Unread notes of suggestions handed to Jim Lesar 4/10/83 for possible use if he decides it is possible to address appe ls court decision in spectro/NAA case and then if he has time. We did not have any opportunity to discuss. I made draft after his comment by phone and memo before reading the court's language.

55

No 82-1072

BACKGROUND

Wh Assassination is a political crime. Whether the assassin is deranged and without purpose or part of a conspiracy with the most evil purposes, the assassination of a President ~~nullifies our system of society jeopardizes freedom~~ the consequences are identical and immediate.

The assassination of a President nullifies our system of representative delf-government, confronts our basic institutions with instant and continuing challenges and jeopardy ~~and, as~~ In the case of the assassination of President John F. Kennedy, our system of justice ~~is~~ was denied and ~~cannot~~ could not function. ~~with~~ This created the most urgent need (for our other institutions) to function with unquestionable forthrightness and integrity if ~~our institutions are~~ they were to protect us all and justify popular respect for and trust in them.

Plaintiff, who is a former Senate investigator and editor, investigative reporter and decorated intelligence analyst, alone among critics of the official investigations of what was immediately characterized as "the crime of the century," has made a large - he believe a unique and the largest - study of the functioning and nonfunctioning of our basic institutions in this time of great stress and thereafter. These basic institutions include the FBI, which entered the case without jurisdiction and has continued its open investigation as a Presidential investigation; and the courts, whose functioning now is limited to deciding lawsuits under the Freedom of Information Act (FOIA) as the plaintiff and others seek to bring to light what the executive agencies suppressed, even from the Presidential Commission appointed by President Lyndon Johnson (The Commission).

Perhaps history alone will decide how our basic institutions, including the FBI, the Department of Justice and the courst, met their responsibilities.

In a representative society, citizens also bear responsibilities. For writers, particularly those with prior investigative and analytical experience, these responsibilities include assessing the functioning of our basic institutions

and making their work available to others.

Plaintiff, a first-generation american whose parents came to this country from the land of pogroms and authoritarianism, qualified by prior professional experience, undertook his large and continuing study without subsidy or personal financial means and engaged in this litigation, when all other avenues were closed to him and the FBI refused to comply with his FOIA request. Plaintiff continues his inquiry despite years of serious illness and consequent limitations, continues it when his only regular income is Social Security, now increased to $335 a month.

Plaintiff believes that FOIA bespeaks one of our unique contributions to self-government and freedom. It is intended to assure the people's right to know that their government does - and does not - do. His practise of what he believes the intent of the Congress was and his responsibilities as a citizen are [illegible] by continuing this litigation despite the fact that its yield cannot be of use to him in his own writing because life's time-clock and his other planned work ended his literary interest in the withheld evidence when he published his encyclopadaedic study of the corpus delicit delicti after suffering acute thrombophletisi thrombophlebitis is late 1975 and he also makes his knowledge and then by making all of his work, including all he obtains under FOIA, available to everyone. This includes those with him he disagrees and those he abhors. It includes all elements of the media, here and abroad, and such official bodies as committees of the Congress. Some of the previously suppressed FBI information plaintiff obtained in this litigation after more than a decade of its suppression by the FBI was invaluable to the House Select Committee on assassination, which used it in its hearings and conclusions, published it in its volumes and broadcast it to the people on coast-to-coast TV and radio.

Plaintiff's initial interest in the scientific testing of the most basic evidence in this terrible and most subversive of crimes stems from his inability to find any definitive statement of it in the Commission's published and unpublished records, which he studied exhaustively.

(on May 23, 1966)
He then asked the Director of the FBI to disclose these results - not to him personally, despite his own planned and since completed writing - but to make public disclosure, to everyone. The FBI Director was persuaded to ignore this request. Plaintiff's subsequent information requests were ordered to be ignored, based on the legal research that conclude that the Act was irrelevant because the FBI did not like the plaintiff. When he persisted, two of the FBI's special agents (SAs) with personal involvement because they were assigned to the Laboratory which performed all the tests and suppressed most of their evidence from the Commission, formulated the FBI's policy of "stopping" plaintiff and his writing. In this endeavor they were supported by legal research, performed at public expense, which endorsed and encouraged the formulated policy of stopping plaintiff by tying him up in frivolous litigation.

The record in this and plaintiffIs other litigation is a record of pursuing the FBI's formulated policyes of ignoring his requests and keeping him tied up in litigation as, when it desires, the government can do almost endlessly. Even when the Department told the Congress in 1976 that it could not defend the FBI's record of ignoring 25 of plaintiff's information requests (then for as much as much as eight years - under the 10-day Act that requires response) and even after the Department promised the Senate that these requests would be met, they remained ignored, except for a few minor instances in which the information requested was first disclosed to others. Even then it was not disclosed to plaintiff voluntarily.

One od of defendant's means of perpetuating FOIA litigation and frustrating the Act and the plaintiff is presenting misleading, misrepresentative and untruthful information to the courts, often under oath. Plaintiff believes that the presentation of official untruthfulness to the courts by the government nullifies and Act and what he believes can be even more dangerous, can undermine the Constitutional independence of the judiciary, a keystone of the soaring arch of our freedoms. Because plaintiff has a unique knowledge of the crime and surrounding events, a knowledge the defendant in this case stated and stated was greater

that that of anyone employed by the FBI, he believes he bears the obligation of informing the courts fully and honestly and he did this in this and other litigation. The courts provided the defendant with a full opportunity of attempting to rebut his serious allegations. This defendant has an unblemished record of not proving and not really attempting to prove that it did not misrepresent, mislead or speak untuthfully.

But this defendant is also the prosecutor, who does not prosecute himself.

This, the oldest of all FOIA cases, still confronts the courts with the challenge the defendant elected not to confront. In filing this petition, the defendant, who since late 1975, has had no personal, no literary and only a citizen's interest in the outcome, despite the great burden it now imposes upon him and counsel who he cannot compensate, seeks to meet his obligation and serve a public role by filing this petition for a rehearing.

extra space

This is a political case. The assassination was a political crime. The FBI's 1966 decision not to disclose the scientific-test information requested by the plaintiff was a political decision. The FBI's 1967 decision to "stop" this plaintiff and his writing and to tie him up in litigation was a political decision which does not have it roots in the bill of rights. The Attorney General's 1967 decision that the information sought should be disclosed was a political decision, as was the FBI's decision not to pay any attention to the Attorney General. The FBI's subsequent ignoring all other FOIA of plaintiff's requests was political decisions, as was that of the Department to tell the Senate his requests would be responded to when it had no intention of seeing to this doing so and to this day hasn't. The minority's opinion the first time this case was before this court was a very political decision - taking its inspiration from the FBI's - to "stop" this plaintiff's inquiry and writing by holding that his investigation and writing should be "forever forfended." (check quote) The majority also made a very political decision, that this plaintiff be enbaled to develop his allegations against the FBI (again, try to use exact language of footnote 5)

1974
The/decision of the Congress to amend the investigatory-files exemption over the en banc opinion of this court and to make this specific in the legislative history of that amendment ~~was a~~ were political decisions. (This opened the/files of the FBI and other agencies, leading to the exposure of their multitudinous transgressions, to the directive that those abuses be ended, and to the agencies' undying enmity for this plaintiff.) The FBI's decision not to comply with plaintiff's litigated request under the amended Act was a political decision, as was its decision to misrepresent his request to the courts. Its decision not to make good-faith searhes with due diligence was a political decision. Its false and self-contradictory testimony represent ~~was~~ a political decision. And in now holding that plainitff's long ~~xxxxxxxxxxxx~~ investigation ~~(carrying forward the first majority's opinion of this court must now and is.~~ and the court made a very political decision, given the purposes of the Act, ~~and~~ the magnitude and ~~nature~~ serious ~~plaintiff's allegations~~ of nature of the crime and the undenied FBI misfeasances and malfeasances ~~of the FBI,~~ ~~which it has not disputed at any point in this so long litigation.~~ alleged by plaintiff,

This court's opinion is a political decisions. It means that a President can be gunned down in broad daylight on the streets of a major American city, that the FBI can investigate that crime and ~~then hide~~ that it can withhold the most basic evidence of it under the Act intended to let the people know what their government does - and does not - do. It consigns the martyred President to trifling with a dubious epitaph.

What is not mentioned often about the Act is that it enable citizens to bring reform and correction about by ~~enabling~~ enabling exposure of official wrongdoing. The 1974 amending of the Act over the en banc decision in this case is directly responsible for such exposures and the official determination to end those wrongdoings.

The decision of this court means that those who err can hide their error by meremly stonewalling, by not making good-faith searches with due diligence, and by being less that truthful to the courts. It means that citizens will not be able to afford to use the act. It means that the courts will be protecting official ~~wrongdoing and~~ political ~~official~~ decisions not to comply with the intent of Congress when it legislated the right of the people to know what their government does.

insert

The FBI's decision not to report its investigation of the crime to the President and the Commission without accounting for all the President's known wounds and without accounting for all the known ~~shots~~ shooting was a political decision. Two of the key issues in this case pertain to these original FBI ~~suppressi attempts to suppress~~ suppressions of evidence. These are the non-production of the testing of the President's shirt collar and tie to determine whether or not it was physically possible for a bullet allegedly exiting at his throat to have cause the damage to them - and ~~thexxxxidxxx~~ the FBI has made no effort at all to refute plaintiff's allegation that it was physically impossible- and whether what the FBI tested (the residues) where a "missed" bullet ~~xxxxx~~ chipped a curbstone ~~is the resudu.s left by that impacting bullet, fixxithxxxf~~ (did) The plaintiff's evidence is that it ~~was~~ not and that the FBI knew it ~~was~~ (did) not.

These are serious matters, matters this court has held will (long) hold public interest ~~for a long time~~. They are serious matters because, without refutation from the FBI, they mean that when it investiagted the most terrible crime in its history, one of the worst and most serious in the history of the nation, it failed, it was not truthful, and it made the political decisiom not to let the people know what really happened when their President was assassinated and their system of representative self-government was nullified.

When the institutions fail them, the people accept these failures or undertake on their own to rectify them, to the degree possible. The plaintiff is one of those who seek to discharge a citisen's responsibilities and to a remarkable degree he has succeeded. His was the first book seeking and reporting the truth, his the longest investigation, and it is he who has brought to light most of what is now know that was not made known by the (contemporaneous) official investigations. In large measure, as other courts have stated, he is largely responsible for the interests of the Congress and ssveral of its investigations. The most recent of these drew heavily upon information the FBI suppressed-even from the Presidential Commis ion - until he brought it to light in this litigation.

The Shirt-Collar and Tie Test

~~The~~ I Included in the new and significant information brought to light for the first time in this litigation, ~~and then~~ (only after remand by this court,) is the fact that the FBI made ~~xxxxxxxxx~~ basic scientific tests it kept entirely secret. It did not report them to the President, although its investigation was for him, and it did not report them to the Commission although it had the obligation to do so.

Neither plaintiff nor anyone outside the FBI knew that the FBI had recognized the need to make tests on the shirt-collar and tie to determine whether the damage to them when the President was killed did or could have come from an exiting bullet, ~~which~~ This is basic to the official solution of the crime. Plaintiff, therefore, could not make a specific request for the results of this testing. However, it is within other of his requests (and is still) ~~and was~~ withheld nonetheless.

However, the results of this test are germane in this litigation because of their relevance to the results of the spectrographic analysis of the damage to the shirt-collar and tie. ~~The~~ Those results are also germane to the open question, were other pertinent tests performed as a result of this collar and tie testing and withheld. (Indicating That the defendant's intent is to continue to suppress ~~by any convenient means~~ and withhold is the fact that this information is pertinent to other of defendant's information request and the additional fact that the Attorney General stated publicly that all non-secret information would be disclosed by the FBI. Aside from the defendant's obligation to make disclosure under the Attorney General's directive and under the other information requests, the plaintiff's seeking of this evidence is not an enlargement of his original request and its purpose. The results of that testing is pertinent not only to history and not only because the people have a legislated right to know. It is important in determining whether even now, eighteen years after plaintiff's first request and thirteen years after this litigation began, the FBI continues to withhold pertinent information.

The Curbstone

That the FBI did not provide all the pertinent information it had and knew it had pertaining to the testing of the curbstone is established by the several pages of Laboratory report on that testing that ~~xxxxxxxxxxx~~ the FBI withholds from plaintiff ~~but~~ which he obtained outside this litigation. The clear meaning of these withheld pages is that the testing disclosed that a bullet did not ~~xxxxxxxxxx~~ leave the residues the FBI tested. What this Lab agent said in his report is not what he testified to before the Warren Commission. He told the Commission that the FBI's testing disclosed that the core of a bullet left those tested traces. What ~~xxx~~ the withheld pages of his report states it that an automobile wheelweight could have ~~xxxxxxxxx~~ left those traces. The chemical composition of bullet cores and wheelweights are not the same. If it was the core of a bullet it could not have been a wheelweight. If it could have been a wheelweight it could not have been the core of a bullet.

Carrying out the suggestion of ~~xxx~~ the majority in the first decision of this court plaintiff, as best an aging and unwell man who has no financial recources ~~could~~ could, conducted an investigation of this testing and its background. His evidence was not contested by the FBI, which elected to ignore it.

This evidence includes that the FBI knew of the impact of the "missed" bullet and of the wounding of bystander Jim Tague the day of the assassination, knew of it because the FBI transcribed the recording of the police radio broadcasts which reported it, knew of it because it, with clear pictures, was reported in the newspapers, knew of it because when it was forced to interview Tague, after succeeding in ignoring him in its investigation, he reported it (and even then the FBI did not obtained residues for testing), knew of it because the United States Attorney reported it, and that it knew the cubbstone was patched its case agent actually reported.

That this small hole in the concrete curbstone could not have eroded ~~xxx~~ is established by the photographs plaintiff presented and by the testimony of FBI agents he deposed. That spot now is the smoothest on the curbstone and is level wit

surfaces

with the surrounding areas. However, as all the FBI's reports prior to its digging up of the curbstone state, as the Warren Commission's testimony states and as the contemporaneous photographs depict, there was a hole at this identical point. For that spot now to be flush with the surrounding concrete requires the opposite of erosion: it requires the addition of new concrete to eliminate the scar. Thus the FBI knew, on this and other evidence, that what it tested was not the original residues from a bullet. And this is ~~what~~ disclosed by the inadequate and incomplete records provided and what is withheld but plaintiff obtained outside this litigation mean.

Of all its many spectrographic plates, which are relatively thin film, the FBI is only one the FBI represents (careful to avoid it representation under oath) was destroyed, alleged to save space, ~~only this one, it would h the FBI would have it believed, was destroyed to save space.~~ Yet the FBI has carefully preserved, without regard to space, newspaper clippings reporting the plaintiffs long-ago interest in waterfowl and an enormoity of such such information that serves no proper official interest ~~and it~~ ought not have wasted public moneys collecting in the firstplace.

Of all the hundreds of thousands of preserved pages, mostly of irrelevancies, that jam the FBI's file pertaining to the assassination, the FBI would have it believed that the quintessential testing of the collar and tie, which could be reported on a single sheet of paper, does no exist.

Together this plate and report require only a ~~fraction~~ ring of an inch for their preservation - and their preservation is required by law, practise and the Attorney General's directive. Together or individually -they can demolish the FBI's solution to this monstrous crime. It is not credible that when the FBI can recover and disclose its monumental collection of junk jammed into its assassination files it cannot locate its most essential evidence of the crime itself. And, significantly, no real search is reported and the evidence is that the FBI did not make even minimal inquiry to determine what happened to these vital and pertinent records.

Plaintiff's Uses of Records Disclosed to Him.

This court erred in suggesting that plaintiff has not made the maximum possible use of all the information disclosed to him through all his FOIA litigation. Moreover, plaintiff always had made all this information available to all others and others do make extensive and unsupervised use of it. Ultimately it will be a free public archive in a major university system. Students and scholars have been using it for years.

Contrary to the court's suggestion plainitff, physically unable to study the disclosed information at his desk because of his medical condition, had to and did study it while sitting with his legs elevated and his arms resting on an arm chair. The extent to which he did this, as rapidly as possible and for very long days, is reflected by the fact that while other husbands asked their wives to reinforce the elbows of sweaters and coats, plaintiff's wife applied patches to a large percentage of the shirt plaintiff owns, of, he wore that many elbows put in examining the large volume of records disclosed as a result and only as a result - of the selfless litigation in which despite all he persists.

The extent to which plaintiff personally read each and every word varied with the subject of the information and the extent to which the FBI loaded its files with the irrelevancies. They consist largely of irrelevancies.

The plaintiff, however, has made a conscientious effort to read all that has been disclosed to him. In some instances he has skipped nothing in files of more than 50,000 pages, and he annotated them. Major news articles resulted.

When the FBI disclosed records as they were processed, defendant read them all immediately upon receipt. When the FBI learned that this could lead to its embarrassment, it withheld until it could dump enormous volumes of paper on him has almost instant knowledge
at at one time, and that is what it did in thereafter. This protected the FBI against exposure of its representations in court, which it did far from completely, as the record in this case illustrates abundant. It also confronted plaintiff with the serious question of where to begin when he received, all at one time, so great a volume of records that their delivery at one time was precluded.

by post al regulations which also required it.

Among those who have used or been compelled to use the information disclosed to plaintiff ~~and then only as the result of litigation in which he has been forced to persist,~~ is the Department itself, which had no knowldge of the information its FBI component had and kept secret. As is uncontested in the case record in this litigation, the day of the assassination the Dallas office of the FBI was informed that an engineer had taken motion and still pictures of the scene of the crime. They included photographs of the assassination itself and of the building from which the FBI claims all shots were fired. The Dallas SA who was shown these photographs by the film processor before they were returned to their owner wrote a report in which he stated that although the still pictures included clear photographs of the actual killing, they were valueless because they did not show the assassin. He said that the motion pictures were valueless because they did not show the building, for all the world as though there were no other evidentiary values and importances. In fact, however, the motion picture includes almost 100 individual pictures of that very window and those surrounding it, both of great evidentiary value. Analysis of it by the Dallas Morning News led to the published and to the best of my knowledge uncontradicted conclusion that at almost the moment of the crime and where the FBI claims Oswald alone was in that windown, two objects are visible in motion. After this record was disclosed to me - the Dallas FBI never sent it to Washington for either FBIHQ or the Warren Commission - the House Select Committee on Aassassinations, whose life was ending, asked the Department to have an enhancement analysis of the film made and published. Years have past and the Department still has not done this, although it did agree to. As of my last knowledge, the FBI was frustrating this scientific study and after years was refusing to accept a first-generation copy of the film or to permit counsel for the owner to be present and maintain possession of the original while computer enhancement was performed.

There are countless other ways in which the plaintiff and anyone else who so desires has and can always make the most extensive use of all the information he obtains.