

Assassination Records Review Board

Reply to the Appeal of the United States Secret Service to the Review Board's Formal Determinations of April 13, 1998

I. Background and Standard of Review

The Assassination Records Review Board, acting pursuant to its authority under the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 ("JFK Act"), voted unanimously to open to the public five records created in 1978 by the House Select Committee on Assassinations. These records pertain to people who were identified by the Secret Service as potential threats to President Kennedy or Johnson between March and December 1963. The five documents typically include the names of individuals who were identified as threats to President Kennedy, the circumstances giving rise to the perception of a threat (*e.g.*, "critical remarks regarding JFK . . . member of the John Birch Society . . . owned weapons), and frequently a brief statement of the nature of the person's alleged mental disturbance (*e.g.*, "schizophrenic"). (Copies of the records subject to the appeal are attached hereto as Exhibits 1-4 -- one of the records being a partial duplicate of another record.¹)

<u>Ex. No.</u>	<u>RIF Number</u>	<u>Description</u>
1	180-10065-10379	United States Secret Service "Threat Sheets" 413 pp. (selected pages are attached hereto; the entire document is being submitted separately)
2	180-10087-10302	Eileen Dinneen memorandum March 24, 1978 "Review of JFK Trip Files for 1963" (plus SS report forms)
3	180-10147-10275	Eileen Dinneen memorandum March 29, 1978 "Secret Service Index File and Commission Documents United States Archives" [Kim: what is their current status in the Archives?] 20 pp. plus 11 page attachment
4	180-10147-10274	Eileen Dinneen memorandum October 19, 1978 Secret Service Protective Cases 22 pp. plus 3 Appendices [complete version of "-465" below]

180-10103-10465 Eileen Dinneen memorandum October 19, 1978
"Secret Service Protective Cases"
19 pp. [incomplete version of "-274" above]

The first exhibit is a 413-page document that consists of "Threat Sheets" prepared by Secret Service agents. The remaining documents are memoranda prepared in 1978 by Ms. Eileen Dinneen, a staff member of the U.S. House of Representatives Select Committee on Assassinations. The Dinneen memoranda also include exhibits and attachments that were originally created by the Secret Service.

The Secret Service has now appealed the Review Board's decision to open these five records. See letter from Lewis C. Merletti to Charles F.C. Ruff, May 6, 1998 ("Appeal").² The Secret Service has advised that, but for the release of the names, it would not appeal the Review Board's decision. [Appeal at 4]. The Secret Service essentially argues that the Review Board's decision to release the information is *first*, an "unwarranted invasion of personal privacy," and *second*, likely to cause a rift between the Secret Service and the mental-health community with the consequent damage to the Secret Service's ability to protect the President. In support of this position, the Secret Service attached seven letters by noted professionals in the field of mental health. (USSS Exs. 3-10)³

The Review Board is genuinely perplexed by the Secret Service's decision to appeal the release of names for three basic reasons:

first, the evidence unmistakably shows that Secret Service itself previously published and made available to the public the same type of information that it now opposes releasing;

second, a great deal of revealing information regarding the individuals whose names appear in the appealed documents is already a matter of public record; and

third, by actively soliciting support for their appeal from the mental-health community, the Secret Service has caused confusion about the types of records that are at issue and has brought into focus the Secret Service's practice of releasing the same type of information that their professionals are now on record as opposing.

Because the type information that the Board voted release is already a matter of public record, and because the Secret Service itself identified the persons at issue as potential threats to the assassinated

²The Review Board's "formal determinations" were made on April 13, 1998. The Review Board provided informal notification to the Secret Service of its determinations on April 14, 1998. Formal notification to the Secret Service, as is required by the JFK Act, was made on April 27, 1998.

By agreement among the Review Board, the Secret Service, and William F. Leary of the National Security Counsel, the date of reply for the Secret Service Appeal was extended to May 6, 1998.

³It should be noted that these letters were *not* provided to the Review Board at the time it was making its deliberations and weighing the evidence, although the Secret Service was specifically asked to present all of its evidence prior to the time of the Board's vote. In addition, the Secret Service raises other evidence in its Appeal that also was not provided to the Board. For example,
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president, the five documents should be opened in full and transferred to the National Archives.

A. Description of the Records at Issue.

The five documents at issue include the names and brief descriptions of persons who were identified as potential threats to the President by the Protective Research Service ("PRS") of the Secret Service between March and December 1963 and who are identified by the Service as "protective cases." The documents sometimes provide dates of alleged transgressions (**Kim will provide better example** such as the date a person jumped over the White House fence). The vast majority of the documents do not provide any of the standard identifying information such as dates of birth, Social Security Numbers, addresses, or descriptions of the persons -- although there are some exceptions to this general rule. The records typically identify the type of threat that a person made against the President or the First Family and they frequently include a characterization of the person's possible mental disturbance.

The Secret Service's Appeal itself does not attach the documents at issue, but it does include statements by seven distinguished mental-health professionals who purport to describe the documents on which the Board had voted. (*See* USSS Exs. 3-7). It is very clear from their descriptions that many of these professionals suffered from a complete misunderstanding of the type of records at issue. For example, Dr. Newman inaccurately believed that the records at issue contain "wholesale revelation to the public of mental health information from [Secret Service] files." (*See* USSS Ex. 6). Dr. Glover wrongly assumed, as did other doctors, that the records intruded on the "confidentiality of information shared by patients [with their doctors]." (*See* USSS Ex. 8). Dr. Appelbaum opposed release of what he understood to be detailed mental-treatment reports because such "information collected as the result of such treatment includes data on diagnosis, sexual behavior, fantasy life, and criminal activity." (*See* USSS Ex. 4). Such records, Dr. Appelbaum presumed, would render "public knowledge that a person attempted suicide, had an abortion, engaged in a homosexual affair, or was sexually abused as a child-- all of which will be found routinely in the documentation of psychiatric treatment . . ." (*Id.*) Based upon their descriptions, it is apparent that the mental-health professionals incorrectly believed that the Review Board was releasing information that, among other things, included records and information disclosing "intimate thoughts, feelings and fantasies" and mental-health histories in which an individual "lays bare his entire self, his dreams, his fantasies, his sins, and his shame." (*See* USSS Ex. 6 Newman quoting Slovenko).

The records voted for release by the Board are much more mundane. In fact, within the records themselves:

No mental-health professional is identified.

No identifiable doctor-patient communication is included.

No "mental health history" is included.

No "family history" is included.

No intimate personal thoughts or feelings are revealed.

As even a cursory examination of ARRB Exs. 1-4 will reveal, the information consists of short, simple, statements that do not on their face identify the source of the information or provide any in-depth discussion of the issues.

B. Standard for the Disclosure of Information Under the JFK Act

According to the JFK Act, "all Government records concerning the assassination of President John F. Kennedy should carry a presumption of immediate disclosure."

§ 2(a)(2). Indeed, "only in the rarest cases is there any legitimate need for continued protection of such records." § 2(a)(7). To the extent that an agency, such as the Secret Service, seeks to postpone the release of information, the JFK Act places the burden of proving the need for postponement squarely on the shoulders of the agency. Congress required agencies to submit to the Board "clear and convincing evidence" in support of their proposed postponements. § § 6, 9(c)(1). Congress carefully selected this high standard because "less exacting standards, such as substantial evidence or a preponderance of the evidence, were not consistent with the legislation's stated goal" of prompt and full release of information. H.R. Rep. No. 625, 102d Cong., 2d Sess., prt. 1, at 25 (1992).

Moreover, the JFK Act, by its express language, supersedes all other relevant laws: "When this Act requires transmission of a record to the Archivist or public disclosure, it shall take precedence over any other law[,] judicial decision construing such law, or common law doctrine that would otherwise prohibit such transmission or disclosure" § 11(a).⁴ Thus the JFK Act supersedes both the Privacy Act, 5 U.S.C. § 552a, and the judicially created doctor-patient privilege upon which

⁴The two exceptions to this "pre-emption" clause, omitted from quotation above, are certain IRS documents and records subject to a deed-of-gift.

the Secret Service and the mental-health professionals largely rely.

II. The Records at Issue Contain Information that Typically is a Matter of Public Record

- A. The Secret Service itself has published this same type of information in its publication entitled *The Record*, distributed it to its offices throughout the country, and has transferred back copies of *The Record* to the National Archives.

[Insert by Kim]

- B. **Mental-health Commitment Records Typically are a matter of Public record.**

After the Review Board was advised that the Secret Service intended to appeal the Board's decision, it selected two-dozen names from among those whom the Secret Service is seeking to protect. The Board then researched what information about these individuals is already a matter of public record in the District of Columbia. The Board requested the files from the Mental Health Docket of the U.S. District Court, which are now available for research at the Federal Records Center in Suitland, Maryland. The records from that docket show that more information is already available to the public than the Secret Service now wishes to protect. This can be seen by comparing the information in the records at issue (on the left below) with the information that is already a matter of public record (on the right).

Information in ARRB Ex. __	Public Commitment Record
[leave blank]	[inset]

[insert of several examples by Kim]

- C. **Some of the information voted to be released by the Board was opened previously at the National Archives.**

[Insert by Kim]

- D. **Release of the Information is in the Public Interest.**

Without having examined the records at issue, the mental-health professionals frequently opined that they contained no useful information about the assassination.⁵

[Insert by Kim]

WC and Oswald as mental case

What did WC and HSCA say about SS

Other investigations of SS

Some names are important

What the US government focuses on and doesn't focus on is relevant

Cases and laws cited by SS regarding confidentiality are irrelevant -- put in an appropriate place in a footnote.

no identifiable constitutional right

JFK Act trumps all other laws [Section 11(a)]

⁵One professional took the rhetorical leap of comparing the Review Board's action in voting to open the records to Oliver Stone's creating the movie *JFK*. Of course it was the Secret Service, and not the Review Board, that first identified the individuals at issue as potential threats to the life of President Kennedy. The Review Board, unlike Oliver Stone, and apparently unlike Dr. _____, is professionally neutral on the ultimate questions of the assassination.

III. Damage to the Secret Services Operations

- a. It is well publicized that SS obtains info from mental health community. The general cooperation is known and supported by the mental health community.
- b. What may not be known is which doctors told what about which patients. But the Review Board is not releasing this type of information.
- c. opinions by experts were based on misunderstanding of the records at issue

SS already releases this kind of information: the only thing new is names
- d. the damage to the SS was created not by the Review Board's actions, but by the SS going to the mental health community and exaggerating and mischaracterizing the info at issue. To the extent that the mental health community believes that very sensitive information is being released and that the SS can't protect it -- it is the SS that has created widespread misapprehension problem.

Unfortunately, the Secret Service has performed a fundamental disservice not only to the reputation of the Review Board -- which did not do what the Secret Service has apparently advertised broadly to the mental health community -- but to itself. The Review Board simply voted to release the type of information that is frequently in the public domain and the very same type of information that the Secret Service itself has published and opened to the public.

After lighting the fire and then pouring gasoline on it, the SS now argues that it is the victim.

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May 15, 1998

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