

## 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 staff members of the House Select Committee on Assassinations. These records pertain to people who were identified by the Secret Service as potential threats to President Kennedy, Johnson and other Secret Service protectees between March and December 1963. The five documents typically include the names of individuals who were identified as threats, 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 additional identifying characteristics such as "schizophrenic," "alcoholic," or "member of John Birch Society." The documents also contain information regarding referrals from other agencies, such as the F.B.I., Postal Service, Veterans Administration, etc. (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.<sup>1</sup>)

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<u>Ex. No.</u>	<u>RIF Number</u>	<u>Description</u>
1	180-10065-10379	Dinneen's prepared "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" also created by Dinneen) (Contains information from protective surveys prepared for President's Kennedy's trips, and information from Protective Research files)
3	180-10147-10275	Eileen Dinneen memorandum March 29, 1978 "Secret Service Index File and Commission Documents United States Archives" 20 pp. plus 11 page attachment



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").<sup>2</sup> 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 eight letters by noted professionals in the field of mental health. (USSS Exs. 3-10)<sup>3</sup>

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 the 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, and not disclosing their own prior action in releasing this type of information on individuals, the Service has now drawn attention to their lax efforts*

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<sup>2</sup>The Review Board's "formal determinations" to open these materials in full 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.

<sup>3</sup>It 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, the Secret Service refers to its initiatives in effort to comply with the "priorities articulated by the White House Security Review Committee." At no time during any of its presentations to the Review Board did the Service make mention of its efforts with respect to the recommendations of the White House Security Review Committee.

*at protecting this information.*

Because the type of information that the Board voted to release is, in many cases, already a matter of public record, and because the Secret Service itself identified the persons at issue as potential threats to the assassinated 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 pertain primarily to individuals whom the Secret Service's Protection Research Section perceived as potentially threatening to the President, Vice President, and their families during the period of March - December, 1963, and how were classified as "protective cases." Document 180-10087-10302, consists of Eileen Dinneen's review of the Service's "Protective Survey Reports" (otherwise known as "Trip Files") for the President's trips during 1963.

The Protective Survey Reports prepared by the Service during the Kennedy administration, routinely contained information about individuals thought to be residing in the area the President was visiting, who were thought to be potentially threatening to the President. The Review Board has released all of the 1963 Protective Surveys (that were still in existence at the Archives), and thus all of the names that the Secret Service is seeking to postpone in this document are open to the public. It should be noted that in 1993, the Secret Service destroyed some of the Protective Surveys from the 1963 time period, in clear violation of the JFK Act. Thus, Dinneen's memorandum is of particular historical significance since it is the only remaining source of what was contained within the Protective Surveys. (NOTE: Discuss with Jeremy)

Record 180-10147-10275, documents Dinneen's review of Secret Service materials within the Warren Commission records that were accessioned to the National Archives in the late 1960's. All of the names that the Service are contesting are already open to the public. These names appear in index cards, and in documentation comports with Dinneen's description of them in this memorandum. See attached.

The additional three documents pose the basis for the Secret Service's primary objections. Document 180-10065-10379 constitutes brief summaries of 413 protective cases ("Threat Sheets") established by the Secret Service between March and December, 1963. The Secret Service provided information on these protective cases to the HSCA staff in 1978, representing that they were all potential threats to the President, Vice President, and other Secret Service protectees between March and December 1963. Each individual identified as a potential threat is listed on a single "Threat Sheet, created by Dinneen. For each of the individuals, Dinneen included some type of

information about what it was about the individual that sparked the Secret Service's interest in them as a potential threat to the President. In certain cases, the Threat Sheet contains a brief description of an incident (e.g. thwarted White House visitor returned to ram his truck through the White House gate and onto the grounds of the White House.) Many of the Threat Sheets contain comments about a person's mental health, such as "schizo-paranoid" and/or "previously hospitalized." In certain cases, the Threat Sheets make reference to organizational or political affiliations of these individuals. None of the documents provide any of the standard identifying information such as dates of birth, Social Security Numbers, street addresses, or detailed physical descriptions of the persons. All of the documents were compiled by HSCA staffers, and represent their interpretation of what appeared in the Secret Service files they were shown.

With respect to the mental health information, none of the documents contain therapy notes, or direct quotes from doctors. While reference to input from doctors is mentioned in approximately nine of the "threat sheets", no mental-health professional is identified, and no identifiable doctor-patient communication is included.

As even a cursory examination of ARRB Exs. 1, 4-5 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. These records **do not** contain information which squares with the doctors' characterization of them..... Contrary to what the doctors have opined in their letters..... (See USSS Exs. 3-7). 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).

**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).<sup>4</sup> Thus the JFK Act supersedes both the Privacy Act, 5 U.S.C. § 552a, and the judicially created doctor-patient privilege upon which the Secret Service and the mental-health professionals rely in support of their arguments.

**II. The Secret Service has not met its burden of proving by clear and convincing evidence that release of the names in these documents should be postponed pursuant to Sec. 6(3) of the JFK Act as an unwarranted invasion of privacy.**

**A. The Secret Service itself has listed this same type of information in its publication entitled *The Record*, distributed it to its offices throughout the country. The Secret Service has transferred back copies of *The Record* to the National Archives (through 1959), and has represented to the Review Board that it will open its copies of *The Record* to the public for the years 1960 - 1964.**

Until the late 1970's, the Secret Service circulated, on a weekly basis, a publication meant for Secret Service employees. Each of these publications contained a section entitled,

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<sup>4</sup>The two exceptions to this “pre-emption” clause, omitted from quotation above, are certain IRS documents and records subject to a deed-of-gift.

“Protection of the President.” Examples of these are attached as Exhibit X. The information contained in the “Protection of the President” section of this publication is the exact sort of “stigmatizing” information the Service is now seeking to protect from release. Moreover, these entries contain information about a person’s age, street address, occupation, physical description, family members’ names and addresses. Along with information about an individual’s suicide threats, dangerousness, weapons possession, criminal convictions, etc., these materials contain the following types of information (that is identical to the material which the medical doctors have expressed outrage over):

(1) Highly Embarrassing Information

“An apparent mental case, suffering from a persecution complex and claims that he is being bothered by electric rays and dope injections.”

(2) Descriptions of Physical Incapacities

“Metal plate over brain; both arms imperfect due to accident and surgery; resides at.....subject is of record as a mental case due to an automobile accident which caused injury to brain.”

(3) Information Received from Doctors

“VA psychiatrists have stated that he is not dangerous.”

(4) Mental Health Diagnoses

“Psychotic and suffering from acute delusions of persecution”

(5) Highly Personal Family Information

“R.M.S. has suffered mental lapses since the death of his son in 1954 and has been hospitalized several times since that date..”

(6) Previous mental h history and hospitalizations

“...previous commitment. The diagnosis at that time was schizophrenic reaction, chronic, undifferentiated type.”

Further, the Service has represented to the Review Board that it will transfer The Record for the period 1960 - 1965 to the National Archives. However, we have not been able to resolve the logistical issue of how to copy the Record or to provide for their view by the public, since they are still being used by the Secret Service. However, excerpts of some of the pages of The Record from 1963 reveal that the names the Service is now seeking to protect. Also, an inspection of these volumes reveals that some names listed as a potential threat in The Record, do not appear to be among the names given to Dinneen by the Secret Service.

**B. Mental-health Commitment Information is Typically 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 jurisdiction in which a majority of these individuals were committed. 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 for each of these cases, 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]

**C. The Service has taken inconsistent positions with respect to the material it is seeking to protect and willing to release.**

The Service has indicated it is willing to release some of the names along with the data about private matters. In taking this position, they have eroded any Invasion of Privacy arguments they now seek to make. Cite examples from SS Nov. 1996 correspondence "uncontested" vs. "Contested" Further, in instances where the Review Board has released similar types of information, the Service has failed to appeal the Board's decision. (See 154-10002-10353 - re: Subject No. 164).

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

Documents already released by the HSCA as well as by the Secret Service already include detailed medical information on persons suspected of threatening President Kennedy. (Thomas Vallee: 180-10080-10153; 180-10080-10102; 180-10080-10100; 180-10080-10099; 180-10080-10111; 180-10080-10090; 180-10080-10080; 180-1008010079. See also JFK Exhibit #74 (180-10110-10279) (open at NARA) See also the report on John Warrington (180-10118-10041). These documents provide examples of where information regarding mental health and Secret Service contacts with medical professionals appears in open documents.

**E. Release of the Information is in the Public Interest, and outweighs privacy concerns.**

Incredibly, the Secret Service has insisted that these records are in no way connected to the Kennedy assassination, other than "the proximity of time in which they came to the attention of the Secret Service." The Secret Service obviously communicated their position to the mental health providers who provided letters in support of the Service's position, since these letters essentially mimic this opinion. Further, the mental health professionals have apparently made this assertion without having examined in full any of the records at issue.

The Service's position is patently false. Pursuant to the letter and spirit of the JFK Act, these records are directly related to the assassination of President John F. Kennedy. The JFK Act defines public interest being served to be the "compelling interest in the prompt public disclosure of assassination records for historical and governmental purposes and for the purpose of fully informing the American people about the history surrounding the Assassination of President John F. Kennedy." 44 U.S.C. Sec. 2107 Sec. 3(10). The Review Board has traditionally defined "assassination records" broadly, with an eye towards fulfilling its obligations to the public under the JFK Act.

There can be no dispute that the records the Review Board is seeking to release in full are important to understanding the Assassination of President Kennedy. This is particularly true, given the fact that they relate to the agency vested with primary responsibility for protecting the life of the President. For the reasons discussed below, an examination of the efforts conducted by the Secret Service to protect the President both prior to and immediately after the assassination of JFK, are essential to an understanding of the assassination story.

**(1) Warren Commission and HSCA criticism of Secret Service's role in Protecting the President.**

Warren Commission and subsequent official inquiries have focused on the performance of the Secret Service, in an effort to understand why the tragic assassination of JFK occurred, and how to prevent another such occurrence. The documents at issue, demonstrate the HSCA's concern about the Secret Service's protective efforts. The main target of the Warren Commission's criticism focused on the Secret Service's protective efforts. The HSCA also leveled criticism at the Secret Service in relation to their protective efforts. Thus, an examination of the full context of the Service's efforts, is essential to an historical understanding of the role played by the Secret Service in the assassination story.

**(2) These records demonstrate the manner in which the Service Focused its Resources.**

Dinneen's reports provide insight for researchers interested in the effectiveness and scope of the Secret Service's presidential protective efforts.

**(3) Some of the names contained within these records are historically Significant and/or may become Historically Significant.**

The Threat Sheets and memoranda at issue include names of individuals already publicly identified as of interest to the Protective Research Section: John Warrington, Thomas Vallee, Thelma King, Richard Case Nagel, and Lee Harvey Oswald.

**(4) The fact that certain names don't appear in the Threat Sheets, is Important to the Assassination Story.**

As Eileen Dinneen observed in her memorandum at 180-10147-10274, her review of the JFK Assassination Files at the National Archives revealed that J. Edgar Hoover had written a memo to J. Rankin stating that "the FBI had fed the Miami and Dallas Secret Service offices information pertaining to a Norman Lee Elkins. Dinneen's review of the 413 "threat files" failed to reveal the presence of any information on Elkins. As Dinneen points out, this calls into question the "accuracy of Hoover's statement or (sic) "the standards set by the Secret Service to begin a file on a potentially threatening individual."

(5) The identity of the names are important for comparison purposes with the names that appeared in other agencies' files, such as the CIA and FBI, and the dates that these names appeared in their files.

(6) Release of some names and not others would invite suspicion from the public as to the identities of the non-released names, and would leave unanswered questions - something the JFK Act is specifically designed to prevent. All perceived potential threats to President Kennedy should be a part of the historical record.

(7) Information pertaining to mental health history, etc, is relevant because of the fact that subsequent investigations determine that Oswald had documented mental health issues, and had allegedly, previously tried to commit suicide. Thus, what the Service knew with respect to mental health information on each of these individuals they considered a threat to the President, is historically significant.

(8) Dinneen chose to record the names - they are an integral part of her study and thus, of the historical record. These three documents are interrelated as research materials compiled and presented by HSCA researcher Eileen Dinneen, and they should be viewed as a coherent project intended to analyze Secret Service protection for President Kennedy. Researchers should be able to cross-check the names that appear in the different documents, with other historical materials.

**F. 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)]

**(III) The Secret Service has not met its Burden pursuant to Sec. 6(4) and 6(5) of the JFK statute, or proving that release of these names compromises an understanding of confidentiality, and/or reveals a protective measure currently utilized by the Secret Service.**

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.

1. Robert Bouck's Testimony before the Warren Commission
2. Interviews of SS Agents before HSCA
3. Publications of the Service in conjunction with the mental health community.
4. John Warrington file
5. In certain instances, newspaper accounts.

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.

What the Service fears is a chilling effect on its relationship with the mental health community. Yet none of the documents at issue here mentions any name of a doctor or member of the mental health community. Only target individuals are listed in the Threat Sheets - and in a very few instances, "informants" who are not identified by name.

C. opinions by experts were based on misunderstanding of the Secret Service's practice with regard to releasing this type of information

D. The Service has failed to produce evidence of any confidentiality agreements or promises with doctors or subjects mentioned in the Threat Sheets.

E. The damage to the Secret Service's relationship with the mental health community was created not by the Review Board's actions, but by the SS

seeking out the mental health community about this issue, and then failing to be honest about what type of information they had already released. 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. While they argue that release of this information will be evaluated in the context of current laws, regulations and present legislative agenda, this is not our problem. They drew attention to this without doing their homework.

- F. If, as asserted by the Secret Service and in the letters of the mental health professionals, the release of this information will result in decreased cooperation between the medical community and the Service, then this is a problem created entirely by the Service. The documents at issue here are unique, and important to an understanding of history - an effort at understanding that uniquely, has been mandated by Congress. It is difficult to believe that the mental health community is to base its decision not to inform the Service of potential threats to the President on the release of these few names. This would contravene ethical and moral principles, and appear antithetical to the practice of reasonable doctors.

#### IV. Conclusions

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.

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to the Review Board's  
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May 15, 1998

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