(Preliminary Summary)

June 5, 1986

RFK Assassination Disclosure and Standards - LAPD Materials

On the basis of even a partial review of the edited Los Angeles Police summary report on the assassination of Senator Kennedy, certain important facts are evident about the redaction practices employed:

-The information released is sometimes valuable in connection with the case, although much of it was previously available. In major respects, however, the withholding practices used in the report fall far short of adequate disclosure and outside the standards traditionally used in similar cases, such as the Warren Commission on the JFK assassination or the House Select Committee on Assassinations on the JFK and Martin Luther King assassinations. This is apparent from even a cursory review of comparable materials released in this case and in others.

-Present withholding policies also fall short of the identification of witnesses provided by Robert Houghton, former chief of detectives of the LAPD, in his 1970 book on the case, Special Unit Senator. Houghton's fuller appreciation of the national importance of the case and the requirements of effective disclosure is illustrated by the fact that many of the names provided by him in 1970 (e.g. Sandra Serrano, Jeanne Herrick, John Antoine Khoury) are still being deleted by the Los Angeles Police and City Attorney's office in 1986.

-Present withholding standards reverse prior policies of the LAPD and District Attorney's offices themselves. Material on over 150 witnesses was entered into the record of Sirhan's trial, including many persons (e.g. Edward Van Antwerp, Peggy Osterkamp, Michael Wayne) whose names are excised in the recent LAPD release. Not only were the witnesses identified, but far more detailed substantive information concerning the relevant facts was likewise put on record. No known serious problems attended the release in 1969 of material still being withheld in 1986. Eighteen years after the shooting, the LAPD is withholding, on anachronistic grounds of privacy, the names of prosecution witnesses (e.g. Alvin Clark, Everett Buckner, Vincent DiPierro) who testified on the record at Sirhan's trial, or at the Grand Jury two days after the assassination.

-Information on this assassination released by the Federal Bureau of Investigation pursuant to the Freedom of Information Act is more forthcoming with respect to many facts, as well as to individual witnesses (e.g. John Weidner, Cathy Fulmer, Tom Rathke). In two sections of the LAPD report (pp. 852-1226 and 1435-1444) the names of less than 30% of 1500 witnesses who "materially contributed to the investigation" are given; this compares with FBI identification of roughly 90% of their key interview subjects.

-While certain of the names excised in the LAPD material can be deduced because they are already on record, in most cases this is impossible. Even when feasible, such identification is often difficult or time-consuming. Witness identities are critical to

serious review of the case, however, because they are necessary for full understanding of the documents and because direct witness statements often add to or contradict the officially reported accounts. In most instances of excision, moreover, it is evident even from available information that the facts provided are not of a sensitive or confidential nature. (e.g. Routine deletions encountered include such persons as former school acquaintances of Sirhan, people who heard information on radio broadcasts and reported it to the police, and people who engaged in target practice on a pistol range on the same day as Sirhan.)

-Only two broad explanatory notations ("privacy" and "governmental privilege") are cited next to specific deletions, which range in length from a single word to several consecutive pages. A more detailed breakdown of deletion rubrics could easily be done, and would aid both in understanding the contents of the report and in evaluating the legitimacy of specific excisions.

-Assessing the justification for excisions is difficult or impossible in many cases, given an absence of the full information. As suggested above, however, most redactions of witness names are unconvincing on their face. While some "governmental privilege" redactions may be justified, internal evidence suggests that far more are made than are necessary for ongoing law enforcement purposes.

-In the explanatory letter from the Los Angeles City Attorney's office which accompanies the report no attention is given to the issue of whether "governmental privilege" for these documents has been waived in whole or in part, due to past selective

access given to private parties. This issue was raised several times before the Police Commission but deferred for future consideration.

-In some instances, contradictory practices of excision are applied to the same information when it appears in different sections of the report. For example, a name may be provided in one section and blacked out elsewhere, in the same subject matter context.

-The City Attorney's office letter accompanying the report asserts that a "tremendous burden" would be entailed in looking "beyond the four corners of the Kennedy Report to determine if a fact included in the report had already been publicly released." (pp. 3-4) In comparison with the broad task of redaction, however, identifying the basic information about the case in the public domain is a very minor chore. The controversies and literature concerning the assassination of Senator Kennedy are easily reviewed, as are the witnesses and exhibits at Sirhan's trial, although work to date suggests no LAPD familiarity with such sources. There is no evidence in the recently released report of a review of the three major published books about the assassination, although they can easily be read and referred to. Indexes are available for all of these books, and one of them, Special Unit Senator, was authored by the Los Angeles police chief of detectives who managed the investigation.

-The indexes contained within the report were withheld in their entirety on the grounds that making them available, even in part, would pose an undue administrative burden. Such indexes are

of great importance in using lengthy documents of this kind; the rationale for their withholding in full is unpersuasive.

-No evidence exists of meaningful practical consultation to date with outside scholars, archivists, or subject-matter authorities in the redaction process. Although enlistment of outside help was promised in Police Commission public sessions, policy deliberation and practical study were apparently limited exclusively to police structure and City Attorney office staff. Some experts and interested citizens testified before the Police Commission or sent recommendations directed to specific points. None of these persons was consulted on practical redaction matters and most of the relevant recommendations were ignored.

-The withholding practices in the summary report seem in important respects to reflect a premise that observations or judgements at police policy levels are ipso facto correct, and therefore beyond any need of independent verification. In fact, important errors of official findings and practice in this case are already well documented and have been widely known for years. More importantly, however, the guiding principle of accountability is the precise reverse of that premise: that disclosure requires not merely the form but the reality of independent oversight and knowledge.

The assassination of Senator Kennedy is the most important crime which ever occurred in the State of California. Fundamental controversies have long surrounded the case, but full and adequate scrutiny of such questions has long been deferred because of official policies of withholding. The application of the redaction stan-

dards described above to the 50,000 pages of primary police documents would gravely compromise the value of public disclosure and substantially depart from the relevant precedents and policies in comparable cases. Unjustified deletions will also complicate and delay release of material. Redaction standards require assessment, and scholars or relevant experts should be involved, as promised, in this aspect of the disclosure process.