

Argument follows

I. Introduction Statement

Introduction & Explanation

Defendants' "Memorandum of Points and Authorities" →

~~This part of defendants' motion is divided into three parts, titled "I. Preliminary Statement", "II. "Pertinent Statute and Regulations", and "III. Argument."~~

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 each and every point, ^{quotation} argument, suggestion or innuendo by ~~plaintiff~~ defendants and their counsel. The court ^{respectfully} is asked ~~to~~ to bear in mind that what is sought in this action is access to the most basic public evidence, official exhibits, in the investigation of the assassination of a President. Despite ~~defendants'~~ elaborate effects 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 ~~XXXXXX~~ a Presidential Commission appointed to investigate and deliberate, the actual investigation was conducted by the Department of Justice, which ^{defendants'} is counsel in this instant action. The Commission never at any time had so much as a single investigator of its own. Of the investigation, 100% was done by the executive branch of the government. This ~~begin~~ investigation began a week before the Commission was appointed. 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 ~~the~~ 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~~ 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 ~~which~~ 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 immediate manpower only, ^{actually,} A much larger ^{was} number of FBI agents and technicians were 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 immediately. They participated in the first and all/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 ^f 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 ~~fideli~~ty 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 ~~an entire~~ ^{entire} charge of the detail that day, not only denied saying what the FBI reported them as saying but went farthur 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 ~~waxwax~~ officially-unpublished proof of this plaintiff has been able to obtain- and it is repetitious - ~~and~~ 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 ~~the~~ ^{the} Chicago office. Until the Secret Service exerted great pressure on Klein's officials, they refused to say anything. ~~XX~~

^{attitude of} ~~president, Seymour xxxxxxxxxxxx William J. Waldman~~ (The modest Secret Service representation of ^{Waldman's} ~~the~~ the company's vice President, Wilkiam J. Waldman's ~~attitude~~ 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 report:
 ^{Secret Service}

"Waldman advised Special Agent~~s~~ Tucker ~~and~~ 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 ~~an~~ ~~instr~~ instant case, by 10 p.m. the night of the crime.

Understanding of the fact that the Department of Justice ~~took and preserved~~ ~~xxx~~ 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 require be made available to him and to an understanding of the character, ~~the~~ 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 ~~are~~ ~~total~~ more than a third more than the entire staff of the Warren Commission, including 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 ~~the~~ ~~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 80 additional FBI personnel were transferred to the Dallas office. (Emphasis added)...Beginning November 22, 1963, the Federal Bureau of Investigation conducted approximately 25,000 interviews ~~and~~ ~~interviews~~ ~~of~~ ~~persons~~ (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~~ ^{most} that is herein relevant, its photographic services, insert as 4a

and that the other item plaintiff seeks is ^{photographs} ~~pictures~~ essential for any study at all, including other views of the ^{and alleged damage} damage to the clothing, enlargements that show the nature of this damage (which is completely invisible in every published copy and obscured where it is visible in those provided by the Archives) ~~and 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,~~

inadequate, 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 ~~can~~ provides special motives and interests that can and plaintiff believes ^{does} ~~has~~ dominated the form, content, expression, integrity and the very nature ~~and character~~ of motions filed allegedly on behalf of the denominated defendants.

Plaintiff believes and therefore alleges that the real reason for denying him ^{Copies} ~~what~~ 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.

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Over and above all of this, the FBI also supplied the Commission's technical and laboratory services, including ^{all} ~~that~~ ^{most} that is herein relevant, its photographic services, ~~and~~ the interpretation of the photographs, and the expert testimony about the clothing ~~Report~~ 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} ~~pictures~~ of the said clothing taken by the Archives because the ^{photographs} ~~pictures~~ taken for the Commission by the FBI are that inadequate, ^{INSERT} 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.

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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 ^p supplying denominated defendants' counsel, most of all ~~the~~ 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} ~~the~~ Court can better understand the significances 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 reach ^{it} 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} ~~originating~~ in FBI headquarters in Washington, Because they are not legally essential in this instant case, p/aintiff 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} ~~eminating from~~ FBI headquarters. More, plaintiff ~~then~~ ^{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 ~~of~~ 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 ~~on~~ from the ~~pictures~~ ^{thereof} relevant photographs in plaintiff's possession and ^{on} competent, professional examination by a qualified, impartial expert, plaintiff can produce expert testimony establishing ^{FBI'S} the erroneous interpretation of the sought evidence ~~by the FBI.~~

The law and existing, controlling interpretations do not require that applicants ~~have any need to~~ provide reasons for seeking public information. Plaintiff believes the law and regulations are clear, that he is entitled to the summary judgement 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~~ presented to the Court, plaintiff will undertake to do both and believes that he can, beyond any prospect of refutation.

7, etc

II. Collateral Issues

~~Commentary~~

~~and their course~~

Defendants have converted this case into something more than one in which plaintiff has to seek the aid of the district court for 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 ~~had~~ ^{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} those who would say ~~is~~ ^{plaintiff} ~~asked~~ what defendants wanted said, and that to a vast audience, ~~with what was~~ ^{asked} 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 ~~an~~ what by comparison can only be to an infinitesimally smaller audience - we come to the essence, ~~but what is not before the court in plaintiff's Motion for Summary Judgement.~~

Actually, what plaintiff seeks is less trouble to defendants, ~~infinitely less~~ infinitely less cost, and is much simpler. Plaintiff ~~asked~~ ^{still} for copies of existing 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 the everyday household chore of defendants. 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~~ ^{and misuse} invoke to pretend it sanctions

~~the obvious~~ 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 family contract could not~~
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 they ~~wanted~~ ^{defendants / Government} ~~said~~ ^{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 ~~both~~ 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 ~~expected~~ 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 lay ^{ing} 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 provided this proof, quite voluntarily. These persons were total strangers to plaintiff.

Insert 3a

Entirely aside from the foregoing, plaintiff, having had improper interest and ⁱⁿ of him libels/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} ~~and~~ ^{ruined his} tape-recorder and 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. ⁹ 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 ~~the~~ ^{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)