affidavit which directly contradicted his first, stating:

> further examination reveals emission spectroscopy only was used to determine the elemental composition of the borders and edges of holes in clothing and metallic smears present on a windshield and a curbstone. *** NAA was not used in examining the clothing, windshield, or curbing.

(Attachment Q, ¶8)

On appeal from the District Court's dismissal of Weisberg's action as moot, the Court of Appeals held that his inquiry was "of interest to the nation," and that he must take the testimony of the agents who had conducted the actual testing of Kennedy assassination evidence to determine the existence or nonexistence of the data sought. Weisberg v. Dept. of Justice, 177 U.S.App. D.C. 161, 543 F.2d 308 (1976)

On remand, Weisberg deposed four FBI agents and established that the FBI had conducted tests that it had earlier denied making. However, the District Court, accepting the FBI's assertions that "all available materials" had been produced, and that other materials not produced had been destroyed or discarded, refused to allow Weisberg to depose Agent Kilty on the nature and scope of the search, and again dismissed the case. Weisberg v. United States Dept. of Justice, 438 F.Supp. 492 (D.D.C. 1977). But the Court of Appeals again reversed, instructing that on remand Weisberg be allowed to depose Kilty and perhaps others knowledgeable about the search. Weisberg v. United States Dept. of Justice, 200 U.S.App.D.C. 312, 627 F.2d 265 (1980).

More than a year after the second remand, the FBI produced additional materials, including computer printouts of the NAA test made on the scraping from the Presidential limousine windshield, a test which Kilty swore had not been done. However, it failed to produce other materials, notably the Dealey Plaza curbstone spectrographic plate and examiner's notes, and a report on whether the slits in the President's shirt collar that were allegedly made by bullet coincide when the shirt collar is buttoned.

Curb stone Spectro plate

The FBI originally claimed that it had made an "exhaustive search" for the curbstone spectrographic plate and notes, and that the plate had been destroyed as a result of routine housecleaning. (Attachments R-S) These claims are baseless. The Kilty Deposition made it clear that the FBI has conducted only a minimal search for missing materials (see summary of Kilty's testimony regarding the search at Attachment T). FBI policies and procedures did not permit the destruction of such materials, there is no evidence of any such destruction, and Kilty conceded at his

deposition that it was "unusual" that only one of the many spectrographic plates in the Kennedy assassination file was missing. (Attachment U)

Moreover, it must be noted that in a publication dated August 1978 by the FBI's Records Management Division entitled FBI Central Records System, the FBI sets forth, at pages 25 ff., the criteria for destruction of FBI investigative files and the requirement that authority be obtained prior to destruction of records, and states: "It is interesting that the FBI has never destroyed an investigative matter of substance." (Emphasis in original.)

Bearing as it does on the number of shots fired during the assassination of an American President, and hence upon the question of whether there was a conspiracy to accomplish his murder, the curbstone spectrographic plate is undeniably "an investigative matter of substance." Coupled with the evidence showing that the curbstone had been altered at the time that it was tested by the FBI, and that the FBI knew that it had been altered but did not so inform the Warren Commission, the cubstone spectro plate bears directly on the integrity of the FBI's investigation.

Also bearing on the integrity of the FBI's investigation, and upon the efficacy or genuiness of its responses to Freedom of Information Act requests, is the Bureau's failure to locate a report said to have been made by FBI Special Agent Paul Stombaugh on whether the slits in the President's shirt collar coincide when the shirt collar is buttoned. Careful examination of a photograph of the President's shirt collar (Attachment V) indicates that the slits do not coincide, thus casting doubt on the theory that the shot which struck the President in the back exited his throat and then wounded Governor Connally.

The integrity of the Freedom of Information Act is also implicated by the foregoing facts. First, as the Court of Appeals stated in Founding Church of Scientology, Etc. v. Nat. Secy. Agcy., 197 U.S.App.D.C. 305, 318-319, 610 F.2d 824, 836-837 (1979):

> If the agency can lightly avoid its responsibilities by laxity in identification or retrieval of desired materials, the majestic goals of the Act will soon pass beyond reach. And if, in the face of well-defined requests and positive identifications of overlooked materials, an agency can so easily avoid adversary scrutiny of its search techniques, the Act will inevitably become nugatory.

Second, the use of false or perjurious affidavits effectively undermines the Act. That the FBI has employed falsely sworn affidavits

to defeat or delay access to information is illustrated by the fact that the FBI first swore that certain tests had been performed on Kennedy assassination evidence, then swore that they had not been, and finally, after plaintiff had been forced to make two costly trips to the Court of Appeals, released records it had denied having. Another instance of perjured testimony by the same FBI agent occurred in a suit for King assassination records. In that suit Kilty swore that the FBI Laboratory did not matain its own records (Attachment W), whereas in the suit for Kennedy assassination records he subsequently testified that he had located the materials in two file cabinets in the FBI Laboratory (Attachment X).

Thirdly, the FOIA was intended to insure prompt disclosure of nonexempt government information. In the case of Weisberg's suit for the spectrographic analyses, it has taken eleven years of litigation and three costly trips to the Court of Appeals just to establish that the FBI has yet to conduct a meaningful search for crucial records pertaining to the FBI's investigation of the President's murder. Although the FBI and other agencies complain loudly about the cost of administering FOIA, it is evident that the enormous costliness of this litigation is the direct result of the FBI's obdurate conduct.

Weisberg's suit to obtain the FBI's scientific tests on Kennedy assassination evidence highlights the importance of the Freedom of Information Act and illustrates why the FBI hates the FOIA so much. The information disclosed is deeply embarrassing to the FBI. Absent FOIA compulsion, no agency can be expected to disclose that has lost or destroyed or hidden vital information bearing on the assassination of a President, particularly when the materials sought bear directly and adversely on the integrity of the agency's investigation of the crime. The fact that Weisberg has been able to obtain some such information under FOIA, albeit at extremely high cost, belies the Department of Justice's current claims that FOIA is "highly overrated" and that most information released under FOIA was brought to light not because of FOIA but because of agency efforts to clean house and correct past abuses.

CONCLUSION

The matters sketched above raise basic questions about the integrity of the FBI's investigation into the assassination of President Kennedy. They also have implications touching upon the FBI's administration of the Freedom of Information Act. Both of these concerns warrant prompt consideration by Congress.