MEMORANDUM

June 25, 1996

To: David Marwell

From: Joan Zimmerman

Subject: More Impressions of the USSS June 24, 1996 Letter

I. A False Issue: Names Relevant to the JFK Assassination Investigation

The USSS categorizes names based on its own criterion: whether the individuals had anything to do with the Kennedy assassination. The USSS is willing to release names of individuals who are relevant to the JFK assassination. The USSS expects the Review Board to supply information showing which individuals are relevant to "the JFK assassination investigation."

The USSS is attempting to shift the burden of producing evidence for postponement to the Review Board. The Review Board has already voted to release all names pursuant to the presumption of disclosure in the JFK Act. It is the burden of the Secret Service to demonstrate with convincing evidence that the names in its protective files as of 1963, merit postponement.

The USSS is defining records as not assassination related after the Review Board has already defined them as assassination related. In fact, the JFK Act defines these names--all of them--as assassination related by virtue of their examination by an HSCA researcher.

In our letter of April 23, 1996, we pointed out that the issue of "who did it" is too narrow to accommodate the broad disclosures contemplated by Congress in the JFK Act. Yet the Secret Service is now repeating the same investigation -oriented thinking in its June 24, 1996 letter. In the Secret Service interpretation, people who "simply happened to be in our protective intelligence (PI) system in 1963" as opposed to "individuals relevant to the JFK assassination investigation" should be protected. First, this is a false distinction. The Secret Service is still writing about these records and the Dinneen reports as though it is trying to solve the case. That is not the point of the JFK Act. Our task is to make open records available to the public about all aspects of the case. Current employees of the Secret Service do not know who was relevant and who was not. Second, the JFK Act requires broad disclosure in order to make available to the public records illustrating "the history surrounding the assassination." That includes all persons perceived to be threatening to President Kennedy in the eyes of the Secret Service.

The Vezeris letter argues (page 5) that the Secret Service has a very low threshold for its PI

investigations. Certainly the broad inclusion of so many people raises the obvious question of how the Service missed someone like Oswald. What distinguished Oswald from others in the 1963 files? To reveal some but not all of the names to researchers interested in this information would be to preclude the public's choice about relevance and defeat the larger purpose of the JFK Act, i.e. invite greater public confidence in the government. We should not be drawn into speculation about who was relevant and who was not, and that distinction should not be made by the Secret Service.

II. The Sensitivity of Mental Evaluations: USSS Lacks Evidence

The argument about mental evaluations being embarrassing is not compelling since the JFK Act does not allow embarrassment as a basis for postponement. The USSS must establish a privacy right. Such a right will be difficult to prove if the person is dead. The Service fails to provide any specific information about the individuals on the threat sheets. Instead the Service simply speculates about possibilities. The JFK Act requires specific information that pertains to specific individuals. The Secret Service seems to belie its urgent sense of the need to protect information by simply offering generalities. If the Service really cared about these individuals, it would do the work necessary to provide information for the Board to review.

Because of the flawed nature of its " relevance to the JFK assassination investigation" assertion, the Service's solicitation of outside letters fails as convincing evidence. How does Melvin Shabshin know that "the individuals involved had no connection whatever with the assassination"? See page 2 of his letter. The Secret Service is conflating current requests for information about targets of investigation with the release of thirty year old names that appear on Dinneen's threat sheets. The JFK Act has already addressed this issue by referring to the uniqueness of the Kennedy assassination as well as the time that has passed since it happened.

III. Mental Health Evaluations: No Longer a Secret Protective Technique

The argument about mental evaluations being a secret protective technique also fails since it has already been widely disclosed in records pertaining to Thomas Vallee. Very detailed mental evaluations also appear in the John Warrington file (Warrington is deceased), which is open at NARA II. Similarly, the Richard Case Nagell file contains detailed criminal and medical histories that the Board may need to review if the Service makes postponements. Because of Nagell's notoriety, the Secret Service will have a very hard time meeting the standard for postponement. In fact, by its own criterion-- relevance to the assassination--the Nagell file should be released in full. I have already prepared a memo citing the various evaluations and documents describing this technique.

Vezeris argues that even if the person is dead, the linkage between mental health information and a

Secret Service investigation would compromise the Service's ability to seek personal information about targets of investigation in the future. In fact, several of these names are already in the public domain through the Service's prior releases as well as previously opened HSCA records. The Secret Service would need to show that this speculative "chilling effect" has already taken place.

We are pleased that the Secret Service is willing to release some names and all of the text of the Dinneen memos. This is certainly useful, but it undercuts the Service's own arguments. The Secret Service is willing to acknowledge that the Dinneen study of the protective files should be released because it reviews and explains the Secret Service PI system, yet the USSS does not distinguish this revelation from the methods it proposes to protect. More significantly, the USSS undermines its own argument by stating quite explicitly that it is willing to release names of those who were related to the assassination investigation. By its own lights, the Service is giving up its assertions about its protective techniques and privacy of mental health evaluations.

IV. Confidential Relationships: The USSS Needs to Show a Current Need to Protect

On page 5, the Vezeris letter alludes to but does not specifically cite a 6(4) postponement. In the last sentence of the second paragraph Vezeris wrote, "Many of these sources have the clear expectation of confidentiality before they provide the information." Under a 6(4) claim, the Secret Service would have to show that a specific individual provided specific information about a target of Secret Service investigation. *None* of the sheets provided by the Service in the June 24, 1996 letter includes a name other than the target. The examples the Service provided contain no specific confidential relationship with an individual needing protection. The Service would need to document a confidential relationship that **currently** requires protection.

The Vezeris letter again alludes to a confidential relationship on page 6 where she writes, "Mental health data is acquired often with the consent of a PI subject." Similarly, "other sources" of information about the target of investigation are given "implied or express assurances." If the Service can provide such specific evidence of assurances for cases over 30 years old, then the Service should do so. If these agreements do not exist, then such assurances can not merit protection under the terms of § 6(4).

The JFK Act recognized that the passage of time allows more releases: "Most of the records related to the assassination of President John F. Kennedy are almost 30 years old, and only in the rarest cases is there any legitimate need for continued protection of such records." §2(a)(7) Since most of the people on the sheets are probably dead, that relationship would not need **current** protection, which is

required for a 6(4) claim. If the Secret Service can show a current need to protect a confidential source of information, then that evidence should be brought to the Board.

V. The Secret Service Does Not Need to Be An Attractive Nuisance

A computer search for names and living- or- dead status would not in itself reveal *to the individual* that the Secret Service is checking this. The Secret Service has offered no suggestion for avoiding the problem it identifies as inhibiting: the subject will obsess about the Secret Service. The Service seems to know how to find people and should be able to offer alternative means to do this without undue intrusion or attention to itself.

The Secret Service is assuming an invasion of privacy for individuals who are not necessarily alive. The Secret Service has the burden of showing that the individual is alive first. Then the Service must demonstrate an invasion of privacy. (See page 4 of the June 24, 1996 letter.) At the bottom of page 5, Vezeris stresses the sensitivity of PI files. Again, these are not current records; they are over 30 years old. *Moreover, the Dinneen sheets are not the files themselves; they are brief summaries of what was in the files she saw.*

Options:

1. The Board can reinstate its vote at the March meeting to open all these documents.
If the USSS simply repeats the contents of its letters, we would have a more compelling case to the White House than they do. The Secret Service relies very heavily on its notion that some names are relevant and some are not. Because an HSCA researcher studied these individuals, they are relevant, i.e. assassination related.We should insist that all the names should be treated as a whole with no distinction about who is relevant and who is not. The Secret Service has specifically refused to provide the evidence required by the JFK Act even after the Board allowed 60 more days to do so.

2. The Board can allow the Secret Service yet another month to provide appropriate information that responds specifically to § 6 criteria:

--The Board can instruct the Secret Service to provide evidence for the 6(3) postponement on a name by name basis, *and*

--The Board can instruct the Secret Service to provide specific information addressing 6(4) language about confidential relationships that require current protection, *and*

--The Board can specify examples of already released material that reveals the Service's

protective technique. Some of this material has been available for over 15 years. The Board can ask the Secret Service to distinguish what has already been released from what they propose to postpone. The Service will need to respond to 6(5) criteria.

Option 2 would demonstrate the Board's patience as well as its willingness to give the Secret Service every opportunity to provide appropriate evidence. If that evidence is still not forthcoming, then our case will be that much stronger.

In selecting an option, the Board might also consider implications for future requests and releases. The Richard Case Nagell file will be reviewed by the Board this summer if the Secret Service chooses to make postponements. Nagell is dead. If the Board raises the bar for privacy postponements for the dead, Nagell's file will be opened in full sooner. Also, we are requesting more and more files from the PRS section of the Secret Service. The Board's decision regarding tests of privacy claims and confidentiality claims will affect the availability of these records to the research community.