

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 Eileen Dinneen, a staff member of the House Select Committee on Assassinations ("HSCA"), based upon their review of Secret Service files. These records identify people whom the Secret Service's Protective Research Section ("PRS") considered to be potential threats to President Kennedy, Vice-President Johnson, and their families, between March and December 1963. The five documents typically include an individual's name, the circumstances that brought him or her to the attention of the Secret Service (*e.g.*, "critical remarks regarding JFK . . . member of the John Birch Society . . . owned weapons"), and sometimes additional background information. The documents also contain some information provided to the Secret Service by other agencies, including the FBI, Postal Service, and the Veterans Administration. Copies of the records subject to the appeal are attached hereto as Exhibits 1-4 (one of the records is a duplicate). The appealed records are described more thoroughly in section A below.

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").¹ 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 this information is *first*, an "unwarranted invasion of personal privacy," and *second*, the decision is 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.

¹The 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.

USSS Exs. 3-10.²

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

First, two of the appealed documents consist essentially of notes that were taken on records that have been opened in full to the public;

Second, the evidence unmistakably shows that the Secret Service itself previously published and made available to the public exactly the same type of information, including names, that it now opposes releasing on privacy grounds;

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

Fourth, by actively soliciting support for their appeal from the mental-health community, and by not disclosing to the mental-health community that it has itself released exactly the same type of information for which it is now criticizing the Board, the Secret Service has itself created whatever problem, however unlikely, that would result from the release of the information.

²It should be noted that these letters were *not* provided as evidence 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 efforts to comply with the new "priorities articulated by the White House Security Review Committee." At no time during any of its presentations to the Review Board did the Service explain its efforts with respect to the recommendations of the White House Security Review Committee. The Review Board believes that any relevant information should have been provided to the Review Board in a timely manner.

As will be shown below, the Secret Service has not satisfied its statutory burden of providing “clear and convincing” evidence against the release of the information or of showing that these are among the “rarest of cases” where information can be “postponed.”³ Indeed, the evidence will show that this type of information has frequently been opened to the public and that the Secret Service itself has opened up this type of information. Therefore, the five documents should be opened in full and transferred to the National Archives.

A. Description of the Records at Issue.

The five records at issue, which were created by HSCA staff member Eileen Dinneen, can be described as follows.

<u>Ex.</u>	<u>RIF Number</u>	<u>Description</u>
1	180-10147-10275	Eileen Dinneen memorandum March 29, 1978 “Secret Service Index File and Commission Documents United States Archives”
2	180-10087-10302	Eileen Dinneen memorandum March 24, 1978 “Review of JFK Trip Files for 1963”
3	180-10065-10379	“Threat Sheets” prepared by Eileen Dinneen ⁴
4	180-10147-10274	Eileen Dinneen memorandum October 19, 1978 ⁵

³“Postponed” is a term of art for “redaction” in the JFK Act. It signifies that, at best, the release of the information may not be postponed past the year 2017.

⁴Selected pages are attached hereto; the entire document is being submitted separately.

⁵The 413 Threat Sheets in Exhibit 3 were prepared by HSCA staff member Eileen Dinneen, based upon her review of computer print-outs of the protective case files that were established by the Secret Service between March and December, 1963. Exhibit 4 consists of Dinneen’s independent analysis of the information in the Exhibit 3 Threat Sheets. For practical purposes, therefore, the personal information in Exhibits 3 and 4 is duplicative. In preparing the materials, 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. Some 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 s fence at the White House). Many of the Threat Sheets contain comments about an individual's mental health, such as "schizo-paranoid" or "previously hospitalized." Several Threat Sheets make reference to organizational or political affiliations of these individuals. None of the documents provides dates of birth, Social Security Numbers, street addresses, or detailed physical descriptions of the persons.

Secret Service Protective Cases
[complete version of "180-10103-10465" below]

180-10103-10465 Eileen Dinneen memorandum October 19, 1978
"Secret Service Protective Cases"
[incomplete version of "180-10147-10274" above]

The five documents at issue pertain primarily to individuals whom the Secret Service's PRS perceived as potentially threatening to the President, the Vice President, and their families during the period of March - December, 1963, and classified as "protective cases."

Even a cursory examination of ARRB Exhibits 1-4 will show that the information about individuals consists of short, summary statements that do not on their face identify the source of the information or provide any in-depth discussion of the issues. This information, although obviously personal, is not the type of information typically described (and objected to) by the mental-health professionals solicited by the Secret Service and attached as Exhibits 3-7 of its Appeal. Based upon their descriptions, it would appear the mental-health professionals had initially 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 Dr. Slovenko).⁶ With respect to the mental health information, none of the

⁶There are similar examples from other USSS Exhibits 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.*)

Because these and other characterizations of the documents appeared to be so much at odds with the documents on which the Board had acted, the Review Board sought clarification from the Secret Service as to what had been told to the professionals. The Secret Service thereupon collected

documents contains therapy notes or direct quotations from doctors. While there are reference to doctors in approximately nine of the Threat Sheets, no mental-health professional is identified, and no doctor-patient is identified.

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.”

JFK Act § 2(a)(2). Indeed, “only in the rarest cases is there any legitimate need for continued protection of such records.” JFK Act § 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. JFK Act §§ 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).

additional statements from the professionals that contained descriptions of the records at issue that were far more accurate. As will be shown below, however, the information that the revised professional’s statements are now discussing is exactly the type of information that the Secret Service has itself released -- apparently without informing the professionals.

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).⁷ 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.⁸

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 Source of the Information for ARRB Exhibit 1 Is In the Public Domain.

Exhibit 1 is a report written by Dinneen that describes her review of Warren Commission records at the National Archives. The underlying records that are the source for her report are all open in full to the public. *See* ARRB Ex. 5. The Secret Service cannot and does not explain why a secondary source should be postponed when the primary source is open to the public. The Secret Service certainly does not provide the “clear and convincing” evidence in support of this implausible suggestion.

B. The Information upon Which ARRB Exhibit 2 is Based Is in the Public Domain.

⁷The two exceptions to this “pre-emption” clause, omitted from quotation above, are certain IRS documents and records subject to a deed-of-gift.

⁸The Secret Service argues that release of these names would contravene the holding and principles articulated by the Supreme Court in *Jaffe v. Redmond*, 518 U.S. 1 (1996). Appeal at 7. In *Jaffe*, the Court created a psychotherapist-patient privilege under the Federal Rules of Evidence, and held that communications occurring between a clinical social worker and her patient were protected from compelled disclosure under this new privilege. *Id.* The *Jaffe* decision is inapplicable to the facts of this appeal. The Review Board is not seeking to compel disclosure of any doctor-patient privileged communications. To the extent any of the information contained in the Dinneen summaries was derived from a doctor-patient consultation, any claim of privilege has long since been waived by disclosure to the Secret Service. Further, the Secret Service has not produced any evidence of a confidentiality agreement involving any of the subjects listed in the disputed materials.

Exhibit 2 is a report by Eileen Dinneen that is based on her 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 administration routinely contained information about individuals thought to be residing in the area the President was visiting and who were identified as potentially threatening to the President. All of the extant Protective Survey Reports on which Dinneen based her memorandum are now open in full at the National Archives. See ARRB Ex. 6. Unfortunately, not all of the Protective Survey Reports have survived.

As the Secret Service has elsewhere acknowledged, it destroyed several of its 1963 Protective Survey Reports in 1993, despite the fact that such destruction was expressly prohibited by the JFK Act. Thus the extant records are open-in-full; the missing records were improperly destroyed by the Secret Service. The Secret Service's Appeal provides no explanation whatsoever to explain these discrepancies and anomalies in its position.

If anything, Dinneen's memorandum is of heightened historical significance since it is the only remaining source that records the information that was contained within the shredded Protective Surveys.

C. The Secret Service Has Published and Released to the Public The Same Type of Information it Now Seeks to Postpone

Beginning in 1938, the Secret Service published, on a nation-wide basis, a weekly periodical for Secret Service employees entitled *The Record*. By the late 1950s, each issue of *The Record* contained a section entitled "Protection of the President." See ARRB Ex. 7. The information contained in the "Protection of the President" section is similar to the information that the Board voted to release and the Service is now seeking to postpone. Indeed, many entries in *The Record* often contain much greater information about a person's age, street address, occupation, physical description, family members' names, and addresses. The publication also includes revealing information about an individual's suicide threats, dangerousness, weapons possession, and criminal convictions, as an examination of Exhibit 8 shows.⁹ In other words, the Secret Service published the

⁹Some representative samples include the following types of information:

KIM INSERT NAMES -- DON'T BE SHY ABOUT IT!

Characterizations of mental competence based on subject interviews: "[H]e is an apparent mental case, suffering from a persecution complex and claims that he is being bothered by electric

very types of information that it seeks to postpone.

The Secret Service not only published this information, it subsequently transferred all volumes printed between 1938 and 1959 to the National Archives. These volumes of *The Record* have indeed been open to the public at least since 1981. See ARRB Ex. 9 (letter from David Pfeiffer to David Marwell, Dec. 10, 1996). With respect to the volumes for the years 1960-64, the Secret Service originally advised the Review Board, on July 10, 1996, that those volumes also were available at the National Archives. (Letter from Jane Vezeris to David Marwell, July 10, 1996, p. 2 -- copy on file). When the Secret Service was advised that *The Record* for the 1960-64 period was not at the Archives, it replied, in a December 10, 1997 meeting, that the Review Board could make its own copy of *the Record* and transfer it to the Archives. The Review Board did make some copies of relevant portions of *The Record* for those years, examples of which are attached as Exhibit 10.

D. Mental-health Commitment Information Typically Is a Matter of Public Record.

The Secret Service and the mental-health professionals have asserted that the information that is the subject of this appeal is typically non-public. In order to test that assertion with regard to information in ARRB Exhibits 3-4, the Review Board selected several names from among those

rays and dope injections." *The Record*, Vol. 22, No. 35, Feb. 27, 1959, at 3.

Previous mental history and hospitalizations: "previous commitment. The diagnosis at that time was schizophrenic reaction, chronic, undifferentiated type."

The Record, Vol. 22, No. 43, Apr. 24, 1959, at 3.

Descriptions of physical incapacities: "Metal plate over brain; both arms imperfect due to accident and surgery" "the subject is of record as a mental case due to an automobile accident which caused injury to his brain." *The Record*, Vol. 22, No. 32, Feb. 6, 1959, at 3.

Information Received from Doctors: "VA psychiatrists have stated that he is not dangerous." *The Record*, Vol. 22, No. 42, Apr. 17, 1959, at 5. "The committing magistrate ordered him examined by two police physicians who found him to be psychotic and suffering from acute delusions of persecution." *The Record*, Vol. 22, No. 36, Mar. 6, 1959, at 3.

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." *The Record*, Vol. 22, No. 39, Mar. 27, 1959 at 6-7.

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 for mental-health observation. The Board requested files from the Mental Health Docket of the U.S. District Court, which are 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).

Example 1: Doyle Allen Hicks

<p>Information about Doyle Allen that would be available if the Dinneen information were released. See ARRB Ex. ___.</p>	<p>Information that is already in the public record about Doyle Allen Hicks. See ARRB Ex. ___.</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>Doyle Allen Hicks</p> <p>"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 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>

Example 2: Marshall Douglas

Information about Marshall Douglas that would be available if the Dinneen information were released. See ARRB Ex. ____.	Information that is already in the public record regarding Marshall Douglas. See ARRB Ex. ____.
<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>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. Subject had a 4" blade knife in his possession which was taken from him. His white shirt was seared with dried blood, and he stated he had fallen accidentally on the knife at his Hotel room. . . . It was deemed advisable to commit him to DC General Hospital for mental observation. . . . He is single & lives alone at 372 E. 10th St.; NYC. . . . He stated he was in Kings County hosp. NYC in 1958 for a nervous disorder. He is colored."</p> <p>"Diagnosis: Schizophrenic reaction, undifferentiated type."</p>

As is readily apparent, with just these two examples, the information that is in the public domain is far more revealing than the information the Secret Service is seeking to postpone. The Review Board would be pleased to make available for the inspection of either the President or the Secret Service additional examples that it has obtained.

In any case, the burden is not on the Review Board to show that the information is in the public domain; the burden rests with the Secret Service to prove by "clear and convincing evidence" that the information should not be opened. Rather than providing any specific information on any of the individuals, the Secret Service has offered only policy reasons for protecting privacy. As is abundantly clear, the "privacy" argument is flatly inconsistent with not only with magnitude of the records that have been opened, but with the Secret Service's actions to open them.¹⁰

¹⁰There are other instances of the Secret Service's inconsistency that are worthy of note.

For example, while it has cited several objections to release of Threat Sheets on privacy grounds (*see* USSS Ex. 2), it has not contested the release of other Threat Sheets containing data that 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." **KIM--YOU NEED TO**

SHOW WHERE THE USSS HAS AGREED TO OPEN THESE THREAT SHEETS.

G. The Records are Relevant to the Assassination and the Release of the Information is in the Public Interest

The Secret Service and the mental-health professionals insist that these records are not relevant to the Kennedy assassination and that their release outweighs the public interest. But the JFK Act itself has already defined "the public interest" in a way that is much more expansive than the Secret Service and the mental-health professionals recognize. The Act itself defines the public interest as 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." JFK Act § 3(10). Thus it is presumed by the statute that the public has an interest in being fully informed about the records.

But it is not simply the JFK Act and the Review Board that presume the importance of these records. It is indisputably clear that, in 1963, the Secret Service itself believed that the names and identifying information in these records was relevant and important for protecting the life of President Kennedy. After the assassination, the Secret Service transferred many of the underlying records to the Warren Commission for its official investigation. It is also clear that the House Select Committee on Assassinations, an official investigative body of the United States government, believed that these records were worth a substantial amount of time and effort to analyze and consider.

Thus it is not the Review Board that initially identified these records as relevant -- although the Review Board fully concurs with prior assessments -- it was the two official investigations of the assassination of President Kennedy that deemed them relevant. With all due respect to the Secret Service and the mental-health professionals, the Review Board believes that it and the prior investigative bodies are in a better position to make such relevancy determinations and are in a better position to evaluate the public interest in the documents. Moreover, issues related to mental health and the Secret Service's handling of information related thereto go to the core of several issues at the heart of the Kennedy assassination.

The Warren Commission and HSCA criticized the 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 assassination of President Kennedy occurred, and how to prevent another such tragedy. The documents at issue, demonstrate the HSCA's concern about the Secret Service's protective efforts. The fact that the HSCA requested to see these documents reflected their concern about the possible failures of the protective efforts in place during the Kennedy administration. Further, the HSCA specifically stated that one of the

reasons they requested these records was to verify that the Secret Service had supplied the Warren Commission with all of the information in its files pertaining to individuals who were threatening the President. Report of the Select Committee on Assassinations, H.R. Rep. No. 95-1828, 95th Cong., 2d Session, at 229. ("HSCA Report").

The Warren Commission determined that the "facilities and procedures of the Protective Research Section of The Secret Service prior to November 22, 1963, were inadequate." *The Warren Commission Report: Report of the President's Commission on the Assassination of President John F. Kennedy*, at 432 (1964). Further, the Warren Commission found that the Secret Service needed to broaden the number of individuals they considered as threatening to the President. *Id.* at 461. The HSCA also found that the Secret Service was deficient in the performance of its duties. HSCA Report at 227.

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 in ARRB Exhibit 4, her review of the JFK Assassination Files at the National Archives revealed that J. Edgar Hoover had written a memorandum to J. Lee Rankin stating that "the FBI had fed the Miami and Dallas Secret Service offices information pertaining to one 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" and "the standards set by the Secret Service for opening a file on a potentially threatening individual." ARRB Ex. 4 at __ **Kim insert cite.**

Thus, with one hand, the Secret Service releases personal information while, with its other hand, it enlists the support of the mental-health community to criticize the Review Board for acting to release identical information. The Secret Service cannot plausibly argue that it has satisfied its burden of providing the clear and convincing evidence against release of such information when the Secret Service itself has released -- apparently without consequence -- the same type of information.