

memo 3

foregoing comment, analysis and comparisons of the representations of plaintiff's appeal and defendants' response that plaintiff has fully complied with the applicable law and regulations by a) making formal appeal, which he did in his aforementioned letter of June 20, 1970 and b) with its rejection~~s~~ by defendants under date of September 17, 1970. Aside from the fact that plaintiff's appeal was rejected, rejection itself was, in violation of the law, which requires promptness, so long delayed that it was not made until quite some time after filing of the complaint and therefore is further without standing or meaning.

Plaintiff has fully complied with law and regulation. At no point do~~es~~ defendants ever allege to the contrary. *INSERT*

The second contention claims "administrative discretion committed to the defendants by statute and an agreement between defendants, on behalf of the general/public, and the donors of the articles." This and the third contention will be dealt with where they later recur in defendants addenda.

With respect to the second contention, plaintiff notes and protest the prejudicial unwarranted and inaccurate allegation, consistent with a like prejudicial and warrantless inuendo above, that what plaintiff seeks presents some kind of jeopardy to the safety of the evidence. The words, "What he desires to do regarding these articles", have no basis except prejudice, a subtlety intended to influence the court, for defendant neither asks nor want to "do" anything to "these articles". This unjustified, prejudicial language is also designed to divert the courts attention away from what is here ignored by defendants, that plaintiff's first request was for copies of existing pictures, which requires nothing further of plaintiff than that he pay the cost of making the copies, for which purpose he has a deposit account with the defendants.

A similar diversion and misrepresentation exists in the third contention, which, with complete consistence, avoids mention of plaintiff's first request, for copies of the existing pictures. of which it cannot be alleged that they are not 'records'. In fact, defendants do not allege it, here or elsewhere and thereby concede that plaintiff is entitled to copies of them.

Thus it can be seen that defendants' "Preliminary statement is not accurate, faithful or in any way representative of the real situation and is designed as a vehicle for prejudicing the court. It is without merit or meaning and does not address the fact <sup>or law</sup> in any substantial or genuine manner.

Defendants' "II. Pertinent Statutes and Regulations"

Despite the title of this section, ~~regulations~~ defendants also quote regulations in "III. Argument", in subsections A, B and C.; and the GSA-family agreement is quoted in subsection B as having the effect of both law and regulation.

Plaintiff addresses defendants' citations in their order of appearance. Where quoted selectively, with what is uncongenial to Defendants' position and argument omitted, plaintiff will provide and full text and assign the significance required to the excisions and the reasons for the excisions. In some case, of which the first serves as an admirable example, ~~emphasis~~ defendants add emphasis, ~~without so indicating to the court~~ Plaintiff begs this court to note with care what has been omitted and what has been added by the ~~emphasis~~ that is not in the law.

The first is what the Public Information is alleged to "provide":

"(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. . ."

There then appears a row of asterisks, followed by:

(3) specifically exempted from disclosure by statute . . ." 5 U.S.C. 552, Pub. L. 90-23 (Emphasis added)."

Just exactly what is claimed to be "specifically exempted from disclosure by statute is nowhere stated. By means of this irrelevancy added to the partial quotation of the law, it is sought to infer that the exemptions of 5 U.S.C. 552 are applicable in this instant case.

However, in neither this instant defendants' motion nor in defendants "Answer" ~~does it~~ do defendants claim applicability of any of the said exemptions.

Before presenting to the court that which defendants omitted in citing the law, plaintiff ~~note~~ asks the court to note the vital discrepancy, what would appear to be an irreconcilable conflict, between the concession in even the partial citation of the law, "On complaint, the district court" and "Second Defense" in defendants' "Answer", which reads, "The Court lacks jurisdiction of the subject matter."

While plaintiff, who represents himself in this action, being without means for hiring experienced counsel, cannot and does not pretend expertise in the law and its

technicalities, customs and practises, it would seem that defendants and their counsel are toying with the Court and the law in arguing simultaneously, albeit in papers the filing of which is separated by some time, that this court does and does not have jurisdiction. Defendants appear as the devil with scripture, improvising interpretations that appear, at the moment of improvisation, to serve defendants' purposes, whether or not factual or even truthful.

The very first words of (a) of the law are relevant and controlling, which, no doubt, accounts for their absence in defendants' representation of this provision.

These words are, "(a) Each agency shall make available to the public information as follows:"

Beginning with the first words quoted by defendants, the rest of this provision actually reads, "...each agency, on request for identifiable records made in accordance with published rules stating the time place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. On complaint, the district court of the United States in the district where the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case, the court shall determine the matter de novo, and the burden is on the agency to sustain its action..."

The remainder of this paragraph deals with punishment for noncompliance.

What is also not cited and what appears to be relevant is:

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

In this connection, plaintiff here notes that in the absence of defendants' claim that what plaintiff seeks is sheltered by the 9 listed exemptions, plaintiff is entitled to the summary judgement for which plaintiff has earlier moved,

Now, what have defendants omitted in their selective quotation of the law?

First, that "Each agency, in accordance with published rules, shall make available, for public inspection and copying-" which is what plaintiff seeks and has sought.

Next, the applicability of <sup>and procedures,</sup> rules, to which plaintiff has adhered faithfully and fully, witness absence of contrary complaint from defendants.

Next, that this particular court does have jurisdiction, which defendants denied

in their "Answer", because it is the court "in the district...in which the agency records are situated."

Next, that this court does have authority "to order the production of any agency records improperly withheld from the complainant." Moreover, there is great and pertinence in what immediately follows but was omitted by defendants, <sup>¶ a)</sup> that this court shall determine the matter de novo and"

b)"the burden is on the agency to sustain its action."

In short, what defendants omitted in their pretended citation of the applicable provisions, is that under the law they must "make available for public inspection" and for copying "that which defendant asks except they claim one of the ~~nine~~ specified exemptions, which, plaintiff repeats, is claimed in enither this instant motion or in defendants"Answer".

And over and above all this, the burden of proof lies not with the plaintiff but with the defendants.

~~The~~ the emphasis added by defendants is misrepresentative, misleading, prejudicial and inconsistent with all authority will be shown as each authority claimed is considered.

The second citation of law is 44 U.S.C. 3301. Again, there are omissions and added emphasis. Defendants acknowledge adding the emphasis:

"In connection with the treatment of materials reposing in the Archives, Congress has indicated:

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

St the outset, this proves without peradventure of doubt that plaintiff is entitled, by defendants' own argument, to ~~the photographs~~ at the very least the existing photographs, his first request so carefully hidden from all defendants' papers before this court.

Now, what ~~does~~ defendants omit in their citation of 44 U.S.C. 3301?

The first omission, which could ~~be~~ not possible be more relevant and in the light of what defendants later allege, amounts to a deliberate deception of the court, is longer than all of the section that is quoted. The carefully-omitted words are:

"regardlew of physical form or characteristics, made or received by any agency of the United States Government under Federal law or in ~~the~~ connection with the transaction of public business and preserved or appropriate for preservation ~~of~~ by that agency or any of its legitimate successors as evidence of the orgabization, functions, policies, decisions, procedures or other activities of the government or because of the informational value ~~xxxxxx~~ of data in them."

A more perfect description of the clothing and pictures thereof, what plaintiff has been denied and seeks in this action, is ~~idiffxdiexi~~ not easily found in the law. If the Congress had had plaintiff's instant action in mind, it could not better have written a law to complete encompass it, to more completely given the sanction of the law to that which plaintiff seeks.

This, apparently, and the complete refutation in it alone of what defendants later allege, arrarently was sufficient warrant for them to withhold this from their citation of the law to the point where their citation is given a meaning diametrically opposite that which the Congress intended and which it has.

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The dishonesty and deceit here apparent is so overwhelming little point is served in adding to it that added by the injudicious added emphasis. The full magnitude of this attempt to subvert and corrupt the law by what amounts to a deliberate misrepresentation will become even more ~~appx~~ apparent in consideration of defendants' further exploitation of it and similar legal torturings.

The remainder of the quotation that is included by pl defendants, especially with the added emphasis is irrelevantm despite the adding of emphasis to lead the court to believe otherwise, as will be seen in what comes later. What plaintiff seeks is not of this character or description.

Because no violation of the retrsriptions imposed by the donor is involved, <sup>as will</sup> be seen and emphasized, despite defendants contrary pretense, the two quoted exceptpts from 44 U.S.C., ## 2107 qbd 2108 are included for purposes consistent with all the other attempts to impose upon the trust of this court and plaintiff's lack of professional counsel. However, it sho should be noted that what these sections cover, fits neither the pictures sought nor the clothing, the language of the statute being "the papers and other historical materials" (defendants, consistently, underlined "other historical materials), which

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Nor is this all that defendants omit, while adding false emphasis that is contrary to the meaning of the law. That defendants are aware of what plaintiff is about to quote need not be assumed, as would seem to be safe, for plaintiff's telegraph it in language appearing on the next page, "Although the Public Information Act does not specifically define the word 'records', predecessor legislation, within the ken of the Congress, did. Section 1 of the Act of July 7, 1943, 57 Stat 380, providing for the disposition of records, states:" There follows a fuller quotation from this statute.

Addressing exactly this point is the language of the Attorney General's Memorandum on the Freedom of Information law (p.23). The only changes made by defendants was required by the intended deception for the applicability in this instant case is made specific by specific reference to "the National Archives". That Memorandum says:

"The term ~~xxx~~ 'records' is not defined in the ~~xxx~~ act. However, in connection with the treatment of official records by the National Archives, Congress defines the term in the Act of July 7, 1943, sec. 1, 57 Stat 380, 44 U.S.C. (1964 Ed.) 366 as follows:" What follows is what defendants culled and added false emphasis to.

It would seem that the true meaning of the law was Wwithin the ken of the" defendants, for there follows in the Attorney General's Memorandum a paragraph that of which defendants did not desire this court to be aware, that "availability shall include the right to<sup>a</sup> copy " and that "it is equally clear" that both "contemporaneous" and "historical" documents are included.

It is apparent that under the law and the official interpretation of the law there is no genuine issue as to any material fact. There is only misrepresentation and deception.

cannot cover the pictures sought, those never having been the property of the late President, and hardly covers his clothing, which prior to this donation was the most basic official evidence of an official investigation which in any event, is described in the agreement covering the gift in an entirely different manner than here represented and deceptively emphasized with the underscoring not in the statute.

The foregoing items are discussed in full detail in consideration of Section "B".

Apparently crediting the court with little perception or undersnading, ~~plaintiff~~ defendants, still again with emphasis designed to mislead, cited WSection 1 of the Act of Jult 7, 1943, 57 Stat 380", to argue that ~~XXXXXXXXXXXX~~ "Although the Public Information Acts does not ~~define~~ specifically define ~~records~~ the word 'records', predecessor legislation, within the ken of the 90th Congress, ~~sixty~~ did". Ignoring the permeating adding of emphasis, defendants quoye sufficient of this law to establish plaintiff's case beyond peradventure in the definition of "records":

". . . 'records includes all books, papers, maps, photographs, or other documentary materials regardless of physical form or characteriztics, 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 <sup>or appropriate for preservation</sup> by that agency or its legitimate successors ~~for preservation by that~~ as evidence of the organization of the orgabization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value in them. . ."

This is the identical language excised from the earlier citation of the law and here is included only in an effort to ~~mis~~ misuse the law, by means of corrupting added emphasis, to redefine records other than as the Congress did. This not only perfectly fits that which plaintiff seeks in this instant actjon but adds to plaintiff's case by eliminating any doubt as to whether what he seeks is encompassed by the designation "records". Without question, bot the photographs and access to the clothing, official evidence, exactly the word used in this statute, and, agaib a perfect description of the reason for keeping the clothing, as will be seen in discussion of the contract, "because of the informational value.

Even if defendants were to pretend, as they do not, that the clothing is no more than "library or museum material", addressed in the next sentence of the statute, for that to apply such library or museum material would have ~~to~~ to meet two added tests for exemption, and both are here lacking. They would have to be "solely" for either a)

"reference" or b)"exhibition" purposes. Defendants, in this instant action and in every other way and on every other occasion establish neither could possible apply, aside ~~for~~ from the added qualification of the statute, "solely".

Nor is there any doubt that the National Archives is the "legitimate successor" to the Warren Commission, perhaps the most readily-available source of the many proofs that exist being the final paragraph of the Foreword to the Commission's report (p. xv), which says that all of its records, testimony, exhibits, files "and other investigative materials which are relied upon in this report" are committed to the National Archives for permanent deposit "under the rules and regulations of the National Archives and applicable Federal law." The Commission's own definition admirably encompasses that which plaintiff seeks in this instant action, it being the most basic evidence, "investigative material" of prime nature, and very heavily "relied upon" in that Report.

What next follows in ~~plax~~ defendants' Memorandum give no more comfort to the pretense that the evidence of the Warren Commission, the Presidential clothing bearing the damage from the bullet or bullets and locating and defining this damage, is not ~~record~~ "records" as defined separately by GSA, even ~~assuming~~ that GSA could, by regulation, ~~nullify~~ nullify federal law, and that official evidence can possibly be defined otherwise.

In an excerpt from "GSA regulations", otherwise undescribed and undefined, called "Definitions" <sup>of what "records" does not include</sup> are three numbered sentences, not quoted in full. Not one is pertinent or even relevant. Not one makes any reference to photographs, which is ~~the~~ what plaintiff seeks, no more. Nor, naturally, is there "exhibits" or "clothing". In any event, the previously-quoted language of 44U.S.C, clearly requires the availability of plaintiff seeks.

"Appeals within GSA" is next quoted from these regulations, why not being clear, for there is no allegation plaintiff did not comply with them and the untested evidence is that plaintiff did. What is interesting is that these regulations also require that appeals be handled "promptly", which is hardly ~~a description~~ so long a period as three months.

"Donated Historical Gifts", a definition not suited to the photographs plaintiff seeks, is also quoted from these regulations, redundantly and irrelevantly, to say that ~~specific~~ conditions specified by the donor must be met. This is not an issue, except to the extent that defendants refuse to abide by their own regulations, as will be seen when subsection B of "Argument" is considered.

From the foregoing, it can be seen that the cited "pertinent Statutes and Regulations" cited with what is seems not unfair to designate as deceptiveness, incompleteness and something less than the ultimate devotion to scrupulousness do not support defendants contentions in any way and in every case require that plaintiff be provided with what he seeks.

Of this there can be, as plaintiff stated in his Motion for a Summary Judgement, no genuine issue as to any material fact.