request, for copies of the existing photogrpahs. 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. ~~XXX~~ Plaintiff never asked to take his own pictures, never asked to be his own photogrpaher, never asked permission to bring his own photographer to take ~~xx~~ these pictures for him. The record set forth above is beyond equivocation, and it is entirely consistent with practise and regulations. Plaintiff asked that defendants 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 which are or may not be necessary to determine to plaintiff's study and investigation.

Moreover, the sense in which "examine " ~~is~~ here ~~employed~~ defendants employ makes it appear that plaintiff has the desire or intent of handling the garments, a misrepresentation carried further in ~~Ex~~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 ~~r~~ather than for research purposes", ~~This was~~ bracketed with the ~~following~~ nasty inuendo,"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's research and objectives. And if counsel who drafted this tricky language with which to attempt to prejudice the Court had read the aforesighted cited 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 comtradictory. 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,

(Emphasis added)

whose ruling thereon will be furnished in writing to the person requesting the records". We return to this.

~~What defendants here claim, absent such written "ruling" as required by their~~ own regulations, is quite specific (p.6). It amounts to license and the sanction of the Court for them to violate their own regulations by the simple expedient of not making any ruling "Absent" this "ruling thereone plaintiff fails, first to state a claim under 5 U.S.C. and, second to establish he has exhausted available administrative ~~xxxxxx~~ remedies."

The plain and simple fact is that none of this is in any way under the influence or control of anyone besides defendants'. Everything plaintiff can do he has done and, as ~~set forth, has gone much further than either law or regulation require.~~

The ~~would~~ seem to be contradiction here with the wording of the Mtion, "that he states a claim upon which relief cannot be granted". Here it is said ~~xxxx~~ only that plaintiff "is not entitled to the relief he seeks" because he allegedly has "falied to exhaust those administrative remedies available to him", which ~~xxx~~ 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 Boradcasting 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 ~~sta~~ statute and an agreement" with the family.

The intent to prejudice here is transparent. "Do what he desires"? Again, this in consistent with other such inuendos already cited, all intended to mislead the Court into the belif that plaintiff has illicit purposes or poses some jeopardy to the safety of the garments. Plaintiff "desires" no more than photogrphs, those existing and those he asks be made 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 record that his purposes are not to have the articles or in the sense used, to "examine" them. His request is for photogrpahs, 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.

ctr→ Defendants' "II. Pertinent Statutes and Regulations" 28

Statutes and regulations are also quoted by defendants in "AII. Argument", in subsections A, and 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 emplied. Nothing plaintiff seeks has such specific statutory exemption. INSERT 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 jurisidction 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 provision is partly-quoted not so long it could not have been quoted in full on that count. If the Court can ignore the defendants' adding of wrong emphasis, what was omitted may be informative.

The very beginning, of what was not quoted, is, "(a) Each agency shall make available to the public information as follows:". Thus, this section of the law really says that

Insert on III-11

no par.

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 donations 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 no more than photographs, and photographs are included specifically in all definitions of "records".

not for withholding information.

its purpose is to provide for information to be made available to the public, The emphasis added tends to distort this to those who do not read the entire section.

The third excision 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 eppecially in the context of the distortion by the adding of false empahasis are the excisions significant: As 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 acknowledgement, hidden by false emphasis, that the legal definition of "records" specifically includes what plaintiff seeks, photographs, there 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. The purpose is simple: to misidentify this official evidence as something other than what it is and hence, somehow, immune. If, as defendants claim, the contract is valid, then none of the considerations are relevant, for that contract, except as quoted above, limits use to scholarship and investigation. The emphasis is to what is precluded and therefore deceptive as well as irrelevant.

Where defendants seek to make different use of this identical provision and there 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 reads:

> ", regardless of physical form or characteristics, made or recorded by an agency of the United States Government under Federal law or in connection with the transcation 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. These even defines the clothing as "records," beginning with the beginning of the elimination, "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, and that 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, become 44 U.S.C. 3301.

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

And, by elimination of the relevant reference to the Attorney General's Memorandum, 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 the carving of the law to make it seem that what plaintiff seeks is not records, defendants follow immediately with equally selective citation and eding of 44 U.S.C.2107 and 2108 (c). The significance of defendants' withholding from the Court the quite specific provisions of the next section xx another section of this same law, 2901,

~~2901,~~ which defines "Records as ~~they~~ relating to defendants and includes precisely what plaintiff seeks and directs ~~the providing of copies thereof~~, has ~~been~~ already been cited

What here is withheld from the Court with regard to section 2107 is what is relevant because of ~~the~~ defendants' claim that the family contract is valid and binding, and that is the ~~restrictions~~ "restrictions agreeable to the Administrator as to their use". The contract provides that access be granted to certain persons, the definition including plaintiff. Without citing this provision of the comtract, I (1)(b), this quotation amounts to a misquotation, for it has ~~the~~ 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 preceeds 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~~ Archivist.

The spirit of the law is also suggested by the next (d) language, which authorizes the Administrator to "cooperate with or assist" any "qualified 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 requesires 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 of these regulations, and their requirement of access and copying, including the duplicating of existing photographs and the making of those that do not exist, this would seem to be a somewhat exhuberant description. All reference to the directly applicable citations presented by plaintiff in the foregoing, all references to the regulations relating to this material in particular, and, of course, all references to the Attorney General's Memorandum or 44 U.S.C. 2901 are excluded by plaintiffs. Quotation, which is from the regulations plaintiff cited and not here presented to the Court, are calculated to carry the misrepresentation of the 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 pretending that plaintiff did not make the appeals required by this regulation, which he did.

Likewise is there no relevance to the next quotation from these record regulations, "Donated Historical Materials," 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 including irrelvant 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 the opposite of the meanig 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 defendants' selection of regulations on the preceeding page specifies an appeal is required. Therefore, in order to falsely allege failure to exhaust administrative remedy, plaintiff's 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. Perhaps it is the sincere official devotion to perfecting this misrepresentation that led to the misdating of plaintiff's appeal as of 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, from plaintiff. But plaintiff did, in it, label it as his appeal ("Herewith I appeal...") from rejected requests. When combined with the misrepresentations and 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 itself is false.

Insert

The requirement imposed upon defendants, that the appeal be forwarded promptly to the Assistant Administrator for Administration and his obligation to rule in writing is quoted at this point, with a wrong sense imparted to it, that this is somehow plaintiff's doing and fault and therefore, because plaintiff was denied his rights, he failed to exhaust his "available" remedies. Truly, Orwellian. So there will be no doubt, plaintiff again quotes the language of the House Report, as brief as any of the relevant citations:

"...the person making the request is entitled to prompt rebiw by the head of the agenc

really

If defendants believed this to be the case, their first response to plaintiff's complaint, rather than the invitation to the unnecessary hear ing 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 however, on page four. That is the requirement imposed by their regulations upon defendants,

> "If the denial is sustained, the matter will be submitted promptly ~~xx~~ 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 ~~xx~~ for Administration; and second, that this ~~will~~ be done "promptly". Consistent with these omissions and ~~xxx~~ 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, ~~xxxxxxxx~~ "Plaintiff Has Failed to Exhaust the Available (sic) Administrative Remedies."

Following the edited quotation from the regulations, where the responsibilities imposed up on 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 here 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 has 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 ~~xx June 20,~~ is there any doubt that defendants would have given this Court copies of the covering letters or a transcript of the lying charges against plaintiff's deposit account? ~~Plaintiff~~ Plaintiff did exhaust his remedies. He did appeal. He was rejected.