

## 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, based on their review of Secret Service files. These records pertain to people who were identified by the Secret Service as potential threats to President Kennedy, Johnson and their families 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 additional background information about the individual. The documents also contain information regarding referrals to the Secret Service from other agencies, such as the F.B.I., Postal Service, Veterans Administration, etc., with respect to their concerns about these individuals. (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

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- 4            180-10147-10274 Eileen Dinneen memorandum October 19, 1978  
                  Secret Service Protective Cases  
                  22 pp. plus 3 Appendices [complete version of  
                  "180-10103-10465" below]
- 180-10103-10465 Eileen Dinneen memorandum October 19, 1978  
                  "Secret Service Protective Cases"  
                  19 pp. [incomplete version of "180-10147-10274" above]

The first exhibit is a 413-page document that consists of "Threat Sheets" prepared in 1978 by Ms. Eileen Dinneen, a staff member of the U.S. House of Representatives Select Committee on Assassinations. The remaining documents are memoranda and supplemental material prepared by Dinneen and other HSCA staff members.

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 classified as "protective cases."

Exhibit 2 consists of Eileen Dinneen's review of the Secret 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 and Johnson administration, routinely contained information about individuals thought to be residing in the area the President was visiting, who were identified as potentially threatening to the President. The Review Board has released all of the 1963 Protective Surveys (that were accounted for 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 that records the information that was contained within the Protective Surveys.

Exhibit 3 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, when they were made available to the public. All of the names the Service is contesting appear in the Index Files and Records contained at the archives. See Attachment for examples.

The additional three documents pose the basis for the Secret Service's primary objections in their Appeal. Exhibit 1 consists of brief summaries of 413 protective cases ("Threat Sheets") established by the Secret Service between March and December, 1963. All of the Threat Sheets were compiled by Dinneen and represent her interpretation of what appeared in the Secret Service files. Dinneen assigned each subject of a protective case a number, and created a "Threat Sheet" to describe the information found on that individual in the Secret Service's file. For each of the individuals, Dinneen included some type of information about what drew them to the attention of the

Secret Service, as a potential threat to the President. Certain threat sheets contain a brief description of an action on the part of the subject that the Secret Service considered threatening (e.g. subject climbed the fence at the White House.) (CITE TO EXHIBIT ) Many of the Threat Sheets contain comments about an individuals' mental health, such as "schizo-paranoid" and/or "previously hospitalized." Several Threat Sheets make reference to organizational or political affiliations of these individuals. None of the documents provide dates of birth, Social Security Numbers, street addresses, or detailed physical descriptions of the persons.

With respect to the mental health information, none of the documents contain therapy notes, or quotes directly attributable to 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 noted.

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, “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

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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.

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 (I'LL PROVIDE CITES TO THE RECORD)

"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 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). NOTE: Should we make this chart an attachment?

Information in ARRB Ex. __	Public Commitment Record
<p>[ Example 1:</p> <p>WH Visitor 9/26/63. Released. At noon same date, he returned to WH with truck and rammed through NW gate. Demanded to see President about communists taking over N.C. Friendly to President.” Paranoid Schizo. Committed from WH 9/63.</p>	<p>Example 1: “At about 10:15 a.m. , September 26, 1963, subject called White House requesting an interview with the President. He stated that Communist was taking over the country, and he wanted the President to know about it. He was not detained.</p> <p>Subject came back to the White House at about 12:10 p.m. this date and drove his pick-up truck through the Northwest gate almost hitting a man on the sidewalk. He drove the truck up the north driveway almost to the White House, before he was stopped by the White House police. The Subject was very nervous. He demanded to see the President. Subject did not appear to be capable of taking care of himself, therefore it was deemed necessary to have him</p>

<p>Example 2:</p> <p>WH Visitor 6/4/63 and 6/5/63. Wanted to see JFK about personal problem.</p> <p>Hospitalized '42, '52, '58 and '63. Schizo. Black. Committed from WH 6/5/63.</p> <p>]</p>	<p>committed to D.C. General Hospital for mental observation.</p> <p>“That subject, a non-resident of the District of Columbia, is of unsound mind suffering from Schizophrenic Reaction, Paranoid Type, is incapable of managing his own affairs and should be committed to a hospital for treatment of his mental condition.</p> <p>Example 2:</p> <p>The above subject called the White House at 4:00 P.M. , 6/5/63 and insisted upon seeing the President concerning a confidential meeting that he believed the President had instructed him to meet with him. w</p>
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**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. For example, while they have cited several objections to release of Threat Sheets on privacy grounds (See Appeal, Attachment 2,), they have agreed to not contest the release of other Threat Sheets which contain data which could be viewed as similarly invasive of privacy. For example, Threat Sheet No. 240 contains the description, “Subject obsessed with idea that her mind

is being bugged.” Threat Sheet No. 83 contains the description, “Alcoholic...continues to be caller with mental problems.” Threat Sheet No. 197 states, “Subject drinks to excess and then places phone calls.”

**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 psychological 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.” (See Appeal, at 5). The Secret Service obviously communicated their position to the mental health providers who provided letters in support of the Service’s position which 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 the 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, and outweigh any privacy concerns. (FOOTNOTE Re: WHALEN v. ROE) 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 President Kennedy, are essential to an understanding of the assassination story.

**(1) The 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 Warren Commission thoroughly criticized the Secret Service's Protective Research Section, finding that the "facilities and procedures of the Protective Research Section of the Secret Service prior to November 22, 1963, were inadequate. Warren Commission Report, p. 432. The Warren Report determined that the Protective Research Section should broaden its scope of individuals it perceived to be threatening to the President. Warren Commission Report at 461. The HSCA also found that "the Secret Service was deficient in the Performance of its duties." House Select Committee Report on Assassinations, Section D.1, at 227 - 233. 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. Release of the names would enable researchers to determine whether the Secret Service made information about individuals who were potential threats to the President, to the Warren Commission. (HSCA at 229)

**(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 Nagell, and Lee Harvey Oswald.

**(4) The absence of certain names from the Secret Service's protective research files is important to a full understanding of the Service's efforts in protecting President Kennedy.**

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. Lee Rankin stating that “the FBI had fed the Miami and Dallas Secret Service offices information pertaining to a Norman Lee Elkins. **(Exhibit 3 at 3.)** 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 names are important for comparison purposes with records of other agencies.**

Release of the actual names of the individuals found within the Secret Service’s protective cases, will enable researchers to compare 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) So as not to invite confusion or further speculation, all of the names should be released.**

The names released should be 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) Investigations of the assassination have revealed that Lee Harvey Oswald had mental illness issues.**

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.**

The three documents prepared by Eileen Dinneen 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 not relevant to the issue of release of assassination records.**

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, of 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.

As early as the Warren Commission, era, the Secret Service has revealed its cooperation with Mental Health professionals in its protection efforts. Robert Bouck, the Chief of the Protective Research Section during the Kennedy Administration, testified to this fact before the Warren Commission. **Testimony of Robert Bouck, W.C. Vol. IV. Pp. 303, 306. The Warren Commission received exhibits that described the Secret Service's criteria for gathering mental health information, and for Commitments. Commission Exhibit 763, 764 W.C. Vol. IV, p. 586, 587.** Other Secret Service agents have told the House Select Committee on Assassinations about the Service's use of mental health information in their protective efforts. (Footnote Interviews of SS Agents before HSCA)

Additionally, the Service has indicated its cooperation with the mental health community in psychiatric journals and publications. (Footnote: Research and Training for the Secret Service: Behavioral Science and Mental Health Perspectives, "A Report of a Committee of the Institute of Medicine" February, 1984, ; Behavioral Science and the Secret Service, Summary and Papers of a Workshop, September 1981; Psychiatric Services, August 1996, Vol. 47 No. 8).

Further, open documents in the JFK collection refer to the fact that the Service relies on the input of mental health professionals in their efforts at protecting the President. Examples of this can be found in the John Warrington and Thomas Vallee files of the HSCA collection.

- 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.

None of the Dinneen documents contains the name of a particular doctor, or member of the mental health community. The individuals identified as a potential threats to the President are named in the Threat Sheets, and in a very few instances, "informants" are mentioned, but not identified by name. Further, although given the opportunity, the Service has provided no evidence of any confidentiality agreements that existed between doctors and the Secret Service, or patients and the Secret Service, with regard to any of the individuals at issue in the documents.

- C. Any damage to the Secret Service's relationship with the mental health community was created not by the Review Board's actions, but by the Secret Service seeking the assistance of 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 Secret Service is violating a pledge of confidentiality and a duty of care with respect to this information, this problem has been created by the Secret Service.
  
- 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 mental health community and the Service, then this is a problem created entirely by the Service. The documents at issue here are unique, and important to a Congressionally mandated understanding of an important era of our nation's history. It is difficult to believe that the mental health community will base any future decision to inform the Secret Service of potential threats to the President, on the release of these names contained among historically significant documents. This would contravene ethical and moral principles, and is 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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May 15, 1998

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