Dear Jim, C.A. 2569-70 transcript and C.A.75-226 5/14/77

Your judgement was corredt. We should have obtai ned this transcript, dspite the cost per page. I can see how it is ap ropriate to C.A.75-226 if we do no more than get what exists and what you can add into the current record and have it there on appeal.

I was a bit tired when I read the transcript. I'd just finished my second outside expedition, first earth-moving then hand mowing where the riding mower can t go, and I was still in a heavy sweat, the sweat having subsiding enough for me to keep glasses on. I may not have caught all of it.

The record in that case is better than I d thought. Gesell was just out to screw me. His decision is based on the fiction that an official exhibit is not a record. I think I met the evodentiat requirementsof a record not only in the various and excessive papers I filed but in oral argument where I read the official transcript in which they are made exhibits. Not the xxxxx pictures but the actual clothing. I pointed out further than when they were deposited in the Archives they were identified by these official exhibit numbers.

The record I made prior to this hearing does include the then applicable Archives regulations. I have not been able to find my copy. I know it is in the court records. It does specify that in lieu of personal examination pictures will be made and provided at the prevailing cost. Not show - given as prints. I recall that during the proceedings I had found my copy and wanted to give it to Gesell but he was short with me and did not take it or listen to it.

The Archives has not provided it. I have asked for that official record, a published record, under FOIA relatively recently. You have the records on this.

(Bud should have a copy. I gave him copies of everything in that case.)

I have also made FOIA request for the pictures taken for me and been refused. I've exhausted my remedies. Here also you have the records.

I am not inclined to agree with you where before I did not, that the little time and cost required by filing an action now is well worth it. If only as appendages in 226. But ask for both the applicable regulation and the pictures. If you can join the DJ, against which I levied no request on this, fine. They were custodians of the actual record, i.e. the clothing. I've also asked for all records of any investigation of the destruction of the tie evidence. It would also be very helpful if and when I got to Dallas for affidavits to supply in 226. With this you will get my today's letter to Pague, who has written me about this again. Right now I'm inclined to think the sooner the better.

As I now recall it I went to some trouble to build an evidentiary base in the Gesell case. This included three-dimension objects as records. They are and I put official records into evidence to establish this

The oral argument is, I think, better than I recall it as being. My strongest recollection is of my nervousness. Next frustration that Gesell would not consider any records that were not in favor of the government's argument. But imagine him in effect holding that CBS could take pictures and they did not have to let me have copies. Pretty raw.

Gesell was even willing to read into the contract what was not there. I'm satisfied that I asked him to read what he omitted, the limitation of refusal of access to "prevent undignified or sensational use." I think I made a record showing this was impossible with the pictures I asked for. But what this oral argument does not hold is the regulation of the Archives requiring them to give me pictures if I pay there posted prices. That is important and because of this records I think should be in the complaint if you file one. My reference to this and to what I had already put into the record is on 9. On this page Gesell tried to rewrite the Act. Eliminating copies. And this, too, I had in the record.

Best,