

Introduction

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 that pertain to people who were perceived by the Secret Service to be potential threats to the president in 1963. The five records at issue, which include four complete originals and one partial duplicate, are included as exhibits to this memorandum.¹ The Secret Service has now decided to appeal the Review Board’s decision. *See* letter from Lewis C.

¹The first exhibit is a 413-page document that consists of “threat sheets” prepared by Secret Service agents. The remaining documents are memoranda prepared in 1978 by Ms. Eileen Dinneen, a staff member of the U.S. House of Representatives Select Committee on Assassinations. The Dinneen memoranda also include exhibits and attachments that were originally created by the Secret Service.

<u>Ex. No.</u>	<u>RIF Number</u>	<u>Description</u>
1	180-10065-10379	Secret Service “Threat Sheets” [413] 413 pp. (selected pages are attached hereto; the entire document is being filed separately)
2	180-10087-10302	Dinneen memo March 24, 1978 Review of JFK Trip Files for 1963 (plus SS report forms)
3	180-10147-10275	Dinneen memo March 29, 1978 Secret Service Index File and Commission Documents United States Archives [Kim: what is their current status in the Archives?] 20 pp. plus 11 page attachment
4	180-10147-10274	Dinneen memo October 19, 1978 Secret Service Protective Cases 22 pp. plus 3 Appendices [complete version of “465” below]
	180-10103-10465	Dinneen memo October 19, 1978 Secret Service Protective Cases 19 pp. [incomplete version of “274” above]

Merletti to Charles F.C. Ruff, May 6, 1998 ("Appeal").²

In its Appeal, the Secret Service is now arguing essentially that the Board's formal determinations to release the information constitutes: *first*, an "unwarranted invasion of personal privacy," and *second*, a potential threat to the Secret Service's relationship with the mental health community. In support of its position, the Secret Service attached seven letters by noted professionals in the field of mental health. (Appeal Ex. 3-10)³ With all due respect to our sister agency and to the mental-health professionals, *the documents at issue in the Appeal contain information that typically is a matter of public record and the documents are not the intimate mental-health records of the type imagined by the professionals in their letter of support.* Although Review Board is fully cognizant of the importance of the Secret Service's mission to protect the president, *the evidence suggests that there is little likelihood of any damage to the important relationship between the Secret Service and the mental-health community.*

I. Standards for the Public 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 itself required agencies to submit "clear and convincing evidence" in support of the proposed postponement. § § 6, 9(c)(1). Congress carefully selected this standard because "less exacting standards, such as substantial evidence or a preponderance of the evidence, were not

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

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

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

consistent with the legislation's stated goal" of prompt and full release of information. H.R. Rep. No. 625, 102d Cong., 2d Sess., prt. 1, at 25 (1992).

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

II. Secret Service Arguments

A. Confidential information

- a. Information in Exhibits 1-4 is cursory
[provide a short but accurate description of the documents]
doctors mischaracterize it
SS [fair] characterization: "very brief summary format of the descriptive data" SS Letter at 3.
this is not the type of information alleged
This is very simple and straightforward info

In order to solicit these letters, it appears that the Secret Service *fundamentally mischaracterized the nature of the documents at issue*. Indeed, we were stunned to read the descriptions in the seven expert letters of what the doctors believed the Review Board was releasing. Their characterizations were so profoundly inaccurate For example:

Individual's psychiatric history; [several]

Confidential materials [several]

Information conveyed to SS by mental health community. [Monahan

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

“We understand that these summary sheets may contain personal information, mental health diagnoses, and characterizations or descriptions of mental health status.” Contains information disclosing “intimate thoughts, feelings and fantasies.” “lays bare his entire self, his dreams, his fantasies, his sins, and his shame.” [quoting Slovenko] Newman

“confidential communications” between therapist and patient. [Newman; Mirin]

“confidentiality of information shared by patients [with their doctors] Glover

important so that “patients may feel safe in revealing extremely personal information during the course of their treatment.” [binder]

“Medical records” [Mirin]

“psychiatric information obtained either with the consent of the subject of the investigation or from cooperative state officials, but in all cases with the promise that such information would not be disseminated further.” [Appelbaum

“information collected as the result of such treatment includes data on diagnosis, sexual behavior, fantasy life, and criminal activity.” [Appelbaum

“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” Appelbaum

“wholesale revelation to the public of mental health information from your files” Newman

“It is our understanding that the ‘summary’ information which may be released could include personal and family histories, findings -- often uncorroborated -- from collateral interviews with family and acquaintances, and psychiatric diagnoses and symptoms.” Glover

persons “being identified as having been in psychiatric treatment.” Binder

Thus it appears that the Secret Service, in order to elicit letters in its support, advised the mental health community, inaccurately, that the Board was releasing the entire patient histories replete with sexual fantasies, dreams, and doctor-patient communications.

In fact, *there is no evidence on the face of the documents that contain confidential communications, referrals from the mental health community, fantasy life, sexual misconduct* .

ID of records at issue with exhibit numbers [threat sheets synopsis only]

Apparent mischaracterization of records by SS to the experts [about which more later].

Despite what the doctors opposing the Board's decisions presume:

No medical health professional is identified

No identifiable doctor-patient communication is included

No "mental health history" is included

No "family history" is included

No information regarding [homosexuality], sexual abuse, sexual fantasies, or sexual abnormality is included.

- b. much more detailed info is already part of public domain, including information released by the Secret Service

Examples:

DC cases found by KH
in JFK documents.
Protective Surveys
The Record at NARA.

KH

- c. Release of the information is in the public interest
 - WC and Oswald as mental case
 - What did WC and HSCA say about SS
 - Other investigations of SS
 - Some names are important
 - What the US government focuses on and doesn't focus on is relevant
- d. Cases and laws cited by SS regarding confidentiality are irrelevant
 - no identifiable constitutional right
 - JFK Act trumps all other laws

B. Damage to the Secret Services Operations

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

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

after pouring gasoline on the fire, Secret Service complains it will get burned

Legal decisions

Tarasoff, 551 P.2d 334 (1976)
Jafee v. Redmond, 518 U.S. 1 (1996)
Whalen v. Roe, 429 US 589

Publications

Psychiatric Services (August 1996)

On the one hand, several psychiatric cases have attempted to kill the president, on the other these are argued not to be probative.

It appears that the Secret Service has done a profound disservice to itself by exaggerating to the mental health community the type of records that are at issue. The records here are nothing like what the mental health experts have imagined, leading us to presume that the actual records were never shown to the

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 broadly advertised to the mental health community -- but to itself. The Secret Service has been broadly touting that the Board has voted etc etc.

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

Experts

- 3 Monahan
- 4 Appelbaum
- 5 Phillips
- 6 Newman
- 7 Mirin
- 8 Glover
- 9 Binder
- 10 Bonnie

information about people in no way tied to the JFK assassination.

Memorandum to the President

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Secret Service

Introductory Statement

Although the Secret Service, in communication with its seven experts conveyed this notion

President has sole and non-delegable authority
Decision to be made within 30 days

Work to be done:

- | | | |
|-------|----|--|
| KH | 1. | Accurate ID of exhibits at issue. |
| KH/JO | 2. | Prepare exhibit quality sets |
| JG/KH | 3. | Decision on whether to protect names in our brief |
| KH | 4. | What does current brief say that is inconsistent with prior papers or new.
e.g., White House Security Review Committee
7 letters

What has SS agreed to release

What SS released in |
| KH | 5. | review threat sheets and Dinneen records for:
info conveyed by mental health community
confidential communications between doctor and patient
detailed mental health histories including fantasies
personal and family histories
suicide, abortion, homosexuality, abuse etc. |
| JG | 6. | Outline of paper |

- KH
7. Obtain copies of cases cited.
 8. Establish citation format
 - SS Ex. 1
 - ARRB Ex. 1
 - SS Letter at __
 9. Current law on availability of commitment records
1963 law on availability of commitment records
 10. Review periodicals and open sources
- KH
11. Make list of potential names to be pursued by Choice Point or some other service

Information SS Objects to Releasing in Documents Under Appeal	Information Currently in the Public Domain

Assassination Records Review Board

Reply to the

Appeal by the United States Secret Service of the
Assassination Records Review Board's April 13, 1998 Formal Determinations
Under the JFK Assassination Records Collection Act

May 15, 1998

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