominent men, living and dead, the right of powerful Government to abuse the powerless individual and deny him his rights by assorted improprieties, ranging from delaying tactics through distortions of law and regulations, to flagrant imposition upon the trust of the Courts and violations of the law and regulations

it is the duty and obligation of the Government to uphold. They include the suffering of the long-suffering innocent and they can influence the futures of important personages.

Above all, they involve the most basic rights of all Americans and the integrity of Government, the law, and in plaintiff's belief, that of society and possibly its future.

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

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

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

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

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

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

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

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

plaintiff will compare what defendants' did represent to this Court and the meanings given thereto with the sources cited.

That not a single statement in defendants' Motion is factual and truthful has been shown.

Defendants' "Statement of Material Facts"

The first papers in support of the Motion is labelled as a "Statement of Material Facts as to which There is No Genuine Issue." Aside from the lack of faithfulness and fidelity, this representation omits, to the point of deceiving the Court, what is most material. The law imposes a burden on plaintiff, beginning with requesting the public information, then, if denied, making appeal, and so forth. Because defendants' alleged statement of the "material facts" makes no reference to these most material facts, to the arduous efforts represented in plaintiff's requests, plaintiff presents a summary of them to the Court. Aside from verbal requests going back to the first of November, 1966, in that case made to the then-Archivist in person, these requests, beginning with December 1, 1969, and the relatively few responses, some months long in being made, total 25. Of these, plaintiff's letters to the Government total 16. Of the Governments nine letters, [redacted] written prior to the filing of the complaint. The single one of plaintiff's letters quoted was his appeal (and defendants are so unfaithful with that letter they even misdate it). One of defendants' letters only is quoted. Its self-serving character becomes obvious when it is recalled that there was no response of any kind to plaintiff's appeal under the law until this letter - written about three months after the appeal was made and not until 21 days after the complaint was filed. That single one of defendants' letters is a falsity, as previously set forth, and is the grossest misrepresentation of everything, the previous correspondence on both sides and the appeal to which it pretends response and pretends non-rejection. The obvious purpose of the latter dishonesty being either to deceive this Court or to defraud plaintiff. Clearly, this Court was in the mind of the author or authors of that misrepresentation. This is no less grievous an offense because the law and all else relevant stipulate promptness in handling appeals, as heretofore cited.

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

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

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

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

As will be seen, it is required under defendants' own regulations.

Nor is it less grievous to quote incompletely and out of context, to make the words quoted appear to mean other than what they actually say and mean by omission of the relevant, which is what here was done.

There are 18 paragraphs in plaintiff's appeal. Of these, nine refer to requests made and refused. Obviously, such selection and extremely limited quotation of it cannot possibly be faithful to it, least of all in a representation of the "Material facts as to which there is no genuine issue".

The first such omission hides from this Court the fact that plaintiff also had actually appealed earlier and, in effect, on several occasions. The Archivist's personal acknowledgment of this has already been quoted. Plaintiff's formal appeal of June 20, 1960, was then edited to accomplish two deceptions which amount to fraud: to make it appear that plaintiff had requested and been refused less than is the case; and that he had been given access to this public information, which is false.

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

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

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

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

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

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

The first omission is designed to lend an air of truthfulness to defendants' contrived claim that plaintiff had not exhausted his "available" administrative remedies, the second to make it appear that he had been supplied copies of the photographs requested whereas he had been uniformly and undeviatingly refused and rejected. The intent and relevance of this misrepresentation of what plaintiff actually wrote and said is clear in defendants' false representations of being entitled to judgment in their favor because they claimed to have complied with the law, and that "there is no genuine issue as to any material fact." Could this have been claimed to this Court without denying it the proof of the falsity of both claims, by editing written request as defendants were to edit law and regulations.

The intent to deceive and defraud is made more clear with selective quotation of the delayed response, which hides from the Court these two things: that plaintiff's requests for copies of what was withheld were, without deviation, rejected; and that this reply to the appeal was not made

until 21 days after filing of the complaint. The deception thus prepared becomes clear in language on page six of defendants' "Memorandum in Support", reading:

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

It is a minor point that defendants err even with regard to who made the answer quoted. (It was not "the Archives" but the GSA Director of Public Affairs.) What is deception is the quoting of a self-serving, ex post facto letter written so long after filing of the complaint, hiding this fact from the Court, and telling the Court that "Notwithstanding the response", plaintiff then filed the complaint. That is, making it seem that not until after receipt of defendant's self-misquoted and misrepresented letter of response did plaintiff file the complaint, which actually was filed 21 days before defendants' September 17 letter was written.

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

The misrepresentation in the GSA September 17, 1970, letter rejecting plaintiff's requests and of it at this point, especially in the meaning inferred to the long final quotation, has already been abundantly exposed. It refuses plaintiff's requests save for the one made to obtain written acknowledgment of what is hidden in the acknowledgment, that despite all the contrary representations to this Court, exactly what plaintiff asked and was refused was done for the Columbia Broadcasting System. (The "Item 5" reference. This kind of blending of schmalz and gore is not the raw material of genuine scholarship and study.)

Thus there is further deception practiced upon and hidden from this

Court. This phrasing hides it from the Court. But the mere existence of this CBS film is total disproof of the spurious claims that relief cannot be granted and that what plaintiff asks is prevented by the family contract, which thus, plaintiff again emphasizes, seeks to place the onus of suppression on the family.

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

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

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

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

In addition to the foregoing, there is nothing in defendants "STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE" about which there is "no genuine issue".

The first-numbered is false in that it does not reflect what plaintiff seeks and in also misrepresenting what he does seek. He does not seek to make his own photographs, as previously proven with direct quotation of the requests, and he does seek what is here hidden from the Court, copies of the existing pictures.

The second repeats this misrepresentation.

The third, like the second, could be honestly represented to the Court but it is not. It repeats again what is not true, that plaintiff wants the articles rather than pictures, and that these "articles are on deposit by virtue of a suppressed "Memorandum of Transfer" dated 18 months earlier. Moreover, the "articles" are official evidence of an official function of Government, the President's Commission.

The two remaining number paragraphs have already been dealt with. There is genuine disagreement as to their genuinely misrepresentative character.

Defendants' "Memorandum of Points and Authorities"

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

"Preliminary Statement"

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

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

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

The misrepresentation in the words that follow, alleging that what plaintiff seeks in this instant motion is that under the law he wants "to examine and photograph, at his expense, certain items of clothing worn

by the President", in part has been dealt with. First, this eliminates again from the Court's consideration plaintiff's first request, for copies of the existing photographs. Second, when long ago plaintiff was denied permission to view - not to handle - some of the garments, which are official evidence, he changed this request to other than is here represented Plaintiff never asked to take his own pictures, never asked to be his own photographer, never asked permission to bring his own photographer to take these pictures for him. The record set forth above is beyond equivocation, and it is entirely consistent with practice and regulations. Plaintiff asked that <u>defendants</u> take these pictures for him, and the only "examination required under these conditions is only what is sufficient to direct the taking of pictures and to determine which are or may not be necessary to plaintiff's study and investigation.

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

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

The contentions that follow are three in number, false and contradictory. The first is that plaintiff "has failed to exhaust those administrative remedies available to him". That plaintiff did exhaust himself in this exhausting is already established. The truth is that defendants first ignored plaintiff's less formal appeals, then ignored his formal appeal for three months, then failed to comply with their own regulations,

as of now for about an additional five months. These require that "if the denial is sustained, the matter will be submitted promptly...to the Assistant Administrator for Administration, whose ruling thereon will be furnished in writing to the person requesting the records". (Emphasis added) We return to this.

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

The second is phrased in this prejudicial and unwarranted manner: "2) the refusal of defendants to permit plaintiff to do what he desires regarding these articles is an exercise of discretion committed to the defendants by statute and an agreement" with the family.

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

Where the meaning of the statute and contract are addressed further by defendants, to the degree plaintiff may not have, he will. This is also true of the third contention, "3) the articles which plaintiff seeks to examine are not 'records' as contemplated by Congress to be within the purview of 5 U.S.C. 552." Here, still again, plaintiff must assert that his purposes are not to have the articles or in the sense used, to "examine" them. His request is for photographs, no more, and on this score he again

alleges the intent to deceive. What plaintiff seeks is shown elsewhere to in every sense be "records" within all legal definitions.

Defendants' "II. Pertinent Statutes and Regulations"

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

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

> "'(a) (3) . . . each agency, on request for identifiable records made in accordance with published rules . . . shall make the records promptly available to any person. On complaint, the district court... has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld . . .'
>
> (b) This section does not apply to matters that are -
>
> (3) specifically exempt from disclosure by statute . . ." 5 U.S.C. 552, Pub. L. 90-23 [Emphasis added]"

Just what is alleged to be "specifically exempt from disclosure by statute" is not stated but is implied. Nothing plaintiff seeks has such specific statutory exemption. There is no law that exempts such photographs from disclosure. There is no law providing that Warren Commission evidence may not be photographed. There is no law saying that clothing including that of the President, cannot be photographed. There is no law saying that donation to the Government may not be photographed. The law under which this donation was made has no such provision. And there is a contract under that law, the said contract specifically providing that photographs will be made. Perhaps these things account for the total absence of any explanation of the claim to the third exemption provided by 5 U.S.C. 552. Particularly with the burden of proof on defendants under 5 U.S.C. 552 is the mere assertion of the exemption at best dubious. It also helps explain the continuous misrepresentation of what defendants have refused plaintiff, which is nothing more than photographs, and photographs are included specifically in all definitions of "records".

The law does provide eight other specific exemptions, each defined with care. Defendants do not claim exemption under any one of them.

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

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

The very beginning, not quoted, is, "(a) Each agency shall make available to the public information as follows:". Thus, this section of the law really says that its purpose is to provide for information to be made available to the public, not for withholding information. The emphasis defendants added tends to distort this to those who do not read the entire section.

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

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

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

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

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

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

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

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

Where defendants seek to make different use of this identical provision and there (p.3) identifying it other than as 44 U.S.C. 3301, calling it "Section 1 of the Act of July 7, 1943, 57 stat. 380", what is here omitted is included. The relevance of the words of Section 3301 as they define records and hence in this instant action do not require the addition of emphasis. What was omitted - most of the provision - reads:

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

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

Defendants' second citation is prefaced by these words:

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

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

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

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

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

And, by elimination of the relevant references to the Attorney General's Memorandum, (and its statement that "records" is defined for the National Archives and as plaintiff alleges) also eliminated was what also appears at that point in it:

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

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

Based upon this carving of the law to make it seem that what plaintiff seeks is not records, whereas it is, defendants follow immediately with equally selective citation and editing relating to 44 U.S.C. 2107 and 2108(c The significance of defendants' withholding from the Court the quite specific provisions of another section of this same law, 2901, which defines "records" as relating to defendants and includes precisely what plaintiff seeks and directs the providing of copies thereof, has already been cited.

What here is withheld from the Court with regard to section 2107 is what is relevant because of defendants' claim that the family contract is valid and binding, and that is the "restrictions agreeable to the Administrator as to their use". "Use", not withholding. The contract provides that access be granted to certain persons, the definition including plaintiff. Without citing this provision of the contract, I (1) (b), this quotation amounts to a misquotation, for it has meaning directly opposite that sought to be imparted to it.

What is eliminated from section 2108 (c) is the authorization to the

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

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

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

What next follows is reference to the published rules promulgated by the Administrator, again earlier dealt with. These are presented to this Court as the "Significant portions of GSA regulations". In the light of what plaintiff has earlier quoted that defendants omitted of these regula-tions, and their requirement of access and copying, including the duplicating of existing photographs and the making of those that do not exist, defendants description would seem to be a somewhat exuberant. All reference to the directly applicable citations presented by plaintiff in the fore-going, all references to the regulations relating to this material in particular, and, of course, all references to Attorney General's Memorandum or 44 U.S.C. 2901 are excluded by defendants. Selective quotation is calculated to carry the misrepresentation of defendants' non-definition of "records" further and to perpetuate the misrepresentation of the provisions of the family contract.

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

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

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

Defendants' "Argument"

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

"A" alleges "Plaintiff Has Failed to Exhaust the Available Administrative Remedies". This might better have been titled "Orwell 1971". The intent to deceive is apparent, for even the fact that plaintiff did appeal is hidden from the Court. There are entirely unexplained quotations from a selection of defendants' regulations beginning on the preceding page. These specify that an appeal is required. There is the headline, "Appeals Within GSA." Therefore, in order to falsely allege failure to exhaust administrative remedy, and consistent with intent to deceive the Court, plaintiff's appeal, labelled "appeal" and in the form of an appeal, is carefully described as other than plaintiff's appeal. The intent to deceive and misrepresent begins with the opening general reference to the requirement of the regulations and "procedures to be followed when #

a request... was denied." At no point is this Court told that plaintiff did appeal and was denied. Perhaps it is the sincere official devotion to perfecting this misrepresentation that led to the misdating of plaintiff's appeal to June 6, 1970, whereas it was actually made June 20. The appeal is referred to as no more than a casual "letter", the consistent reference to it. But plaintiff did, in it, label it as his appeal ("Herewith I appeal...) from rejected requests. When combined with the misrepresentations, misinterpretations and omissions already cited from both the appeal and its rejection, there can be little doubt of defendants' intent.

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

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

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

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

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

interrogations of the accused, beginning with his arrest, less than two hours after commission of the crime. The first thing the FBI did was warn or threaten all witnesses to strict silence, which precluded the appearance of knowledge of any versions of what these witnesses said or could have said except as the FBI chose to represent it. As a matter of fact, just this and the fidelity of FBI reporting became so scandalous the Commission could not avoid it, and even such probative professional investigators as the two Secret Service agents driving the President's car, one of whom was in charge of the entire detail that day, not only denied saying what the FBI reported them as saying but went farther and said it was impossible. Countless FBI interviews were conducted of which no record or report was made to the Commission. And this, too, although little noticed, had to be and was considered by the Commission.

The grim reality of immediate and unending FBI control of the official investigation is that it was so immediate and so thorough that it even foreclosed the Secret Service, which did have jurisdiction, vested as it is with responsibility for the security of the President and his protection. Of the officially-unpublished proof of this plaintiff has been able to obtain - and it is repetitious - one that plaintiff has published illustrates this abundantly.

It will be recalled that a certain rifle allegedly was the murder weapon. The day after the assassination, the Secret Service, having traced it to the seller, Klein's Sporting Goods Co., sent agents to their Chicago office. Until the Secret Service exerted great pressure on Klein's officials, they refused to say anything. The modern Secret Service representation of the attitude of the company's vice president, William J. Waldman, is presented in these words (Secret Service file # CO-2-34030, printed in facsimile on p. 39 of plaintiff's second book, WHITEWASH II: THE FBI-SECRET SERVICE COVER-UP):

> "It should be noted at this point that Waldman kept reiterating that he had allegedly been instructed by the FBI not to discuss this investigation with anyone." (Emphasis in original)

When Waldman was finally persuaded to talk to the only federal agency with legal jurisdiction, in the words of the same Secret Service report:

"Waldman advised Special Agent Tucker that the FBI had been to his place of business from approximately 10 p.m. on 11/22/63 until approximately 5 a.m. on 11/23/63..."

It required considerable investigating to trace the rifle to Klein's, then to locate company officials and get them to their place of business and gain access to the records, but all of this was accomplished by the FBI, which is to say a part of the Department of Justice, which is defendants' counsel in this instant case, by 10 p.m. the night of the crime.

Understanding of the fact that the Department of Justice immediately took control of the actual investigation and never relinquished it, in plaintiff's belief, is necessary to an understanding of defendants' refusal to make available to plaintiff that which law and regulation required be made available to him and to an understanding of the character, content and doctrine of defendants' motions.

Accepting Director Hoover's number of agents immediately assigned to the case for comparison, ignoring the large number of others later involved in it, these 150 investigators number more than a third more than the entire staff of the Warren Commission, including the file clerks and typists. And of the 94 who served on the Commission, the 15 who were the general counsel and assistant counsel, those upon whom most of the responsibility fell, are but 10% of those number of FBI agents on the investigation at the outset only.

How understated all of this really is in representing the FBI control over the actual investigation is acknowledged by the Commission in the Foreword to its Report (xii):

"The scope and detail of the investigative effort by the Federal and State agencies are suggested in part by statistics from the Federal Bureau of Investigation and the Secret Service. Immediately after the assassination, more than 50 additional FBI personnel were transferred to the Dallas office...Beginning November 23, 1963, the Federal Bureau of Investigation conducted approximately 25,000 interviews." (Emphasis added)

Thus, with the first FBI reports of investigations completed the very day of the assassination, which means in less than half a day from the time of the shooting, the immediacy of FBI control becomes apparent. The magnitude of the number of interviews, 25,000, can perhaps be grasped by comparison with the total number of printed pages produced by the Commission in its Report and 26 appended volumes of testimony from 552 witnesses and more than 5,000 exhibits, by number. All of these total considerably less than 25,000.

Over and above all of this, the FBI also supplied the Commission's technical and laboratory services, including all that is herein most relevant, its photographic services, the interpretation of the photographs, and the expert testimony about the clothing (Report, pp. 91-2, under "Examination of Clothing").

Thus, it can be seen that what plaintiff seeks in this instant action is access to the evidence that will, for the first time, permit impartial study of that evidence and its meaning. In turn, this means the first impartial evaluation of the FBI representation of that evidence. When it is further understood that one of the items of which plaintiff seeks copies is those photographs of the said clothing taken by the Archives because the photographs taken for the Commission by the FBI are that inadequate, and that the other item plaintiff seeks is photographs essential for any study at all, including other views of the damage and alleged damage to the clothing, enlargements that show the nature of this damage (<u>which is completely invisible in every published copy and obscured where it is visible in those provided by the Archives</u>), views from the other side, the inside, all existing photographs being from the outside only, and from the side, the existing photographs not including any side views, it becomes readily apparent that, aside from any defense of the denominated defendants in this instant action, defense counsel, inevitably, are defending their own agency, the Department of Justice.

Whether or not this is, as generally understood, a conflict of

interest, it provides special motives and interests that can and plaintiff believes does dominate the form, content, expression, integrity and the very nature of motions filed allegedly on behalf of the denominated defendants.

Plaintiff believes and therefore alleges that the real reason for denying him copies of the official, public evidence he seeks in this instant action is for no other purpose than suppression, to deny access to evidence that can disprove or at the very least cast the most serious doubt on the federal explanation and "solution" of the assassination of President John F. Kennedy.

In turn, this means a number of other things, that investigation having been by and dominated by the same agency of government that in this action represents the denominated defendants. There is no embarrassment to the denominated defendants that can come from complying with the law and their own regulations and providing the public information in the form of photographs that plaintiff seeks. There can, however, be the greatest embarrassment to the agency supplying denominated defendants' counsel, most of all to the Director of the Federal Bureau of Investigation.

In the passage cited above from the Director's testimony before the Warren Commission, he also testified that he, personally, went over EVERY request from the Commission and every response, over everything sent to the Commission. So this Court can better understand the significance here alleged, plaintiff cites but a single of the available cases from the Commission's record.

FBI agents in the field provided reports to Washington saying that a certain thing attributed to Oswald in the Commission's Report was not, in fact, done by Oswald. When these field reports reached FBI headquarters, they were rewritten and the Commission was sent a summary report saying the opposite of what the investigative reports said. The language of the Warren Report is identical with that of the rewritten, erroneous report prepared in FBI headquarters in Washington.

Because they are not legally essential in this instant case, plaintiff does not attach them, but he has and can produce to this Court both sets of these Reports, the words of the investigators in the field and the opposite version of FBI headquarters. More, plaintiff personally interviewed these witnesses, in the presence of a public official in that distant jurisdiction, and with the assent of these witnesses, tape recorded their exact words. There is no doubt, nor was there ever any doubt, that this act, a significant act in any consideration of whether or not there had been a conspiracy to kill the President, was deliberately corrupted in FBI headquarters, a false account was given to the Commission and that false account, word for word, became the Commission's conclusion.

For the FBI, such considerations exist in plaintiff's access to the official evidence that is denied him. The photographs plaintiff seeks will prove the FBI was again wrong.

There is a difference between proving the FBI wrong, which is not plaintiff's purpose, and learning and establishing the truth about how and by whom the President was assassinated, which is. Plaintiff assures this Court that as of the moment of this writing, based on the evidence plaintiff has already obtained from the relevant photographs in plaintiff's possession and on competent, professional examination thereof by a qualified, impartial expert, plaintiff can produce expert testimony establishing the FBI's erroneous interpretation of the sought evidence.

The law and existing, controlling interpretations do not require that applicants need provide reasons for seeking public information. Plaintiff believes the law and regulations are clear, that he is entitled to the summary judgment he asks. However, should plaintiff be denied, and should it seem necessary that, because of the unusual nature of this case and of that public information sought, the seriousness of plaintiff's purposes be established and the character and meaning of the evidence denied him be presented to the Court, plaintiff will undertake to do both and believes that he can, beyond any prospect of refutation.

II. Collateral Issues

Defendants have converted this case into something more than one in which plaintiff has to seek the aid of the district court for the relief to which, there being no genuine issue as to any material fact, he is clearly entitled.

This is, in fact, a case that should never have had to get before a court of law, all the material facts being so clear, all on one side, plaintiff's. What plaintiff seeks is no more than public information to which he is, clearly, entitled, under all applicable law and regulation. What plaintiff seeks is no more than what defendants have already provided another.

And on this point - that defendants would provide what plaintiff seeks to those who would say what defendants wanted said, and that to a vast audience, and at the same time refuse identically the same thing to plaintiff, who could not be depended upon to say what defendants wanted said, albeit to what by comparison can only be to an infinitessimally smaller audience - we come to the essence.

Actually, what plaintiff seeks is less trouble to defendants, infinitely less cost, and is much simpler. Plaintiff asks for copies of existing still pictures of certain official evidence, public records, and that still pictures be made for him of this same evidence showing views not shown in any of the existing pictures. What plaintiff asks is no more than defendants' everyday household chore. Complying with law and regulation requires no departure from defendants' everyday norm, no intrusion into the work-day of a single employee. And none of it except at plaintiff's cost.

What was done for the Columbia Broadcasting System and with such skill and deceit hidden from this court by the employment of tricky language and selective quotation of the existing, written record, did involve considerable trouble for defendants and did involve the most serious breach of a contract defendants claim is a valid and binding contract, indeed, one they falsely invoke and misuse to pretend it sanctions

defendants' obvious and flagrant violation of law and regulations. Bringing elaborate television camera equipment into the National Archives Building, with the attendant crews, tracking all of this up and down elevators, through corridors and to wherever the photographing was done, intruded into the work of many people. It was a departure from the norm. And it did make possible use of this public evidence in the poorest possible taste, use that could only cause new and needless pain and suffering to those who had already suffered too much and too greatly. The contract between defendants and the family could not have been more explicit in prohibiting this.

Yet defendants did it, because they could depend upon the Columbia Broadcasting System to show and say what the Government wanted said, that the Government's investigation of the assassination of the President and its Report thereon were, in essence, correct and dependable. For this profit, defendants were willing to violate their contractual obligation, risk this added pain and suffering to the survivors, cause whatever added public anguish that might have ensued.

Plaintiff, on the other hand, has written critically of the official investigation of this monstrous crime and has exposed and brought to light flaws in the official reporting thereof. Plaintiff has, from the very first of his extensive writing, said that the expected job has not been done and must be, entirely in public and preferably by the Congress. He has since devoted himself, his investigating and research, and his writing, to laying a basis for this, to attempt to right wrong, to effectuate justice - to make society work.

He has, as a consequence, been the recipient of rather unusual attentions many, if not all, of which can be of only an official nature. Some, without doubt, are, and plaintiff has the irrefutable proof in his possession. Some of the intelligence by the federal government against plaintiff was subcontracted. And some of the subcontractor's employees, being devoted to a genuinely free and democratic society,

being opposed to Orwellian official intrusions into private lives and especially into the rights and freedoms of writers in a society such as ours, have voluntarily provided this proof. These persons were total strangers to plaintiff.

For such improper and illegal violations of the rights and freedoms of Americans, our government has established "fronts". Plaintiff, whose belief, interests and hopes do not call for scandalous treatment of such serious topics as the assassination of a President and study of it and its official investigation, has eschewed scandal and, although he is a writer, has not exploited this ready-made scandal delivered to him. But plaintiff does have not electrostatic but actual carbon copies of those reports made to the federal Government, records of communication between the front established by the Government, funded and maintained by it, records of communication between this front and subcontractor, envelopes in which payments to the subcontractor were made and even copies of checks made in payment for such nefarious and improper services.

There have been more such untoward things. There have been intrusions into plaintiff's use of the mails, with both his letters and manuscripts intercepted, in one case certainly and in another possibly preventing publication of plaintiff's manuscripts. And of this also plaintiff has proof in his possession.

There have been shadowings, agents planted in audiences. And to this plaintiff has credible witnesses to support his own observations.

There is substantial reason to believe there also has been electronic eavesdropping.

Entirely aside from the foregoing, plaintiff, having had improper interest in and libels of him attributed to FBI agents (something plaintiff is unwilling to believe and cannot prove), reported this to the Department of Justice and asked at least pro forma denial, if only for the record. In two years, and after renewal of the request, no such denial has been forthcoming. Having reason to believe that Army

intelligence spied upon him on at least one occasion, and in addition, intercepted, pilfered and damaged plaintiff's luggage, records, broke his tape-recorder and ruined his typewriter, the interception and damage being a matter of record with the air line involved, has had no response to repeated letters to the Army. Two requests for instructions, regulations and any forms required by the Army under 5 U.S.C. 552 are unanswered, after two months.

Failure to respond to requests for knowledge required for use of 5 U.S.C. 552 are not the exception but the rule with Government agencies, at least where the requests come from plaintiff. The last time plaintiff was in the Department of Justice building, he sought copies of their regulations from the designated office and from the offices of the lawyers involved and could not get them from either.

By the most remarkable coincidence, all three aspects - Government suppression of public information, eavesdropping and surveillance, and improper interest in plaintiff - are encapsulated in a Herblock cartoon published in the Washington Post of Sunday, February 7, 1971, while these papers were being prepared for the Court. (Copy attached) (Exhibit 27)

So, this, what seems like a simple case in which bureaucracy just arbitrarily denies plaintiff that public information which without doubt is both public information and the right of plaintiff, is much more than that.

Nor is it a simple matter of bureaucratic arbitrariness, or of official, personal dislike of plaintiff, vented in the improper manner.

What we have here is a symptom of a dangerous national illness, of an officially-suffered malignancy that presents a great hazard to our society. It is, in plaintiff's belief, a subversion of any free society.

The Congress passed a law to assure all Americans certain rights. Ours is the kind of society in which precisely these rights are essential, the kind of society that cannot survive in this form without the full enjoyment of just these rights.

There is no wealth or power that can match that of the federal

Government, if that Government is determined to prevail, to have its way. How much less, then, is it possible for a lone man, with neither means nor influence, to enjoy his rights, faced with the determination of Government to deny them?

And if any one man is denied his rights, who can depend upon the enjoyment of his own?

Is there then freedom? Is there then a Government of laws?

The Congress enacted a law, the one plaintiff invokes, to guarantee and assure public access to public information. Congress had to enact this seemingly superfluous law because Government power and abuse of power had grown to the point where the public was regularly and systematically denied access to public information. That same bureaucracy now has seized upon this law as a means of subverting it to further deny the public that public information the law requires be made freely available (under careful safeguards to protect the rights of individuals who might otherwise be hurt), and now argues that Congress "Created a right without a remedy", in the words of the Court of Appeals in American Mail Lines v. Gulick.

This instant case and the foregoing record are samples of the ends to which that bureaucracy is willing to go and does go to suppress public information. In this case it is information that is not congenial to official postures.

Here we have a bureaucracy that first exhausts a private citizen with one device of harrassment and suppression after another, literally runs him ragged in the hope that his determination will weaken and die, to the end that public information be suppressed. In order to accomplish this illicit purpose when that determination persists, the same bureaucracy is willing to and does impose upon the trust of a Court, in effect lying to that Court, distorting and adding false emphasis to quotation of the law, regulations and relevant other records. It eliminates what is germane from the consideration of the court and represents as true to that Court that which it knows to be false.

So, what we have here is an extension of the truly subversive, an attempt to convert the Courts into an instrument of suppression.

If justice and legal rights have become no more than a game to be practiced between adversaries, with anything either adversary thinks he can get away with or in fact does get away with, no matter how dishonest, how knowingly unfaithful to the law and applicable regulations, can with impunity misinform or underinform a court, and can do this deliberately, and all this can be done in an effort to deny another his rights, what has the law become, what does justice come to mean, how can it be dispensed by judges, and is there any meaning to laws creating and sanctifying people's rights?

In this case we deal with what should be close to sacred in a country such as ours: the assassination of a beloved President; the Government's investigation and account of that awful crime; and the availability, really meaning the suppression, of public information about both the crime and its official investigation. Here the suppression is by the investigator, the executive branch of Government.

We also deal with a first-amendment right, for by subterfuge, various demeaning and delaying tricks, and violation of law and regulations, that same Government makes a writer's first-amendment rights meaningless. There is and can be no genuine freedom of speech and of the press without unimpeded access to public information.

And now the same powerful forces twist the law to perpetuate this suppression and the denial of rights under the law.

Motive may be no more sinister than the predictable desire of bureaucracy to protect itself. But more than that is at stake. And free society cannot survive the hiding of some bureaucratic errors, certainly not those that vitiate basic rights.

Even more than the foregoing is inherent in this simple case, made complicated only by the obfuscations undertaken by the Government and the requirement imposed upon the plaintiff that he respond to them

in an effort to obtain what he regards as his rights and to prevent the making and preservation of a false record on subjects of such contemporaneous and historical import.

There are the reputations of these eminent men called upon to undertake so unpleasant a task as that of this Presidential Commission. Most, if not all, have said they did so reluctantly. Several have said they refused the appointment. One of these has explained his reasons to plaintiff. None served with expectation or possibility of personal gain. Because of the magnitude of the investigation and all the things that had to be covered, to which a considerable volume of the utterly irrelevant was added by the Department of Justice but had to be considered by the staff, if not the members, of the Commission; and because almost without exception the members of the Commission were already over-committed to the public service and already carried responsibilities too great for the average man, most of the work necessarily fell to the staff. Yet the responsibility was that of the members. One cannot read the transcripts of the executive sessions of the members without realizing that from the first it was impossible for them to keep up with what was happening and that they were acutely aware of this and deeply troubled by it.

Despite the wealth and power of the Government, this Commission and its members were severely limited. They were limited by pressing political considerations, which is not exceptional in our society. They were limited by the information that reached them and by what did not, by the volume of the irrelevant heaped upon them and by the lack of the relevant. They were further limited by the expert interpretations and opinions that were made for them - and here plaintiff repeats that almost all were made by the Department of Justice, which is defendants' counsel in this instant case and is saddled with a conflict because it <u>was</u> the source of the expert opinions and interpretations of precisely what the House Report properly termed the "critical" and "vital" evidence.

Under the best and normal conditions, men err. Even Jesus trusted Judas. Those men and institutions we have come to regard as capable of rendering good and faithful judgments, the judges and the courts, we assume can and will err, and our system of justice has built into it the mechanism for the correction of error by the most eminent, trusted and respected.

Under what certainly were less than the best conditions, surely abnormal conditions, beyond question great pressures, the possibility of error by a body such as this President's Commission were greater than average.

When we consider that the Supreme Court has reversed itself, we know that when men in highest places do err, the world does not shake, our Government is not cast into crisis, the populace does not take to the streets with firebrands. We expect error, recognize it as a natural, human flaw. But we also expect the possibility of its rectification. We have come to assume this. It is a basis of our social and political structure and of faith.

To consider the possibility that such eminent men as these who were the members of this Commission could have made a mistake is to consider them no more and no less than human beings. It is no secret some of them had the most serious doubts about the conclusions they signed. They did not write their Report. Some expressed the most troubled disagreement with it. One member has shared some of this with the plaintiff.

To consider that they could have made a mistake is not to consider, as some of those who pose as defenders, men who had access to the public media and were able to reach the largest audiences, have said in what is anything but a defense: to consider that the conclusions and Report of this Commission were in any way wrong is to say there was a conspiracy extending downward from the Attorney General to the lowliest charwoid in the Department of Justice. Such comment was not defense but indictment, and when it is recalled who was then the Attorney

General (and the line taken by his successors in this present case inherently is a parallel if not an identical one), the motive of such "defenders" becomes suspect.

If there was error, that should be known. If there was no error, that, too, should be known. Neither can be established without free access by everyone interested, especially those in the best position to understand and evaluate, to every scintilla of evidence that remains. ("Remains" is not a figure of speech; some does not.)

Public confidence in either the Commission or the Government is not fostered by suppression, no matter how it is dignified by calling it "withholding". Making what is now denied available to the public 70 years hence does no good today. (Assuming that more of it does not disappear or become tainted.)

This is not to say that what can injure the innocent should be publicly available. It should not be. Where it has been and plaintiff has been provided with it, as has happened often, plaintiff has applied strictures not applied by Government and has removed the defamations from his writing. While the Government has refused copies of official evidence to the plaintiff and has gone to court to continue to deny it to him - evidence as completely innocent as still pictures of clothing - it simultaneously has made available hundreds of pages of material that can be seriously injurious to the innocent. Simultaneously, while refusing plaintiff certain identified items of public information and claiming providing it is precluded by the law under which it was sought and this action is brought, it voluntarily made it available to him outside the law. Now it cannot be both ways at one and the same time. Here plaintiff means literally one and the same time. Plaintiff's official application for certain data was rejected by the Department of Justice. His appeal was likewise rejected by the Attorney General. The Attorney General holds, in writing, that while the exemptions of the law are not mandatory and he can find they need not be applied, in this case he did not waive them several months ago, when plaintiff appealed. But while plaintiff's application was rejected and his appeal turned down, at that very time the same Department of Justice

declassified a large percentage of this identical material, and plaintiff now has it. Surely this is not action under the law, serious judgments, anything better than what, on signing the law, President Johnson said should never be controlling, the whim of some official. If these papers could not be released to plaintiff on his proper and formal request, under the law, they also could not have been, as they at that time were, declassified, but not made available to plaintiff until several months later (and then, deceptively, only in part, hiding the fact that others also were declassified and available - at least as much or more in volume,).

Such toying with the law does not build public confidence in the law or in Government. But these are only a few of the contemporaneous examples of precisely this and under this law, by this Government. Another is the release of several hundreds of pages of documents that had been classified and withheld at the National Archives by order of the Department of Justice. These many withheld pages, ordered withheld by the Department of Justice, had already been published by the Commission! More than seven years earlier and prior to their being ordered withheld! If the Court doubts this for one moment, the Archivist, if he knows what goes on in his agency, can enlighten the Court. If the Archivist has no personal knowledge, the man in immediate charge of this particular archive can be reached by phone at 963-6982. And, should it interest the Court, if they do not so inform the Court, plaintiff will deliver copies of the printed pages, printed by the Warren Commission, and copies of what, at about the time the motion to which this responds was filed, was released by the Archives.

What this also addresses is the dependability of the Government's word when it says that certain evidence must be withheld. What is withheld too often is not withheld because law and regulation require it and is withheld to suppress, contrary to law and regulation, as in this instant case. And what is released, again too often, is what should not be, under any circumstances.

Plaintiff is not suggesting for a minute that those who have released that which should not be are unaware that it should not be. Rather does he believe that they have selected a variety of nobodies and the ill, people without influence or power, to make what can hurt them freely available, hoping thereby to create a demand for further suppression of that genuine and meaningful evidence still withheld and desired to be withheld by the Government. But it is not those who, like plaintiff, regard this subject matter with utmost seriousness, who have any interest in or any intention of using such freely-available defamatory material.

Such whimsical application of law and regulation is not in the interest of the family of the assassinated President. It is not in the interest of and certainly does not tend to defend or protect the reputations of the eminent men who were the members of this Commission. It is, in fact, in plaintiff's view, a great tragedy that one of the members of this Commission died harboring the most serious doubts about the most basic conclusions of the Commission on which he served. That member shared these doubts with plaintiff. Better by far, especially for the members of the Commission, that if their work was in any way or manner flawed, it be known while they live, that they may, if they desire, say whatever they may feel they should and so that, if they are so disposed, they may do whatever they might feel impelled to do to rectify any such error. It certainly is no kindness to the now-dead member for his defense and justification in the history of the country to have to be vested in so weak and uninfluential a defender as the plaintiff in this instant action.

Only truth is ever a defense of any action or decision. Only truth can rectify error. Truth can be established only by fact, in this case public information. It can be first understood and then presented only by those with the requisite knowledge. On this question, that can come with only an unbelievable amount of time and work, none of it agreeable or in any manner remunerative. There can be no profit in it.

Unless, of course, the applicant is a rich and powerful television network whose primary dedication is to interests other than unalloyed truth. For such an applicant there is one interpretation of law, regulation and contract. For those without means and influence, for those who do not blindly agree with the ordained truth, these same laws, regulations and and contracts have different applications and meanings.

No genuine, honest, public interest is served by suppressing any information on these subjects save that which is, without possibility of reasonable doubt, clearly covered by the proper and specific exemptions provided by the law. The interests and reputations of the members of the Commission are neither served nor defended by suppression. Suppression, in fact, is exactly opposite the expressed will of the former Chief Justice who headed the Commission and of the then Attorney General, since also assassinated. Both were consulted and both said that everything that could possibly be made available to the public should be. But the Government fostered no headlines on this. Instead, it arranged for the widest possible attention to whatmmade it appear that the family of the victim was responsible for the suppression of evidence. This was arranged by first denying plaintiff access to that same public information and later making it available to one who could be depended upon to look for sensation and not to have the knowledge required for correct analysis and understanding of what he was given, the contract in this case. (Complaint Paragraphs 44-48 and Exhibit F)

The reasons given plaintiff for refusing his request in that instance were spurious, for if true they were not subject to change. But over and above that, they were legally invalid under the American Mail Lines v. Gulick decision.

Still again, there is the question of the seriousness with which law and regulation are regarded and obeyed by the Government, including defendants in this instant case and their counsel above all.

A proper and reasonable standard was given by the President upon his signing of the law under which this action is brought:

> 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.

Surely there is no question of "national security" in pictures of official evidence, pictures of garments!

Most reprehensible of all is the effort, elsewhere and in the motion to which this responds, to make it appear that the suppression is the doing of those who have already suffered irreparably and most of all, the survivors of the victim. That is despicable beyond adequate description because it is contrary to their interest and to the conditions of their donation to the National Archives. It is a particularly insidious and evil trickery because under IV(Z) of that contract the person upon whom this can be blamed is one prominent in political life. He is not of the party now in control of the executive branch and he is widely and popularly regarded as one who may at some day present a challenge to the present administration.

Saying that the suppression of this evidence was caused by the family of the late President is implicit and explicit in "III.Argument", sections B and C. In these sections, the thrust of defendants' argument is that suppression is required by the terms of the GSA-family contract. (Complaint Exhibits A and F) This argument is furthered by the addition of false and misleading emphasis in quotation (the adding of emphasis is not always indicated). An examination of this argument and of the specific and relevant provisions of the contract itself in other addenda will show, exactly the opposite is the case. Furthermore, as Complaint Exhibit C shows, the representative of the executors of the estate has written plaintiff expressing no objection to the providing of photographs to plaintiff. These letters were entirely without influence upon defendants or their counsel.

So contrary is this representation of that contract to its <u>actual</u> provisions that the contract does not even permit the Government to decide what a researcher's needs are, if, as is not and cannot be challenged

in this instant case, the researcher is accredited as a "serious scholar or investigator of matters relating to the death of the late President". The same provision (I.(1)(b))goes much further and limits the right and power of the Administrator "to deny requests for access" exclusively "in order to prevent undignified or sensational reproduction". (Emphasis added)

(This happens to be the only use thus far permitted by the Government, undenied in response to plaintiff's challenge.)

To this misrepresentation of the contract by counsel for defendants, the Department of Justice, making it appear that the family is the cause of the suppression, other facts ought to be added for understanding of the strange situation that is thus brought about:

This clothing was first covered in a certain "Memorandum of Transfer" of April, 1965. By different subterfuges, that was denied plaintiff by the National Archives. Later, when the Secret Service, which executed this said memorandum, gaveas copy thereof to the National Archives, to be given to plaintiff, the National Archives first "neglected" to so inform plaintiff, then delayed a long time after plaintiff indicated knowledge thereof before making forced acknowledgement and then refused this copy to plaintiff. When defendants' "Answer" was filed in this instant case, plaintiff, believing it required him to have knowledge of the exact provisions of this "Memorandum of Transfer", again asked the Secret Service for a copy, explaining that the copy given him by way of the National Archives had been intercepted and not delivered by the National Archives. The response of the Secret Service was that the Department of Justice would be consulted. Following this consultation, the Secret Service declined to directly provide plaintiff with a copy of this "Memorandum of Transfer", which is also public information, having been used by the Government in public and in Court. (American Mail Lines v. Gulick is in point.)