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Los Angeles, CA 90027
July 31, 1986

Ms. Diane Nixon
Chairperson, RFK Materials Advisory Committee
National Archives - Los Angeles Branch
24000 Avila Road
Laguna Niguel, CA 92677

Dear Ms. Nixon:

I am writing in response to your recent letter requesting comments on the draft questionnaire of the Mayor's Advisory Committee, concerning repository policies on the RFK assassination materials. The primary need, as reflected in your letter, is "to have the material available to the public"; an outcome whereby essential material may remain unavailable to the public would reverse the stated intentions of the mayor and others. Based on recent experience, however, it remains unclear whether adequate - as opposed to minimal - disclosure will take place for many critical materials. This remains my primary area of concern, to which specific administrative procedures are secondary.

With these considerations in mind, I have the following suggestions and comments:

1.) The questionnaire should inquire as to whether prospective repositories will accept general oversight on redaction decisions from a panel of scholars and relevant experts to be designated in the archival agreement. At present, it seems unclear whether final authorization for release of materials will reside with the Mayor, the City Council, the Police Commission, the repository itself, or elsewhere. It is important for confidence in this process, however, that such decisions heavily involve the work of an impartial and expert panel. Such a group might consist of 3-5 people, including case, academic and civil liberties experts and a repository representative. The interest of some repositories in this collection might well be conditional on such arrangements, about which at least tentative information should be available.

Two central points are especially relevant here. The first is that scholars with relevant expertise have at no stage been involved in the detailed or practical work on redaction to date. Yet it is the specific and practical work which spells the entire difference between effective and ineffective disclosure. Specific suggestions sent to the Los Angeles Police Commission from interested parties in the last year generated no practical outside consultation. If close attention to standards is also to be excluded in the deliberations of the present committee, contrary to past indications, it is imperative that clear and effective provision for it be made in the next stage of work. Meaningful expert involvement in these decisions has been promised in the past, including in the Police Commission resolution of July 30, 1985.

The second central point relates to the nature of the disclosure restrictions to be applied. The California Public Records Act, like other relevant California law, is variously interpreted, but it clearly allows ample scope to meet the scholarly and research needs in this case. The law enforcement exemption in the act, section 6254, states that "Nothing in this section is to be construed as preventing any agency from opening its records... to public inspection, unless disclosure is otherwise prohibited by law." The broad descriptions of applicable standards offered in the past have been frequently unobjectionable, but the specific work done on the summary report falls far short of traditional and recognized disclosure practices, in a way which would be crippling if extended to work on the entire body of material. (See previous letter and attachments, June 5, 1986.) For example, of the 1500 interviewed witnesses who "materially contributed to the investigation" (report, p. 852) the names of over 1,000 of them were excised. The withholding of these names in the future would make it impossible to verify or elaborate the most basic facts on fundamental issues and block present prospects for fuller understanding of the case. Similar issues exist for other kinds of information.

The panel suggested here would oversee rather than administer the redaction policies, giving judgements on questions of release and withholding. It might, if thought desirable, advise on other questions, although specific administrative matters seem primarily the province of the repository itself.

2.) Some important legal and procedural questions, presently not addressed, should be touched on in the questionnaire or otherwise determined and clarified. The views of the advisory committee on these matters are important and go to the central elements of any disclosure arrangement. Such questions include the following:

- a.) Will the papers be formally subject to the California Public Records Act and other relevant California law, after their transfer as before? Will this issue be effected by the (public or private) nature of the repository institution?
- b.) Who will be liable in lawsuits which may be filed charging legally inadequate disclosure, or invasion of privacy? (The latter kind of suit, though hypothetically possible, seems far less likely in view of the relevant history of the Houghton book and related cases.)
- c.) Under what kinds of conditions, in a contractual arrangement, could the contract be rescinded, and pursuant to what kinds of legal or other procedures?
- d.) With respect to audio, video, photographic or other materials originating from outside the department, are there any important legal or duplication concerns which should be addressed? (See item 5, attachment.)

These and similar contingencies which bear on any repository arrangement are basic to an appreciation of its meaning and merits. For that reason, committee views on them should be known.

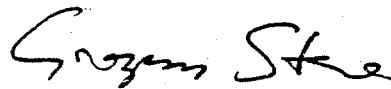
3.) The question of whether and to what extent "governmental privilege" on these materials has been waived was specifically deferred by the Los Angeles Police Commission to the current proceedings. (March 4 transcript, II.2.) If they are not to be resolved by the present committee, indication should be given as to whether they may devolve on a future repository. It is generally understood that the case files in question here were used extensively for the purposes of a commercially published book (Special Unit Senator, 1970) written by a police department officer and a civilian co-author. The present files, or extensive copies thereof, were apparently removed from police headquarters for the use of the co-author, on behalf of this book. The bearing of such facts on possible waiver of governmental privilege are matters of obvious concern.

4.) The questionnaire or attached information should clarify the implications of the "contractual deposit" and "deed of gift" distinction cited in question three. Would this difference go to the prerogatives of the archive or the legal questions noted above? Is it certain that a deed of ownership can legally be drawn for city-owned historical materials? Would such a deed extinguish the formal rights of the general public to these items by removing their formal status as "public documents?" An alternative which would "privatize" these documents or place them beyond standard legal reach has grave dangers.

Prior to the question of which repository can do a good job is the question of what a good job is thought to consist of, i.e. the committee's own preferences. At points in the questionnaire, these preferences are usefully suggested (e.g. questions 5b, 6d and 9b) but on some matters they are unclear. Depending on such information, some repositories may or may not wish to submit a proposal, and any which do will be able to address the committee's priorities more effectively. Some such matters might be treated briefly in the cover letter.

Several more administrative points regarding the questionnaire are addressed in the attached list. Though important, these are subsidiary to the matters raised above, particularly number one. If impartial and expert inputs are not incorporated in the formal decision process, the prospect for effective disclosure will remain clouded. With such inputs, decisions are likely which would address the long-frustrated needs of public understanding on this case.

Sincerely,


Gregory Stone

ENCS - 3
cc: committee members

Additional Points Concerning Repository Questionnaire and Issues

1. Work deemed essential by the committee should be so designated as much as possible. From a research point of view, however, I personally would not argue that the extensive operations described in the tape recordings series on the inventory (pp. 3-4) are all strictly necessary for each tape. Existing tapes and transcripts should be fully accessible, but new transcriptions may not be necessary for each of them, and discriminating judgements on such questions could result in large savings. Conversely, the unnecessary withholding of vital information from these tapes would minimize their research usefulness. (It is worth noting that the Los Angeles District Attorney's office routinely makes available most of its witness tapes with no excisions whatever. Some other aspects of D.A. policies may also provide useful points of reference.) As in the tape series, judicious workload savings may be possible in some other series as well, so long as public rights of access are not compromised.
2. Draft question 7d refers to photocopy costs and draft question 9a refers to speed of release. Release of most or all of the materials within one to two years, and photocopy availability at 5¢ a page or less are desirable. Section 7d might also inquire if photocopies can be purchased by mail and whether researcher use of portable photocopy equipment is permitted. With respect to audio, video, photographic or other special materials, inquiry might well be made about the repository's willingness to make exact copies available at or near cost. In some cases, such materials may require precise and exacting technical work for which appropriate arrangements should be possible.
3. Any repository agreement should stipulate that in the event of official reexamination of aspects of this case, the appropriate authorities shall have necessary access to copies or originals from this archive. Fundamental evidence questions continue to surround this assassination and suggest that partial or general reassessments of the case may well occur. Such occurred in the 1975 retesting of the crime-scene bullets and in the work on similar cases performed by the House Select Committee on Assassinations.
4. Draft questions 5a and 8b address important issues of archival knowledge and qualifications, which are key to matters which cannot be covered or resolved by a formal document. They illustrate the value of addressing the range of relevant concerns in this document.
5. Draft question three asks, "As a condition of receipt of these materials, would you require copyright ownership of them?" In comparable situations, including the Warren Commission, the HSCA, etc., governmental documents disclosed have entered the public domain. A contrary policy here would privatize materials which are appropriately public and could inhibit the flow of case information. (More complex concerns involving third-party rights might arise in some cases of materials originating outside of government.)

6. The 1986 memo concerning evidence which is cited on page five of the inventory might be attached to the document to clarify that section. A list of the specific evidence would help, if available. Any case-related materials which are not covered in the inventory, or are located elsewhere, should be identified. (If duplicate groups exist, these should remain with the archive or be otherwise noted. Records of property, chain of possession and evidence destroyed or missing should be included with existing case materials. This would include, for example, records of the destroyed ceiling tiles or of test gun H18602.)

7. Microfilming the collection, referred to in draft question 6d, may well be desirable, though perhaps not essential. (It is not clear whether the redacted or un-redacted files are to be microfilmed. If the latter, the main value of the process would seem to be for sale to other research centers.) Consideration should also be given to the creation of a duplicate set of redacted files, to which routine public access would be granted, allowing access to the original on special request. Such a procedure would safeguard the originals and reduce administrative burdens on all concerned.

8. Draft question 9b addresses the important matter of review for the purpose of removing restrictions. More critical than review at specified intervals, however, is a designated process for review of specific researcher requests. Such review would logically be conducted by the panel suggested in the attached letter, and would balance the relevant competing interests. (Information accompanying the request could contribute to such an evaluation, as with evidence that a particular witness was deceased, with the consequent lapse of privacy interest.) In this way, the review process would not be arbitrary in its timing but responsive to the level of research activity. Requests should be subject to reconsideration if refiled after an appropriate interval.