UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff v. U.S. GENERAL SERVICES ADMINISTRATION and U.S. NATIONAL ARCHIVES AND RECORDS SERVICES, Defendants	C. A. No. 2569-70

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 9(h) of this Court, Plaintiff moves the Court for summary judgment on the ground that the material facts, as to which there is no genuine issue, show that Plaintiff is entitled to judgment as a matter of law. Plaintiff made requests for the disclosure of certain identifiable records within the control of the Defendants; Plaintiff's request was authorized by 5 U.S.C. §552, and Defendants refused to disclose said records. The undisputed facts do not provide any basis for sustaining Defendants' refusal to grant Plaintiff's requests for access to said records; wherefore, Defendants, who have the burden of proof, should be enjoined from refusing to grant Plaintiff access to the records he seeks.

Attached to this motion, and in support thereof, are a Statement of Material facts, as to which movant contends there is no genuine issue, and a Memorandum of Points and Authorities.

HAROLD WEISBERG, pro se

Date: ______________

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing motion of Plaintiff for Summary Judgment with attached Statement of Material Facts and Memorandum of Points and Authorities was mailed, postage prepaid, this 19th day of November, 1970 to the U.S. Attorney, Room 3136-C, United States Court House Building, 3rd and Constitution Ave., N.W. ; the Office of the Attorney General of the United States, Washington, D.C. 20530; the U. S. General Services Administration, F between 18th and 19th Sts., N.W.; and the U.S. National Archives and Records Service, Pennsylvania Ave. at 8th St., N.W., Washington, D. C.

HAROLD WEISBERG

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v.

U.S. GENERAL SERVICES ADMINISTRATION

and

U.S. NATIONAL ARCHIVES AND RECORDS SERVICES,

Defendants

C. A. No. 2569-70

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

Pursuant to Rule 56, Federal Rules of Civil Procedure and Rule 9(h) of the local rules of this court, Plaintiff submits that the following are material facts as to which there is no genuine dispute:

1. In compliance with the Freedom of Information Act, Plaintiff has on numerous occasions requested that photographs of the President's clothing be taken for him by the National Archives, or that he be granted access to inspect said clothing, or that existing photographs of said clothing in possession of the Archives be made available to him.

2. Defendant National Archives has authority to grant Plaintiff's requests, as is admitted in paragraph 19 of Defendant's answer.

3. Defendant National Archives has denied Plaintiff access to the President's clothing, refusing to allow his personal inspection of said clothing, or to have photographs of it made for him, or to provide him with the existing photographs of said clothing already in the possession of the Archives.

4. Plaintiff has exhausted his administrative remedies.

5. Defendant National Archives has not claimed that the requested records fall within any of the specified exceptions available under the Freedom of Information Act.

Plaintiff submits that the above stated facts, as to which there is no genuine dispute, entitle Plaintiff to judgment as a matter of law.

HAROLD WEISBERG, pro se
Route 8
Frederick, Md. 21701
Tel: (301) 473-8186

Date: ____________________

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v.

U.S. GENERAL SERVICES ADMINISTRATION

and

U.S. NATIONAL ARCHIVES AND RECORDS SERVICES,

Defendants

C. A. No. 2569-70

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant has raised several legal issues in its answer. These are dealt with below.

I. COMPLAINT STATES A CLAIM UPON WHICH RELIEF CAN BE GRANTED

5 U.S.C. §552(a)(3) provides as follows:

> "Except with respect to the records made available under paragraphs (1) and (2) of this subsection, 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."

As such identifiable records have not been made promptly available to him by the Defendant National Archives, it is clear that Defendant's failure to grant Plaintiff's properly submitted requests gives rise to a valid claim under 5 U.S.C. §552(a)(3).

As to whether Plaintiff's claim is one upon which relief can be granted, the continuation of the above-quoted passage from 5 U.S.C. §552(a)(3) is instructive:

> "On complaint, the district court of the United States in the district in which 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."

By way of relief, and in accordance with the above-quoted passage, Plaintiff has requested that Defendant be enjoined from withholding from him the agency records which he seeks.

Further, Plaintiff maintains that the so-called Letter Agreement between Burke Marshall and the National Archives is illegal, in part or in entirety. However, should this "contract" be upheld, then Plaintiff asserts that he is entitled to relief under its provisions. That agreement states:

> "(2) Access to the Appendix A materials shall be permitted only to:
> ....
> (b) Any serious scholar or investigator of matters relating to the death of the late President for purposes relevant to his study thereof."

Plaintiff is a serious scholar and investigator, having authored four published books on the assassination since 1965. The records sought are relevant to his study of the death of President Kennedy (See attached Affidavit A).

II. THIS COURT HAS SUBJECT MATTER JURISDICTION

5 U.S.C. §552(a)(3) states that the U.S. District Court has jurisdiction in each of three circumstances: 1) in the district where the complainant resides, 2) or has his principal place

of business, 3) or in which the agency records are situated.

Plaintiff alleges on information and belief that the records he seeks are kept by the National Archives and Records Service and are situated in the District of Columbia. Plaintiff notes that no representation has been made to him by the responsible agency officials which would cause him to believe otherwise.

Plaintiff also takes notes of paragraph 2 of an affidavit executed by the Archivist (attached as Affidavit C), which admits that as of that date the clothing of President Kennedy was "on deposit in the Archives of the United States."

III. THE NATIONAL ARCHIVES IS A PROPER PARTY DEFENDANT

In paragraph 19 of its Answer, Defendant admits that it has authority to grant Plaintiff's requests. It follows, therefore, that the National Archives and Records Service is a proper party defendant.

Further, in an affidavit executed July 29, 1970, Dr. James B. Rhoads asserted:

> "As Archivist of the United States... my responsibilities include the custody and preservation of all documents and other articles on deposit in the Archives of the United States, including the clothing of former President Kennedy, consisting of a coat (CE393), shirt (CE394), and necktie (CE395)....." (See paragraph 2 of attached affidavit by Dr. James B. Rhoads).

Paragraph 4 of the Rhoads affidavit also states:

> "The agreement provides that, in order to preserve these articles against possible damage, the Administrator is authorized to photograph or otherwise reproduce them for purposes of examination, in lieu of the originals......"

As part of the relief sought, Plaintiff has asked that photographs of the President's clothing be made for him. It is clear from the above-quoted passage in the Rhoad's affidavit that the Archivist has authority to grant this request.

IV. DEFENDANT HAS EXHAUSTED HIS ADMINISTRATIVE REMEDIES

In early November, 1966, shortly after items of the President's clothing has been transferred to the National Archives by the so-called Letter of Agreement between Burke Marshall and Lawson B. Knott, Plaintiff made a formal request for access to the items of clothing so transferred. A copy of the Letter of Agreement itself was also requested.

Dr. Bahmer, Head of the Archives at that time, later wrote Plaintiff that Mr. Burke Marshall, representative of the executor for the Kennedy estate, had denied Plaintiff's requests. Even Plaintiff's request for a copy of the Letter Agreement was refused.

At a later date, after public use had been made of some of the items requested by Plaintiff, Plaintiff renewed his requests Again, they were denied.

Plaintiff next sought information which would enable him to invoke the provisions of the Freedom of Information Act. On May 27, 1969 Plaintiff hasked the National Archives for the information he needed to order to exhaust his administrative remedies. Plaintiff repeated this request on July 14, 1969, and July 31, 1969. Finally, on August 13, 1969, the Archives sent Plaintiff copies of several sets of regulations which seemed designed for the use of lawyers. There was no reference to the use of forms

in making application for records under the auspices of the Freedom of Information Act.

More than a year later, on August 19, 1970, the Archivist wrote Plaintiff that their regulations "do not prescribe the use of a form in requesting documents under the Act."

Plaintiff is a writer. His writing is based in large part on research done at the Archives. Thus, the inordinate delays on the part of the Archives in responding to his requests affected his capacity to earn a living.

To expedite matters, Plaintiff wrote the Archivist asking that each time a request was refused it be forwarded through appropriate channels and treated as an appeal.

Although Plaintiff was assured this would be done, in fact it was never carried out.

However, Plaintiff also directed an appeal to the Director of Information in a letter dated June 20, 1970. After waiting more than two months without receiving any response to his appeal, Plaintiff filed this suit. (See Affidavit B) [illegible]

V. DUTY TO DIVULGE

Plaintiff is entitled by the Freedom of Information Act to the records he seeks. The Act states:

> "Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fee to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person."

Plaintiff is "any person" under Subdivision (a)(3) of said Act and the defendants are agencies which must, by law, make "promptly available" records which Plaintiff identified and requested in writing.

Plaintiff is not required to have a substantial interest in the records sought and is not required to state any interest whatsoever in requesting access to records.

VI. BURDEN OF PROOF IS ON THE DEFENDANTS

The Defendants have the burden of justifying their refusal to grant Plaintiff access to the records sought. Section (a)(3) of the Freedom of Information Act removes from the agency the power of discretion as to whether or not access to the records should be granted:

> "In such a case the court shall determine the matter de novo and the burden is on the agency to sustain its actions."

VII. DEFENDANTS CLAIM NO EXEMPTION

The Freedom of Information Act lists nine specific exemptions to the general proviso that agency records and information must be made availble to any person upon proper request. Defendants have not claimed that their refusal to grant Plaintiff requests is justified because the records sought fall within the ambit of one or more of the nine specific exemptions provided for by the Act.

VIII. CONCLUSION

The relief requested by the Plaintiff is an injunction. This is a proper remedy under subdivision (a)(3) of the Act, which states that the appropriate District Court "has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant."

HAROLD WEISBERG, pro se
Route 8
Frederick, Md. 21701

Date: ____________

Affidavit A

A F F I D A V I T

District of Columbia }
City of Washington) SS

Harold Weisberg, being duly sworn, deposes and says:

He lives at Route 8, Frederick, Maryland.

He is a professional writer and a book publisher, now 57 years old, whose professional writing career began in or about 1930. He has been a newspaper and magazine correspondent and has been a writer, editor, research analyst and investigator for the federal government, before and during World War II, when he was cited and honored for his work by the federal government. As a consequence of some of deponent's investigative reporting in the period beginning about 1940, much praise therefor having been forthcoming from Members of both Houses of Congress, the hite House, members of the President's cabinet, and even the Director of the Federal Bureau of Investigation, certain actions were taken by the federal government, including the vesting of Nazi-front corporations and the assessing of fines and penalties, in one case totaling $160,000.

For the past almost seven years, his extensive writing and publishing has been in the field of political assassinations, especially that of the late President John F. Kennedy. The first of these books is titled WHITEWASH: THE REPORT ON THE WARREN REPORT. It went through four printings in the self-published original form and a like number in pocketbook reprint, the first printing alone in the latter form being of a quarter of a million copies. Beginning with his second book, WHITEWASH II, also mass-reprinted, most of the materials came from the National Archives, where he has been an accredited researcher since the spring of 1966. His last card of accreditation is No. 005-495. In all or in part, with materials from the National Archives, he has published an additional six books, four thus far in limited editions only, and has a number of others partly researched, partly written, or both. Unrestricted and uninhibited access to what he is entitled to under law and regulation is indispensable to this research and writing.

Deponent's writing and publishing is well-known to the federal government, including to the Defendants in Civil Action 2569-70 in the Federal District Court for the District of Columbia. Defendants have bought copies of his books, including from him. Those of Defendants' employees directly involved in the files in which he conducts research have asked him to autograph copies for them, their friends and for other employees. Among the copies bought outside of normal commercial channels by the Defendant General Services Administration, directly from deponent, are copies for the Lyndon B. Johnson Library. Additionally, deponent knows copies have been bought in commercial channels for he has personally seen them.

Deponent avers that there has been sufficient federal government interest in his writing for copies of parts of manuscripts to have been obtained, not from deponent, and to have been officially responded to prior to publication, prior even to delivery of any of the said manu-

script to the printer. By remarkable coincidence, this coincides with the non-delivery of mailed copies of the manuscript sent to a literary agent. Other proofs of federal government interest in and knowledge of Deponent's writing is in Deponent's possession, including copies of clandestine intelligence against Deponent.

Deponent's book-publishing operation is known as "Coq d'Or Press". Despite the contrary contention in paragraph 2 of Defendant's "answer" to the complaint in Civil Action 2569-70, Defendant General Services Administration paid Coq d'Or Press by check for its purchases and can produce the canceled checks deposited to the account of Coq d'Or Press.

Moreover, counsel for Defendants, the United States Department of Justice, also has certain knowledge of the truth of Deponent's statements in his complaint in Civil Action 2569-70, namely, that Deponent is a professional writer, not only because it also has copies of Deponent's books, but for many other reasons.

In Deponent's wartime writing, cited above, he worked in close collaboration with said United States Department of Justice, gave said United States Department of Justice all of the benefit of his investigations and writing, including evidence of a criminal nature and directly related to the national defense, some of which said United States Department of Justice and its agents had not been able to develop on their own.

During this writing career, well known to counsel for Defendants in Civil Action 2569-70, Deponent worked closely with three Assistant Attorneys General of the United States. On one occasion, Deponent spent four months assisting two Assistant Attorneys General in charge of the Criminal Division in the field, living with them and his expenses paid by the said United States Department of Justice, for whom at this time Deponent served as a technical consultant. Deponent's personal relations with these Assistant Attorneys General of the United States (and many other employees) were of a close and personal nature and on a basis of trust. One Assistant Attorney General even entrusted an official armored automobile to Deponent, on several occasions sending him on personal missions that, strictly speaking, in an area where alcoholic beverages were illegal, were not in accord with local law.

There have been other occasions on which Deponent, as a writer, researcher and investigator, has collaborated with the United States Department of Justice and various of its subdivisions, including by giving them files he had obtained from a subversive organization. In another case, prior to United States entry into World War II, at the behest of said United States Department of Justice, with which in his writing and investigating Deponent was then working in close collaboration, Deponent became a voluntary and unpaid agent of an intelligence service of a friendly power, namely, the United Kingdom.

For long periods of time, Deponent was on the press list of the United States Department of Justice.

Deponent affirms that, quite contrary to their misrepresentation in Paragraph 2 of the aforementioned "answer", both Defendants, the National Archives and Records Service and the General Services Administration, as well as their counsel, the United States Department of

Justice, have long known Deponent to be a professional writer and publisher. Moreover, as an editor and as a writer-investigator, Deponent has also been known, in two different cases, to the office of the United States Attorney for the District of Columbia, serving as both a witness and a source of information for the said office of the United States Attorney for the District of Columbia.

____
Harold Weisberg

I, ________________________, Notary Public in and for the District of Columbia, do hereby certify that Harold Weisberg personally appeared before me in said District of Columbia on the _______ day of November 1970, the said Harold Weisberg being personally well known to me as the person who executed the said affidavit and acknowledged the same to be his act and deed.

Given under my hand and seal this ________ day of November 1970.

____
Notary Public

A F F I D A V I T

AFFidavit B

District of Columbia)
City of Washington) SS:

Harold Weisberg, being duly sworn, deposes and says:

He is a professional writer and publisher, living at Route 8, Frederick, Maryland. Since the assassination of President John F. Kennedy on November 22, 1963, he has made an intensive study of and has written more extensively than any other writer about this assassination. He has also written about other assassinations. This work is incorporated in a total of eight completed books and a number of others in various stages of development. The first and best-known of these books is titled WHITEWASH: THE REPORT ON THE WARREN REPORT. His writing and his books are well known to various agencies of government, including the Defendants in Civil Action 2569-70 in the Federal District Court for the District of Columbia. It is also well known, including to all government agencies in any way involved in the official investigation of this assassination, that his beliefs are not in accord with the conclusions of the Presidential commission on this assassination, known as the Warren Commission, and that his opinion of the official investigation is that, at best, it was unspeakably and indescribably incompetent.

Deponent was the first author of any book to concentrate upon the so-called autopsy performed on the body of the President and what is relevant thereto. It occupies a major part of his first book, is one of the three parts of his second, and is the subject of two completed books of a projected three on this subject alone, under the general title, POST-MORTEM. The first of the POST-MORTEM books was written before August 1967, its completion delayed by the withholding from him of certain necessary data by the National Archives, one Defendant in said Civil Action 2569-70.

On or about November 1, 1966, it was announced that there had been promulgated an executive order, by the then-Acting Attorney General, in which he proclaimed that the national interest required that all evidence in the physical possession of the government be transferred to the National Archives and there preserved intact with such other evidence as had been deposited there with the files of the then-defunct Warren Commission. At this time it was also announced that the representative of the executors of the estate of the late President had made certain "gifts" to the government, consisting of essential evidence relating to the assassination and presented as the personal property of the decedent. Included in this alleged "gift" were certain exposed photographic and X-ray film and the garments worn by the assassinated President at the time of the crime.

Immediately following these public announcements, deponent conferred with the then head of the National Archives, Dr. Robert Bahmer, and made formal request for access to this "gift" and the evidence of the assassination contained therein, especially the film and the documentation of the said "gift". At the suggestion of Dr. Bahmer, deponent immediately wrote Dr. Bahmer a letter along these lines which Dr. Bahmer said he would forward to the representative of the executors of the said estate. Thereafter, Dr. Bahmer wrote deponent that his request had been rejected by the said representative of the executors, Mr. Burke

Marshall, who is also the signatory to the "Letter Agreement" by which the so-called "gift" was consummated.

Even a copy of this Letter Agreement was denied deponent, the claimed reason being that its public use would be of a "sensational or undignified nature", words coming from the said Letter Agreement as it related to the objects included in the "gift" and thereafter regularly employed in letters to deponent from the National Archives. Some months thereafter, however, when this Letter Agreement was requested by a newspaper reporter without detailed knowledge of the fact of the assassination or its official investigation, notably one publicly sympathetic to the official account of this assassination and the chairman of the said Commission, the claim that any use of the said Letter Agreement would be "sensational or undignified" vaporized and this said reporter, in violation of the regulations of the National Archives, was given exclusive first-use of the said Letter Agreement. Regulations required that deponent be given equal access to it. However, it was not sent to deponent until some time after publication, thus denying deponent his rights to government records he had been first in requesting and had requested long before the said sympathetic reporter.

This is not the only such case involving denial of such records to deponent, but he cites it because it illuminates the spuriousness of the claim that withholding of what he seeks is to prevent sensational or undignified use. There was no change in the said Letter Agreement from the time of his request, therefore, no change in whether or not its use would be sensational or undignified. The sole difference is that the government could expect the use made thereof by this reporter to be in accord with the government's wishes and preferences. As a consequence, this first and extensive use having stifled journalistic interest in the said Letter Agreement, the reporter not having understood what it discloses, what it discloses is largely not understood today.

Customarily, the said National Archives ignores those proper inquiries made of it or, when made by those not of sycophantic predisposition to support the official position on the assassination, unduly delays responses or makes evasive or deceptive or openly false responses, to the end that deponent is seriously interfered with in his quest for information about the assassination of his President and his writing frustrated and delayed where it is not thereby prevented. One example is with deponent's request for a truthful and meaningful explanation of this cited denial of his rights and violation of the regulations. In four and a half years of regular requests, no such response has been made by the Defendant National Archives.

Similarly, when it became a matter of public knowledge that public use had been made of part of this evidence related to this "gift", of which deponent had had knowledge since before the time of the Letter Agreement and the announcement of the "gift", in January 1969 deponent made a new and separate request for this specific and indisputably "identified" paper. He was promised an immediate answer but it was not made. Thereafter, when both were in attendance upon a court within the District of Columbia, the Archivist, Dr. James Rhoads, informed deponent verbally that response would soon be forthcoming. It was a matter of about 32 days before a false and deceptive letter was,

finally, after much reminding by deponent, sent to him. Deponent immediately pointed out the deceptiveness of this so-called response and its evasiveness, the spurious claim that what he sought was a "private paper", apparently, from this misrepresentation, entrusted into the keeping of the National Archives because the Kennedy family is without means of securely storing anything. Deponent asked for the government's copy of this paper. He never got response. Deponent was then promised a copy of this paper from the agency of primary interest, which elected to give it to deponent through the National Archives, and so informed deponent. Months went by, and, after much prodding from deponent, when a total of a year and a half elapsed, the said National Archives again falsely claimed the government's copy to be a private matter and denied it to deponent.

Not until under date of August 19, 1970, did deponent receive an official acknowledgment of that of which he had been informed by the agency of origin, namely, that this document had been sent to the Archives to be given to him by that means. Hiding the fact of delay for about a half-year, the Archivist, evasively, said only, "We have an electrostatic copy of the Government copy of the 'memorandum of transfer' of the material relating to the autopsy of President Kennedy. This copy (emphasis added) is withheld from research under the terms of 5 U.S.C. 552, subsection (b) (6) as part of 'medical files and similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy' of the family of the late President Kennedy."

(It is noteworthy that this letter of August 19, 1970, begins, "This is in reply to your letters of March 13, 16, 19, 20, April 24, May 18 and July 2, 1970." Deponent believes this demonstrates the prolonged and unnecessarily- delayed response to his proper inquiries and the diligence of his efforts to obtain papers to which he is entitled. Among other things, these letters ask for this particular paper which had been given to the National Archives to be given to deponent. Surely it did not require 165 days for the National Archives to determine this paper, already ruled not to be subject to any of the restrictive provisions of 5. U.S.C. 552 by the agency of origin, was "part of medical files and similar files", which it is not, being no more than a receipt/memorandum of transfer of a number of items, including what is at issue in this suit that is in no way "medical".)

When it is understood that this paper covers the illegal giving away of government property, without any legal sanction of any kind and, moreover, in added violation of specific regulations, the magnitude of the kinds of deceptions regularly practiced by the National Archives to deter and interfere with the right to information, research and writing by deponent can be understood. The elapsed time is a not unfair indication of how the mere stalling frustrates deponent's rights and writing and the law under which he filed Civil Action 2569-70, which specifies that such requests will be handled promptly. With this abuse, the law is without meaning. It becomes a sham.

Moreover, this particular document relates very much to the subject matter of this suit, Civil Action 2569-70, and constitutes one of the records of the secret transferring of the official evidence - the publicly used evidence as well as secret evidence - of the Warren Commission.

Over the years, faced with constant interferences with his right to know under the law and with delays calculated to impede his research and his writing of that which the government prefers not be written, deponent made many requests of the National Archives that he be informed of what he must know to invoke the provisions of 5 U.S.C. 552 and to be supplied with agency instructions and regulations thereto relating. Combing the inordinately extensive files of this correspondence (made extensive by the National Archives' failure to respond or responding evasively, thus requiring endless extra and detailed letters by deponent, a few of the very many samples of which are contained in this affidavit) would be a great burden. However, without exhausting the possibilities, these illustrations are readily available to deponent:

On May 27, 1969, he asked the National Archives for that information he required "to be able to exhaust all administrative remedies."

On July 14, having received no answer, he reminded the Archivist that, as with all other agencies of government, deponent's request that he be informed of what he had to know to invoke the law had not been sent him.

On July 31, a similar request was repeated.

On August 13, 1969, the Archivist sent copies of several sets of regulations which seemed to deponent to be designed for the use of lawyers, which he is not, without any reference to the use of forms for application, etc. Finally, <u>a year later</u>, on August 19, 1970, the Archivist wrote deponent that their regulations do "not prescribe the use of a form in requesting documents under the act". This, it should be noted, is two months <u>after</u> deponent, frustrated by the futility of seeking to be able to use the law enacted to guarantee freedom of information, had addressed a still-unanswered appeal, as prescribed by the regulations.

Thereafter, on other occasions, deponent made clear to the Archivist that he lacked understanding of the special requirements of that agency with respect to the law, as recently as March 13 and April 24, 1970.

Time went on and the number of unfilled requests mounted. With deponent still uninformed about how he might use the law, he began asking, when from the record and the history of such unfilled requests he could anticipate their ultimate refusal, that, upon refusal, each request be forwarded through channels as his appeal. In no single case was this refused and in no single case was it done. It is not now physically possible for deponent to set down all such cases, but he does here affirm a relevant case.

He made one such request on November 11, 1969. Under date of January 22, 1970, more than two months later, and <u>never having forwarded any single letter or request</u> as an appeal, the Archivist wrote deponent:

"You have requested that we treat all your letters and requests as your appeal under the Freedom of Information Act (5 U.S.C. 552). Since your letters and the necessary responses now comprise a large file, it would be administratively difficult to do this ... submit or resubmit a numerical list of those desired records ..."

It should be noted that the only reason these requests accumulated is because no single one was forwarded as an appeal, as requested.

It should also be noted that the number of such letters of request is relatively small, and it is only the entire file of correspondence which can be described as "a large file". Most of this correspondence, by far, is not related to deponent's request for the forwarding of appeals.

The deceptive semantics of the "numberical list" is significant for only part of the Warren Commission files is identified by numbers and deponent had requested the forwarding of appeals for public records not of such numbered identification.

At the time of receipt of this letter, deponent was ill and preoccupied with other writing. What the Archivist requested of deponent also required an enormous amount of time, as deponent reported to him under date of March 13, 1970. After briefly reviewing the history and with the intent of submitting a list of all ignored or denied requests for information to be appealed, deponent did supply a list of some of these things. What is most relevant here are:

"It has been months since I asked for access to some of the late President's garments. Ultimately, I was refused. I again asked that pictures be taken for me, by you, and you again refused." (Marked on page two, attached.)

On the "memo of transfer", which included some of what is sought in this action, "It has been close to a year since I asked you for a copy of the government's copy. You have at no point indicated a) that there is a government copy, as I know beyond doubt there is, or b) whether or not you have it." (Marked on page three, attached.)

"... raw material of the panel report ..."(which includes what is at issue in Civil Action 2569-70 - marked on page three, attached.)

"My request for the Kennedy-family-GSA contract ... all attachments and related papers ..." (Marked on page four, attached.)

Notwithstanding this letter of March 13 and the specific items mentioned in it, under date of May 13 (which happens to be after deponent filed an action under 5 U.S.C. 552 against the Justice Department), was there any response. At the end of a letteron other matters, the Acting Archivist wrote, "We note we have not yet received a list of the documents withheld from research concerning which you wish to appeal ..."

While it is true that deponent did not prepare a complete list of all such items, he had submitted a partial list of specific and identifiable items on March 13. Pending action on this, and in the fact of the undeviating failure of the Archivist to forward any single refusal through channels as an appeal, there seemed and to this day seems to be no purpose other than the waste of time and money to be served by completing the list, these specific requests having again been ignored.

Thereafter, the aforementioned appeal was filed on June 20, 1970. Deponent believes the additional lapse of more than three months was more than enough time for truthful and meaningful response.

On August 19, and with the apparent intention of making some use of it in Civil Action 2569-70, the Acting Archivist made this reference to the foregoing:

"You stated in your letter of March 13 that you intended to submit a numerical (Emphasis added) list of records concerning which you wish to appeal ... We have not received this list." This false emphasis on "numerical" has been noted earlier. And deponent's letter of March 13 does not make any reference to a "numerical list".

And not until three months after the filing of the appeal was there even acknowledgment by the National Archives. It makes no reference to this civil action, filed four weeks earlier, and apparently also has the intent of making a deceptive record to be used in this proceeding. Deponent's response, by return mail, under date of September 19, has never been responded to.

However, after the rejection of deponent's appeal, after deponent had appealed without result to the representative of the executors of the estate, and after he had challenged both the said representative and the Archivist to show how the pictures deponent seeks could be used in any way they could describe as either "sensational" or "undignified" or how the pictures made freely available by the Archives could be used in any other than an "undignified" or "sensational" way, deponent received a self-serving, really frivolous, offer from the Archivist dated October 9, 1970. Deponent had obtained from another source pictures similar to those withheld. The Archivist said, "If you will send us the print or prints ... we can prepare enlargements ... according to your specifications."

So, the only thing the Archives has been willing to do to help deponent learn what he can that is hidden in the evidence it is suppressing is to offer to take away the business of the independent photographic shop with which deponent deals.

From the foregoing it can be seen that the legally required system of appeals has been converted into a futility for precisely the purpose proscribed by the mocked law, to deny public information.

However, when it was more than apparent that every such means and device would continue to be used to suppress what should not be from those not in accord with the official position on the assassination, deponent tried a third approach. That which he seeks by this action has been used by the government in still another manner, in a so-called "panel report" prepared for the Attorney General, suppressed for a year, and then released both as a means of publicity and in court, in that order, in early 1969. Deponent thereupon asked both the Archives and the Department of Justice for all of the raw material used in the preparation of this published report, some of which, including what is sought in Civil Action 2569-70, being itemized within the report as part of its raw materials. Both rejected this request and both, strangely, claim not to have any of it, which has to be false, possession being admitted in Civil Action 2569-70 and being refused deponent. Appeals having been a futility within the Archives and the General Services Administration, deponent decided to appeal to the Attorney General, as prescribed by the pertinent regulations of the Department of Justice.

While deponent is not a lawyer, he had obtained and read The Attorney General's Memorandum on the Public Information Section of the Administrative Procedures Act, these being the official governmental instructions and interpretations of 5 U.S.C. 552. Deponent had also heard of the decision in American Mail Lines, Ltd. v. Gulick, (411 Fed 696 (1969)). In American Mail Lines, the court held that even the mention of the existence of a memorandum by the Maritime Subsidy Board constituted a waiver of any right to withhold the memorandum itself under the provisions of 5 U.S.C. 552. The court held of this memorandum that it thus lost its "status" as a paper that could be withheld "and became a public record", by mere reference to it.

Now what deponent seeks has been repeatedly and publicly used, and not merely by reference. It is evidence in two published official proceedings and has been widely published and caused to be published elsewhere by the government that now denies it to deponent.

The President of the United States and the Attorney General say in the cited Memorandum on 5 U.S.C. 552 that "only the national security, not the desire of public officials", determines what must be restricted. No question of national security is involved in what deponent seeks. With both the National Archives and the Department of Justice, which used it publicly, having denied having what deponent seeks, deponent was faced with the added question, which, if either, is telling the truth? He therefore took note of and followed the language of the discussion under subsection (c) of the Attorney General's Memorandum (page 24):

"Where a record is requested which is of concern to more than one agency, the request should be referred to the agency whose interest in the record is paramount, and that agency should make the decision to disclose or withhold after consultation with the other interested agencies. Where a record is requested from an agency is the exclusive concern of another agency, the request should be referred to that other agency. Every effort should be made to avoid encumbering the applicant's path with procedural obstacles when these essentially internal government problems arise. Agencies generally should treat a referred request as if it had been filed at the outset with the agency to which the matter is ultimately referred."

Deponent, who is the applicant, has no way of knowing which agency considers itself to have "paramount" interest. His efforts with the National Archives have been frustrated at every turn and the so-called "appeals" made into a mockery of the law. The delays alone, when the clear intent and the language of the Attorney General's memorandum both specify and require "promptness", violate the law and make deponent's effort to use it futile. His repeated requests for the forwarding as appeals of his proper requests were repeatedly ignored by the National Archives. His "appeal" likewise was ignored by the proper person, to whom he addressed that appeal, for three months - until after deponent waited more than a reasonable time, then filed Civil Action 2569-70. Deponent believes he has met all requirements and that any right to deny him access under the law on the spurious ground he had not exhausted his administrative remedies are waived by these delays, refusals to consider his appeals and their being ignored.

Otherwise, an agency can ignore an appeal indefinitely and the applicant can do nothing, the law thus being rendered a nullity and a shabby pretense of "freedom of information".

Now, with regard to deponent's application in proper form, its rejection and his proper appeal to the Department of Justice, his first appeal, likewise, was ignored. Deponent then addressed a second appeal to the Attorney General, who denied it under date of June 4, 1970.

Thus, deponent believes he has exhausted all reasonable administrative remedies, in all three possible areas of appeal. Deponent believes he has done more than the legislative history of this law or the specific language require of him. He believes he has exhaustedly exhausted all prospects of administrative remedy.

____
Harold Weisberg

I, ________________________, Notary Public in and for the District of Columbia, do hereby certify that Harold Weisberg personally appeared before me in said District of Columbia on the ________ day of November 1970 and the said Harold Weisberg, being personally well known to me as the person who executed the said affidavit and acknowledged the same to be his act and deed.

Given under my hand and seal this ________ day of November 1970.

____
Notary Public

AFFidavit C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JOHN NICHOLS, Plaintiff v. THE UNITED STATES OF AMERICA: JAMES B. RHOADS, ARCHIVIST OF THE UNITED STATES, GENERAL SERVICES ADMINISTRATION, AND JOHN H. CHAFEE, SECRETARY OF THE NAVY, Defendants	)	No. T-4761

AFFIDAVIT OF JAMES B. RHOADS

DISTRICT OF COLUMBIA)
) ss
CITY OF WASHINGTON)

James B. Rhoads, being duly sworn, deposes and says:

1. I am the duly appointed Archivist of the United States and, as such, I am the head of the National Archives and Records Service, one of the five operating services of the General Services Administration, an agency of the United States of America. My office is located in the Archives Building, 7th Street and Pennsylvania Avenue, N.W., Washington, D.C. The following statements are based upon information acquired by me in connection with my services as Archivist and Deputy Archivist.

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2. As Archivist of the United States, pursuant to authority delegated to me by the Administrator of General Services, my responsibilities include the custody and preservation of all documents and other articles on deposit in the Archives of the United States, including the clothing of former President John F. Kennedy, consisting of a coat (CE 393), shirt (CE 394), and necktie (CE 395), the x-rays and photographs taken in connection with the autopsy of former President John F. Kennedy, and the rifle (CE 139), cartridge (CE 141), cartridge cases (CE 543, CE 544, CE 545), clip (CE 575), bullets and bullet fragments (CE 399, 573, 842, 843, and 856) which were Warren Commission exhibits, a copy of the Zapruder film, and a map of Dealy Plaza, Dallas, Texas, (CE 882), all of which were referred to in the complaint filed in the above-entitled action. I do not have the spectrographic analysis referred to in paragraph 5(h) of the complaint.

3. Said clothing, x-rays, and photographs were transferred to the United States of America for deposit in the National Archives of the United States by the executors of the estate of the late President John F. Kennedy by letter agreement dated October 29, 1966, executed by Burke Marshall, on behalf of the executors of the estate of John F. Kennedy, and by Lawson B. Knott, Jr., Administrator of General Services, on behalf of the United States of America. A copy of said

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letter agreement is attached hereto as Exhibit A. As authorized by 44 U. S. C. 2107 said letter agreement, the validity of which has never been challenged by the Government of the United States, contains restrictions on the inspection of or access to said clothing, x-rays, and photographs. Said restrictions having been accepted on behalf of the United States of America, compliance therewith is required by the letter agreement and by law.

(pages 12 - 18)

4. Pursuant to said agreement, access to the articles of clothing is limited to certain Government officials and to serious scholars or investigators of matters relating to the death of the late President for purposes relevant to their study thereof, and the Administrator of General Services is authorized to deny requests for access, or to impose conditions he deems appropriate on access, in order to prevent undignified or sensational reproduction of the articles of clothing (paragraph I(2)). The agreement also provides that, in order to preserve these articles against possible damage, the Administrator is authorized to photograph or otherwise reproduce them for purposes of examination, in lieu of the originals, by such persons as are authorized to have access thereto (paragraph III(1)). In addition, the Administrator is authorized to impose such other restrictions on access to and inspection of said articles of clothing as he deems necessary and appropriate to fulfill the objectives of the agreement and his statutory responsibility under the Federal Property and Administrative Services Act of 1949, as amended, to pro-

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vide for the preservation, arrangement, and use of said materials transferred to his custody for archival administration (paragraph VI).

5. Paragraph VII of the letter agreement provides that all "duties, obligations and discretions" of the Administrator under the agreement may be delegated to the Archivist of the United States. As stated above, as Archivist of the United States, I have been delegated such authority. Pursuant thereto I have determined that (a) serious scholars or investigators authorized to have access pursuant to paragraph I(2)(b) may view photographs of said articles of clothing, but may not inspect or examine the articles of clothing themselves; and (b) in no event shall said articles of clothing be released to the custody, temporary or otherwise, of any such scholars or investigators for any purpose.

6. Under the restrictions imposed in paragraph II(2) of said letter agreement, the plaintiff may not be permitted to have access to the x-rays and photographs referred to above, and custody of said x-rays and photographs, temporary or otherwise, may not be given to the plaintiff for any purpose.

7. The National Archives and Records Service, through the National Archives and the Presidential Libraries, for which it is responsible, performs a very valuable service both for important public figures who give their papers and other historical materials

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to the United States and for scholars who will eventually use these materials as basic sources for research. It provides secure storage for the papers and other historical materials and a professional staff to arrange and index such papers and other historical materials so as to make them more useful to scholars who will use them. The authority of the National Archives and Records Service to accept such gifts of papers and other historical materials subject to whatever conditions of limited access may be requested by the donor ensures that, during the period when a degree of sensitivity attaches to discussion of events and personalities, the rights of privacy of the donor and of persons discussed in the papers are fully protected. It also ensures that valuable collections of papers and other historical materials will be saved and, with the passage of an appropriate period of time, will be made available to writers, scholars, and other interested persons for research use. To permit the confidential restrictions to be violated would completely destroy public confidence in the Federal Government's ability and willingness to honor its commitments to donors of papers, oral history transcripts, and other historical materials. If this confidence is destroyed, the validity of the whole concept of the National Archives and Presidential Libraries will be placed in question, and the future development of these and similar institutions will be

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imperiled. If public figures no longer can be assured that their interests will be protected when their papers and other historical materials are deposited in public institutions, they will cease to place important and sensitive materials in such institutions. The result will be a drying up of basic research resources in history, economics, public administration, and the social sciences generally, and consequent damage to the cause of education, culture, and public enlightenment.

8. The Warren Commission Exhibits referred to above were transferred to the National Archives pursuant to the Act of November 2, 1965 (Public Law 89-318, 79 Stat. 1185), and the order of the Acting Attorney General, dated October 31, 1966 (31 F. R. 13968), issued pursuant to that Act. Section 4 of the Act of November 2, 1965, provides that these items, together with others, shall be placed under the jurisdiction of the Administrator of General Services for preservation under such rules and regulations as he may prescribe. Pursuant to the authority delegated to me by the Administrator, as stated above, I have determined that (a) three dimensional articles held in the National Archives pursuant to the Act of November 2, 1965, including the rifle, clip, cartridges, bullets and bullet fragments referred to above, may be viewed by researchers but may not be handled either manually or

with instruments for the purpose of testing or otherwise; (b) none of said articles shall be taken from the Archives building for any reason by anyone except an authorized employee of the Federal Government, subject to my approval; and (c) in no event shall custody of such articles, temporary or otherwise, be given to any other person for any purpose. The foregoing rules with respect to such articles are necessary to prevent loss, damage, destruction, or alteration to which such articles would be subjected if they were permitted to be handled, transported, or tested. Adherence to the foregoing rules and continued, uninterrupted custody of such articles by the National Archives is imperative in order to permit the full discharge of the responsibilities imposed by the Act of November 2, 1965, for the secure preservation of the articles. Shortly after the Warren Commission ceased to exist items of evidence, including the Exhibits hereinbefore referred to, were transferred to the National Archives, and the National Archives and Records Service informally provided regulations for reference service on such items of evidence to those officials of the National Archives and Records Service having responsibilities with respect to those items. A copy of said regulations is attached hereto as Exhibit B. ——→ (page 19)

9. The above-mentioned x-rays and photographs, articles of clothing, and Exhibits 399, 573, 842, 843, 856, 139, 141, 543, 544,

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545, and 575 were acquired and are preserved, subject to all restrictions applicable thereto, solely for reference purposes as materials having permanent historical and evidentiary value.

10. Requests made by the plaintiff for access to the autopsy x-rays and photographs were denied by the Archivist of the United States by letters to the plaintiff dated July 21, 1967, and October 5, 1967, copies of which are attached hereto as Exhibits C and D, respectively. The requests of the plaintiff to allow him to have Exhibits 399, 842, and 843 analyzed by neutron activation and to measure Exhibit 856 were denied by the Acting Director, Diplomatic, Legal, and Fiscal Records Division, National Archives and Records Service, by letter to the plaintiff dated June 28, 1968, a copy of which is attached hereto as Exhibit E. Plaintiff's request to study the autopsy x-rays and photographs and to have temporary custody of Exhibits 399, 573, 842, 843, and 856, together with the articles of clothing hereinbefore described, for submission to neutron activation analysis was denied by the Archivist on January 17, 1969, by a telegram which was telephoned to the Western Union Telegraph Company for dispatch to the plaintiff. Plaintiff's request to examine and fire the rifle (Exhibit 139) and to examine and study the clip (Exhibit 575), and to study, photograph, and

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(page 21)
(page22)

submit to neutron activation analysis Exhibits 543, 544, 545, and 141 was denied by letter dated February 6, 1970, a copy of which is attached hereto as Exhibit F. (page 23)

11. The 8 mm motion pictures of the assassination of the late President Kennedy filmed by Mr. Abraham Zapruder together with individual frames will be shown to plaintiff at his request on the same basis as they are shown to other researchers; that is during normal working hours at the building housing the Archives of the United States in Washington, D.C. A copy of the large scale map of Dealy Plaza in Dallas, Texas (CE 882) will be furnished to plaintiff upon request.

JAMES B. RHOADS

Subscribed and sworn to before me this 29th day of July, 1970.

Francis J. Heppner
Notary Public

My Commission expires: August 31, 1974