MEMORANDUM TO THE PRESIDENT

I. The Secret Service failed to meet its burden of "clear and convincing evidence" for postponement of this information, pursuant to the JFK Act.

Congress was unambiguous in its requirement that agencies seeking to postpone information pursuant to the President John F. Kennedy Assassination Records Collection JFK Act of 1992, 44 U.S.C. Sec. 2107 ("JFK Act") must submit "clear and convincing evidence" in support of postponements. The JFK Act sets forth only a limited number of grounds for postponement of public disclosure of records. See JFK Act §§6, 9(c)(1). Unlike other federal agencies that have sought the postponement of information (such as the FBI and the CIA), the Secret Service failed to produce clear and convincing evidence as to why the names in the documents should be postponed under any of the provisions of Section 6 of the JFK Act.

The JFK Act requires that when an agency is seeking postponement of information, it must produce "clear and convincing evidence" with respect to each assassination record. Although the Secret Service made some effort to determine whether or not the individuals were living or dead, it did not produce any other evidence with respect to *any* of the names it was seeking to protect. At no time did the Service produce evidence as to why a particular individual would suffer an invasion of privacy. Nor did they offer evidence as to the existence of any confidentiality agreements between the Service and any individual or medical professional. Further, the Service failed to show, pursuant to the requirements of Section 6(5), how release of any of these names would "reveal a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service.."

Instead, the Service relied entirely on policy arguments in support of their requests for postponement of the names at issue. While the policy arguments made by the Service may have some overall appeal, they are irrelevant to the issue of whether or not the Service met its statutory burden for the postponement of these names. The Service cannot shirk its clear responsibility to produce clear and convincing evidence with respect to each of the individuals at issue.

II. In response to the Secret Service's policy arguments, the Review Board demonstrated that much of the information the Service is seeking to protect, is already publicly available - thus undercutting its privacy arguments.

Much of the type of information that the Secret Service is seeking to protect has already been made publicly available. As the Review Board noted in its Reply Brief, the Service has already released to NARA, other documents containing similar information. Further, the Secret Service has not denied that a large portion of commitment-type information is available to the public.

In addition, the Secret Service's latest attempt to claim that <u>The Record</u> has not been opened,

ignores the facts. In 1981, the Secret Service submitted a form 258, that transferred its volumes for 1938 - 1958 of The Record to the National Archives without *any* restrictions whatsoever. These records have been open and available to the public for the past seventeen years. [1] In 1978, a different law governed restrictions on this type of information. Thus, even if the Service had never opened these records in its 1981 document, an entirely different set of exemption standards would be applicable to the information contained in The Record. Under the FOIA law, whether or not an agency's request for an exemption is granted is ultimately determined by the National Archives. With respect to the information in The Record, it is highly likely that the archivist would agree to release this material. This would be a reasonable position, given the age of the records, their historic significant, and the fact that they *do not* contain lengthy treatment information about the individuals' mental health.

More importantly, the information in The Record has already been opened.
Cite Executive Order by way of analogy

III. These names are significant and related to the history surrounding assassination of President Kennedy.

A. These documents contain the names of people that the Secret Service and the HSCA had identified as potential threats to the President.

Contrary to what the Secret Service continues to maintain, the individuals at issue were considered by the Secret Service to be potentially threatening to the President. Eileen Dinneen, the researcher who prepared these documents, described the "Threat Sheets" contained in RIF # 180-10065-10379 as follows: "Upon Team IV's request for all files involving potential threats to President Kennedy's safety, 413 computer printout were released for review." (Footnote re: Exhibit 3 given to Bill Leary). Indeed, the entire focus of Dinneen's study is on how the Secret Service evaluated threats to President Kennedy in the months preceding and immediately after his death. Further, the fact that the PRS investigated individuals who were threatening to the President, had been a matter of public knowledge since the days of the Warren Commission.

B. The American people have a right to know who was contained in the Protective Research files of the Secret Service.

Although the Secret Service makes much of the fact that "It is important to note that upon investigation, the majority of these individuals were evaluated as not of protective concern." In stating this, the Service fails to acknowledge several facts: *First*, the individuals whom the Secret

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[1] The Service's reliance upon its 1978 correspondence with the National Archives is unavailing.....

Service did or did not deem to be of protective concern, is extremely important to understanding the Service's protective methodology - a methodology that has been repeatedly criticized by every single entity that has conducted an inquiry into the assassination of President Kennedy. *Second*, the public's interest in the names of the individuals that were among those the Secret Service considered threatening to the President is not "negligible and remote" as is argued by the Service. These names were in these files because the Service felt that they were potentially threatening to the President. The fact that subsequent investigation may have ruled out some of these individuals as potential threats, is also of historical importance.