MEMORANDUM TO THE PRESIDENT

Assassination Records Review Board
Reply
to the United States Secret Service's Appeal
of the
April 13, 1998 Formal Determinations

May 22, 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 the staff of the House Select Committee on Assassinations ("HSCA"). 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 describe the circumstances that brought these individuals to the attention of the Secret Service (*e.g.,* "critical remarks regarding JFK . . . member of the John Birch Society . . . owned weapons"). 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 ARRB 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 of individuals in the five documents, it

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[1]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 deadline for the Secret Service's Appeal was extended to May 6, 1998. In an effort to seek possible resolution of the differences between the Review Board and the Secret Service, the parties earlier exchanged draft versions of the Appeal and Reply. Because the parties were unable to resolve their differences, they are submitting concurrently their slightly revised final drafts on today's date. Further responses may be forthcoming.

would not appeal the Review Board's decision. *See* 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*, 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. *See* USSS Exs. 3-10.[2]

The Review Board is genuinely perplexed by the Secret Service's decision to appeal the release of names in the five documents 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;*
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> *Second, the evidence unmistakably shows that the Secret Service itself previously published and agreed to release to the public exactly the same type of information, including names, that it now opposes releasing on privacy grounds;*
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> *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*
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> *Fourth, by actively soliciting support for its appeal from the mental-health community, and by not disclosing to the mental-health community that it has itself agreed to release 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.*

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[2]It 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 Secret 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.

Ex.	RIF Number	Description
1	180-10147-10275	Eileen Dinneen and Jim Conzelman 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	413 "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 the latest, all information must be released by the year 2017. 44 U.S.C. § 2107 (5)(g)(2)(D).

[4]Only selected pages from ARRB Exhibit 3 are attached hereto; the entire 413-page document is being submitted separately to William F. Leary of the National Security Council.

[5]ARRB Exhibit 4 consists of Dinneen's independent analysis of the information in the 413 Threat Sheets in ARRB Exhibit 3. For practical purposes, therefore, the personal information in ARRB 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 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 a 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. The documents do not contain 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]

Even a cursory examination of ARRB Exhibits 1-4 will show that the descriptions of individuals consist of short, summary statements that do not identify, by name, the source of the information. This information, although obviously personal, is not the type of intimate personal information typically described (and objected to) by the mental-health professionals in their letters attached as USSS Exhibits 3-10. Based upon their letters, it would appear that the mental-health professionals had initially believed that the Review Board was releasing information that, among other things, includes 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." USSS Ex. 6 at __.[6] In fact, none of the documents contains therapy notes or direct quotations from doctors. While there are references to doctors in approximately nine of the Threat Sheets, no mental-health professional is identified, and no doctor-patient communication is identified.

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[6](Quoting Dr. Slovenko). There are similar examples from the professionals that suggest an initial misconception on their part of the type of records on which the Review Board had acted. 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." USSS Ex. 6 at __. Dr. Glover wrongly assumed, as did other doctors, that the records intruded on the "confidentiality of information shared by patients [with their doctors]." USSS Ex. 8 at __. 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." USSS Ex. 4 at __. 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.* at __.

Because these and other characterizations of the documents appeared to be so much at variance with the actual documents on which the Board had voted, the Review Board sought clarification from the Secret Service as to what had been told to the professionals. The Secret Service thereupon collected additional statements from the professionals that contain descriptions of the records at issue that were far more accurate. As will be shown below, however, the information that the revised professionals' statements are now discussing is exactly the type of information that the Secret Service has itself released—apparently without informing the professionals.

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., pt. 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).[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]

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

[8]The Secret Service argues that release of these names would contravene the holding and principles articulated by the Supreme Court in *Jaffee v. Redmond*, 518 U.S. 1 (1996). *See* Appeal at 7. In *Jaffee*, 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. *Jaffee, 518 U.S. 1.* The *Jaffee* decision is inapplicable to the facts of this appeal because the Review Board is not seeking to compel disclosure of any privileged doctor-patient communication. 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 the original disclosure of that communication 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.

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 as an Unwarranted Invasion of Privacy.

A. The Source of the Information for ARRB Exhibit 1 is in the Public Domain.

ARRB Exhibit 1 is a report written by HSCA staff member Eileen Dinneen that describes her review of Warren Commission records at the National Archives. According to Steven D. Tilley, Chief, John F. Kennedy Assassination Records Collection, National Archives, the underlying records that are the source for Dinneen's report are all open in full to the public. ARRB Ex. 5 at 1. 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 "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.

ARRB Exhibit 2 is a report by 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 Secret Service during the Kennedy administration routinely contained information about potentially threatening individuals who resided in the area the President was visiting. All of the extant Protective Survey Reports on which Dinneen based her memorandum in ARRB Exhibit 2 are now open in full at the National Archives. 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 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 of the anomaly of seeking to postpone information already in the public domain. 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 *The Record*, a weekly periodical distributed to Secret Service personnel nationwide. By the late 1950s, each issue of *The Record* contained a section entitled "Protection of the President." *See* ARRB Ex. 6. 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 data about a person's age, street address, occupation, physical description, and family members than are contained in the records on which the Review Board voted. *The Record* also includes revealing information about an individual's suicide threats, dangerousness, weapons possession, and criminal convictions, as an examination of ARRB Exhibit 6 shows.[9] In other words, the Secret Service published exactly the same type of information that it now 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 since at least 1981. *See* ARRB Ex. 7 (Letter from David Pfeiffer to David Marwell, Dec. 10, 1996). The Secret Service itself consented to the opening to the public of the 1938-59 issues of *The Record* when it transferred the volumes to the National Archives in 1981

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[9]Some representative samples from *The Record* include the following types of information:

Characterizations of mental competence based on subject interviews: Olindo Mastro-Pietro "is an apparent mental case, suffering from a persecution complex and claims that he is being bothered by electric rays and dope injections." *The Record*, Vol. 22, No. 35, Feb. 27, 1959, at 3.

Previous mental history and hospitalizations: Fred Henry Bethke had a "previous commitment." "The diagnosis at that time was schizophrenic reaction chronic undifferentiated type." *The Record*, Vol. 22, No. 43, Apr. 24, 1959, at 4.

Descriptions of physical incapacities: Gilbert Roland Hemphill had a "[m]etal plate over brain; both arms imperfect due to accident and surgery;" "[T]he 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 4.

Information received from doctors: Regarding Walter Lawrence Hajec, "VA psychiatrists have stated that he is not dangerous." *The Record*, Vol. 22, No. 42, Apr. 17, 1959, at 5. For Thomas Joseph Jordan, 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: "Reverend Manness 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.

and identified no restrictions to their release on Standard Form 258, which was signed by Joseph J. Prunka, Chief, Paperwork Management Branch of the Secret Service. ARRB Ex. 8.[10]

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, at 2—copy on file). When the Secret Service was advised that *The Record* for the 1960-64 period was not at the Archives, it agreed to make these volumes available for the Review Board's inspection and, ultimately, agreed 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 ARRB Exhibit 10. The Secret Service has, therefore, voiced no objection to opening this information in its own records that objects to the Review Board releasing.

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 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 many 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

Information about Doyle Allen Hicks that would be available if the Dinneen information were released. *See* ARRB Ex. 10.	Information that is already in the public record about Doyle Allen Hicks. *See* ARRB Ex. 11.

[10]If the Secret Service had an objection to the release in full of *The Record*, it should have marked Box 5 D on Standard Form 258 -- which is blank. *See* ARRB Ex. 8. It is also worthy of note that the Secret Service answered "no" to the question whether *The Record* was subject to the Privacy Act. *See* Box 5 C.

"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."	"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. 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." "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."

Example 2: Marshall Douglas

Information about Marshall Douglas that would be available if the Dinneen information were released. *See* ARRB Ex. 12.	Information that is already in the public record regarding Marshall Douglas. *See* ARRB Ex. 13.
"WH visitor 6/4/63 and 6/5/63. Wanted to see JFK about personal problem." "[h]ospitalized '42, '52, '58 and '63. Schizo. Black. Committed from WH 6/5/63."	"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." "Diagnosis: Schizophrenic reaction, undifferentiated type."

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 clear, the "privacy" argument is inconsistent not only with the quantity of the records that have been opened, but with the Secret Service's own actions to open them.[11]

E. The Records are Relevant to the Assassination and 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 the harm resulting from their release would outweigh the public's interest. *See* Appeal at 5; USSS Exs. 3, 5, 6, and 8. 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 it to be worth

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[11]There 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 some 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. *See* "Attachment" to USSS Ex. 12. For example, Threat Sheet No. 83, which the Secret Service does not object to releasing, contains the description, "Alcoholic . . . cont[inued] to be 1970's caller with mental problems." Threat Sheet No. 197 states: "subject drinks to excess and then places phone calls." Threat Sheet No. 240 contains the description, "Subject obsessed with idea her mind is bugged." For Threat Sheets, *see* ARRB Ex. 3.

investing a substantial amount of time and effort in analyzing the significance of the records in their inquiry into the assassination. Thus it was not the Review Board that initially identified the underlying records as relevant—although the Review Board fully concurs with prior assessments—it was the two prior official investigations by the United States government of the assassination of President Kennedy that deemed them relevant.

Moreover, issues related to mental health, and the Secret Service's handling of information related thereto, go to the core of two additional issues at the heart of the Kennedy assassination:

First, the Warren Commission and the HSCA criticized the PRS's role in protecting the President. The 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 examined these documents reflects its 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 information in its files pertaining to individuals who were threatening the President. *See Report of the House Select Committee on Assassinations*, H.R. Rep. No. 95-1828, 95th Cong., 2d Sess., at 229. ("HSCA Report"). The Warren Commission itself had 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.

Second, the absence of certain names from the Secret Service's PRS files is important for understanding its efforts in protecting President Kennedy. As Dinneen observed in her memorandum in ARRB Exhibit 4, the review of 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." ARRB Ex. 4 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" and "the standards set by the Secret Service for opening a file on a potentially threatening individual." *Id.*

Thus, the Secret Service has released personal information with one hand while, with its other hand, has enlisted 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 "clear and convincing" evidence against release of such information when the Secret Service itself has released —apparently without consequence—exactly the same type of information.

III. Based Upon Evidence Provided by the Secret Service, the Safety of the President Will Not Be Compromised by the Release of Names in Thirty-Five- Year-Old Records

Under the JFK Act, information properly may be postponed if it is shown, by clear and convincing evidence, that its release "would reveal a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service . . . for protecting Government officials, and public disclosure would be so harmful that it outweighs the public interest." JFK Act § 6(5). The Secret Service Appeal raises this provision as a basis for postponing release of the names of individuals in the records at issue. When considering the possible applicability of Section 6(5), it is important not to confuse or conflate the issues. There are three points that must be borne in mind.

First, it is not a secret that the mental-health community forwards to the Secret Service the names of persons who are potential threats to the President. As early as the Warren Commission era, the Secret Service revealed its cooperation with mental-health professionals in its protection efforts. Robert Bouck, the Chief of the PRS during the Kennedy Administration, testified to this fact before the Warren Commission. *Investigation of the Assassination of President Kennedy: Hearings Before the President's Commission on the Assassination of President Kennedy,* Vol. IV, at 303, 306 (1964) (testimony of Robert Bouck). Further, the Warren Commission received exhibits that detailed the Secret Service's guidelines for mental commitment of certain White House visitors. Commission Exhibit 764, Vol. IV, at 587. Additionally, the Secret Service participates in conferences and publications with the mental-health community.[12]

Second, the records at issue do not disclose who, if anyone, in the mental-health community provided information to the Secret Service. None of the records at issue contains the name of a

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[12] *See, e.g.*, *Behavioral Science and the Secret Service: Toward the Prevention of Assassination* (J. Takeuchi, F. Solomon, W.W. Menninger eds., 1981); *Research and Training for the Secret Service: Behavioral Science and Mental Health Perspectives: A Report of a Committee of the Institute of Medicine* (National Academy Press, February 1984); and M.H. Coggins, H.J. Steadman, and B.M. Veysey, *Mental Health Clinicians' Attitudes about Reporting Threats Against the President*, 47 J. Psych. Services 832 - 836 (1996).

particular doctor, or member of the mental-health community. The Threat Sheets contain only minimal references to private individuals who provided information. 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.

Third, the only information on which the Secret Service is basing its appeal is the release of names in 35-year-old documents. It must be remembered that the Secret Service is not appealing the release of the substance of any of the information in the records except for the names of those who were identified as potential threats to the President.

Thus, the sole plausible argument in support of the Secret Service's position is that if the names of individuals are released, the mental-health community will have less trust in the Secret Service's ability to protect confidences, and doctors will therefore be less likely to transmit names of potential threats to the President. While such an argument is not implausible on its face, the Secret Service has not provided "clear and convincing" evidence that it is true. In fact, the evidence would seem to point in the opposite direction. If the argument were true, the mental-health community would presumably have stopped cooperating with the Secret Service years ago when the Service opened to the public copies of *The Record* and released other confidential information, by name, about individuals. The Secret Service has not, of course, chosen to acknowledge the very important fact that it has released just the type of evidence at issue without any adverse consequence.

The Review Board is able to identify only one other argument that the Service might make, but it is so extreme as not to be plausible. The Secret Service might now argue that, although the mental-health community was completely unaware of the many prior releases of the information now being appealed, it is now fully aware of the possible release of JFK documents and that this new release might jeopardize future cooperation. Of course, the responsibility for broadcasting the issue among the mental-health community lies squarely with the Secret Service in its solicitation of letters and in its own characterization of the issues at stake. For the Secret Service to argue that the names cannot be released because the mental-health community is now aware of the issue would, of course, be like the boy who killed both parents and then pleaded for the mercy of the court because he was an orphan.

Despite the rhetoric to the contrary, the Review Board cannot believe that there are many trained professionals who would jeopardize either the President or their own patients' well being by refusing to identify potential threats to the life of the President simply because certain names were released in 35-year-old records related to the assassination of President Kennedy.

Conclusion

Unfortunately, it appears that 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 described to the mental-health professionals—but to itself. The Review Board simply voted to release the same type of information that the Secret Service itself has routinely placed in the public domain. All of the records should be opened forthwith.

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