



U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

April 1, 1981

James H. Lesar, Esquire
2101 L Street, N. W.
Washington, D. C. 20037

Dear Mr. Lesar:

Over the past several years, at the request of your client, Mr. Harold Weisberg, personnel of the Office of Privacy and Information Appeals have conducted a number of searches for records of the Offices of the Attorney General and Deputy Attorney General pertaining to Dr. Martin Luther King, Jr.

From the time in 1975 that O.P.I.A. began to process requests for records of the Offices of the Attorney General and Deputy Attorney General until approximately one year ago, searches for records of the two Offices were limited to index checks and inquiries of personnel in the two Offices. Using this methodology, efforts to locate "King" records for both Offices were unsuccessful with the exception of one thin folder, captioned "MARTIN LUTHER KING INVESTIGATION", which appears to have been a "working" or "desk" file of someone formerly in the Office of the Deputy Attorney General. As you know, three records from this one file were processed and released to Mr. Weisberg, with excisions. They were subsequently re-released by the Federal Bureau of Investigation, with fewer excisions, are encompassed by Civil Action 75-1996, and are the same items identified in the attachment to O.P.I.A. Director Quinlan J. Shea's letter to you dated February 3, 1981, as FBI #1-3. The only other records in this file pertained solely to administrative aspects of setting up the "OPR Task Force" charged with looking into the investigation of the murder of Dr. King. These items were not initially processed for release, in the belief that they did not fall within the scope of any pending request by Mr. Weisberg and on the assumption that they would be of no interest to him. Mr. Shea did mention their existence

EXHIBIT C

to him, however, and Mr. Weisberg orally informed him that he would like to have copies. Sometime last summer, after discussions with the Office of Professional Responsibility, the release of these records was approved. Although it is believed that copies were furnished to Mr. Weisberg at that time, no copy can now be located of any transmittal letter or other record which proves that to be the case. Accordingly, copies of them are enclosed herewith. No excisions have been made. (Tab A)

In the spring of 1980, members of the O.P.I.A. staff discovered that three additional, relevant indexes had begun to be maintained by the Records Maintenance and Disposition Section, Justice Management Division, and that these indexes, by and large, did not duplicate the official indexes of the two Offices. Two of these indexes were of Attorney General records, one for those of Attorney General Levi and one for those of Attorney General Bell (an index for records of Attorney General Civiletti has since been added). The third index was for the Office of the Deputy Attorney General and covered the approximate period of 1969 to 1979, inclusive. O.P.I.A. personnel reviewed all three indexes and then screened the following files:

Attorney General Edward H. Levi files:

1. Section 1, # 3, EHL/FBI
2. Section 1, #24, Civil Rights Division
3. Section 1, #60, FBI Guidelines
4. Section 1, #61, King Report (classified)
5. Section 3, #43, FBI/Improprieties
6. Section 3, #44, FBI/Informants
7. Section 3, #45, FBI/Intelligence
8. Section 3, #52, FBI/King Investigation
9. Section 3, #61, FBI/Oversight Committee
10. Section 3, Schedule A, MLW/FBI
11. Section 3, Schedule A, MLW/FBI/Martin Luther King - notes

12. Section 3, Schedule A, MLWolf/Civil Rights
13. Section 3, Schedule A, Part F, FBI Issues
14. Section 6, FBI Assets (classified)

Attorney General Griffin B. Bell files:

15. Criminal/Consensual Use of Electronic Devices
16. House Assassinations Committee
17. Ray, James Earl
18. Civil Rights, General
19. Office of the Attorney General, general
20. King, Coretta
21. King, Martin/Compensation Proposal

Office of the Deputy Attorney General files:

22. Box 14, King, Martin Luther (Jr.) - Task Force Report
23. Box 19, Ray, James Earl

The result of this process was the location of those records mentioned in Mr. Shea's letter to you of August 22, 1980, and concerning which he wrote you (with releases) on February 3 and March 10, 1981. (Mr. Shea stated in his letter dated March 10, 1981, to you that fifty-two, instead of fifty-three, documents had been released to you on February 3, 1981; this was an error, since fifty-three documents were released to you as originally stated.) Enclosed herewith are the last items to be released from these records. As Mr. Shea has already advised you, it is the position of the Department of Justice that virtually all of the substantive materials within the scope of your client's request are exempt from mandatory release under the Freedom of Information Act pursuant to 5 U.S.C. 552(b)(5), which pertains to privileged inter- and intra-agency communications which reflect an agency's internal deliberative process. Because of the historical importance of the matters under discussion in these records, however, it has been determined that most of the materials are appropriate for discretionary release.

Copies of the following eighteen items are being released without excisions: OPR #2, 9, 10 and 24; FBI #7; OLC #1, 2, 3 and 4; SG #1; DAG #2; AG #5, 7 and 30; and CRIM #1, 2, 3 and 4. Copies of the following ten items are being released, with excisions: OPR #1; AG #25, 26, 27 and 31; CRIM #5, 6 and 7; and CIV #1 and 2. (Tab B)


Two records are being withheld in their entireties. These are the items identified in the attachment to Mr. Shea's letter of February 3 as Civil Rights #7 and Attorney General #33. The reasons for the excisions and withholdings are contained in Mr. Shea's "Vaughn" affidavit being filed with the Court in Civil Action 81-0023 today.

Mr. Shea has informed me that Mr. Weisberg wrote to him regarding FBI #1-3 on March 6, after receiving the letter of February 3, and stated that he did not desire to have additional copies of these three items released to him unless they bore notations. They do not. He has also inquired specifically about records of his early FOIA requests to the Office of the Deputy Attorney General and records located or created as the result of his having filed these requests. Any such records would have been transferred from the Office of the Deputy Attorney General to the Office of the Administrative Counsel, Justice Management Division, in 1976, as the result of the reassignment of administrative responsibilities in the FOI area effected at that time. The incumbent Administrative Counsel, Mr. William Snider, has informed Mr. Shea that he took over his position in October 1978. At that time, it was the practice of the office to destroy administrative records as soon as there was no longer a need for them. He has changed that practice, but the records which were received or compiled prior to that time no longer exist.

If Mr. Weisberg is dissatisfied with my action on his request, he may appeal from this partial denial by writing to the Attorney General within thirty days of your receipt of this letter. Any letter of appeal should be addressed to the attention of the Office of Legal Counsel. Both the letter and the envelope should be clearly marked "FREEDOM OF INFORMATION APPEAL". In the event of your client's dissatisfaction with the results of any such

appeal, judicial review would thereafter be available to him in the United States District Court for the judicial district in which he resides or has his principal place of business, or in the District of Columbia, which is also where the records sought are located.

Sincerely,



Robert N. Ford
Acting Associate Attorney
General

Enclosures

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF PROFESSIONAL RESPONSIBILITY
WASHINGTON, D.C. 20530

MAY 24 1976

TO: Rudolph W. Giuliani
Associate Deputy Attorney General

M.E.S. FROM: Michael E. Shaheen, Jr., Counsel
Office of Professional Responsibility

SUBJECT: Assignment of Secretarial and Paralegal Personnel
to Martin Luther King Task Force

I have attached several memoranda which, when read chronologically, are self-explanatory. In his May 24, memorandum to me, Robert Dennis explains that in conversation with Acting Executive Officer, Harry Fair, of the Civil Rights Division, Mr. Fair suggested that I "coordinate" the release of the three civil rights employees with Jim Turner. Before receipt of Dennis' memo, however, while talking to Mr. Fair today about another matter, he advised me that additional details of Civil Rights Division employees were not going to be allowed. I advised Mr. Fair that the Deputy Attorney General was responsible for decisions of this sort and that I was not the appropriate person with whom to discuss these matters.

You should know that the Martin Luther King Review is progressing nicely and that the only threat to that continued progress comes from having no secretarial assistance and inadequate staff of paralegals in assistance. (There is no problem with Ms. Hope Byrne and her detail). But we do enlist your assistance in giving the Task Force immediate relief in the form of secretarial help. I shall appreciate your early attention (and success) in resolving this problem. The individuals from Civil Rights who are named in Mr. Dennis' memo are available to assist if you can secure their detail. (The Task Force has had no secretarial assistance for the full month of its existence). Help!



MAY 18 1976

TO: Michael E. Shaheen, Jr., Counsel
Office of Professional Responsibility

FROM: Fred G. Folsom, Leader
Martin Luther King Review Task Force

SUBJECT: Assignment of Secretarial and Paralegal Personnel

It is requested that Linda Ramsberg and Carole Kosack be immediately assigned as our principal secretaries. We would hope that they will be familiar with transcription work and be able to take charge of the "housekeeping" operations for our task force.

We have immediate need of more assistance to collect data and do research in several areas emerging from our review. Miss Hope Byrne, research analyst, has reported for parttime work and expects to begin full time next week. From the list of other qualified paralegals supplied to us last week it is requested that Elizabeth Dunigan be assigned to begin work as soon as she can be processed.

MAY 18 1976

TO: Robert L. Dennis; Director
Operations Support Staff
Office of Management and Finance

FROM: Michael E. Shaheen, Jr., Counsel
Office of Professional Responsibility

SUBJECT: Attached Memorandum from Fred G. Folsom

I have attached a memorandum to me from Fred G. Folsom, Leader, Martin Luther King Review Task Force, which is self-explanatory. I would appreciate your early assistance in effecting the requested personnel assignments.

copy to Folsom 5/17/76

Memorandum

TO : Michael E. Shaheen, Jr.
Counsel
Office of Professional Responsibility

DATE: MAY 24 1976

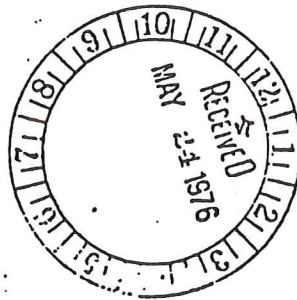
FROM : Office of Management and Finance
Operations Support Staff

SUBJECT: Assignment of Secretarial and Paralegal Personnel to the
Martin Luther King Review Task Force

This is in response to your memorandum dated May 18, 1976, requesting the assistance of the Operations Support Staff in obtaining personnel for the Martin Luther King Review Task Force.

The memorandum you attached from Mr. Fred Folsom, the task force leader, identified four employees who he requested to work on the project. According to the Executive Assistant of the Criminal Division, Mr. James Musckett, Miss Hope Byrne will be working on task force matters part-time for the next several weeks and then will be able to devote full time to the project. The other three employees, Mmes. Linda Ramsberg, Carole Kosack, and Elizabeth Dunigan are in the Civil Rights Division and my staff has talked with the Acting Executive Officer, Mr. Harry Fair, about releasing them for the task force. Mr. Fair, however, suggested that you coordinate their release directly with Mr. James Turner, Deputy Assistant Attorney General of the Civil Rights Division.


Robert L. Dennis
Director



5010-110

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

UNITED STATES GOVERNMENT

Memorandum

TO : J. Stanley Pottinger
 : Assistant Attorney General
 : Civil Rights Division

FROM : Rudolph W. Giuliani
 : Associate Deputy Attorney General

SUBJECT: Martin Luther King Task Force

DATE: June 2, 1976

There has been some confusion as to the assignment of secretaries and a research assistant to the King Task Force. I understand that you have discussed this matter with the Deputy and he has decided that two secretaries and a research assistant should be detailed from your division to the Task Force. Our tardiness in settling this matter has already delayed the work of the Task Force so could you have these three individuals detailed immediately. Mike Shaheen has discussed the three particular individuals with Harry Fair--Elizabeth Dunigan, Linda Ramsberg and Carole Kosack.

cc: Glen E. Pommerening
 : Assistant Attorney General
 : Administration

Michael E. Shaheen, Jr.
 : Counselor, Office of
 : Professional Responsibility



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Department of Justice
Washington, D.C. 20530

May 27, 1976

ink
King
address

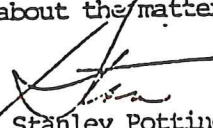
MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

Re: Martin Luther King Review Group

I have received a memorandum of May 24, 1976 (attached), from Glen Pommerening, and Jim Turner received a telephone call from Ed Scott today, both on this subject.

In the May 24 memorandum, Mr. Pommerening says that "the Deputy Attorney General has decided" that the Civil Rights Division is to pay various costs of this review group. Today, Mr. Scott said that you had also decided that in addition to the three attorneys we have already detailed, two secretaries and a research analyst are now to be detailed as well. Six positions represent a significant cost to this Division.

I have instructed Jim Turner and Harry Fair not to execute this latest request until I hear from your office on some consultative basis. I assume that there has been a simple misunderstanding in this regard, given the two days of constant reminders at Big Meadows that consultation on decisions of this kind are necessary and appropriate. Given that a key for my recommendation that another group continue the King review was that the Civil Rights Division lacked adequate resources, obviously it makes little sense to continue this drain of resources without at least the courtesy of a discussion about the matter.


J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

CC: Glen Pommerening
Mike Shaheen ✓

RECEIVED

Memorandum

TO : J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

FROM : Glen E. Rommeling
Assistant Attorney General
for Administration

SUBJECT: Martin Luther King Review Group

DATE: MAY 24 1976

The Deputy Attorney General has decided that those organizations furnishing personnel through detail to the Review Group will continue to fund all personnel compensation for those individuals. All other costs for such items as travel, rents, printing, equipment, etc., are to be borne by the Civil Rights Division.

Funding of these costs by your Division is to be accomplished by the execution of a reimbursable agreement between the Civil Rights Division and the Office of Professional Responsibility. A special accounting code has been established for the Review Group to specifically identify all costs incurred.

The Operations Support Staff of this office will develop a budget for the Review Group to cover the remainder of this fiscal year as well as for the Transition Quarter. These budgets will be reflected in the reimbursable agreements which will be sent to you for signature.



5010-110

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OSS:RLD:RAC:pjr 5/17/76

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

Glen E. Pommerening /s/ GEP
Assistant Attorney General
for Administration

Martin Luther King Review Group

Noted
MAY 24 1976
J. Pottinger
G. Pommerening

The Deputy Attorney General has decided that those organizations furnishing personnel through detail to the Review Group will continue to fund all personnel compensation for those individuals. All other costs for such items as travel, rents, printing, equipment, etc., are to be borne by the Civil Rights Division.

Funding of these costs by your Division is to be accomplished by the execution of a reimbursable agreement between the Civil Rights Division and the Office of Professional Responsibility. A special accounting code has been established for the Review Group to specifically identify all costs incurred.

The Operations Support Staff of this office will develop a budget for the Review Group to cover the remainder of this fiscal year as well as for the Transition Quarter. These budgets will be reflected in the reimbursable agreements which will be sent to you for signature.

cc: Mr. Shaheen, OPR
Mr. Giuliani, DAC
Mr. Crampton, Tax
Mr. Folson, MLKRG
Ms. Lee, OSS

Official File Copy



OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

*Discussed with Glenn P. - 5-11-76
and he said he would implement.
RAG*

MAY 10 1976

Mike

TO: Rudolph W. Giuliani
Associate Deputy Attorney General

FROM: Michael E. Shaheen, Jr., Counsel
Office of Professional Responsibility

SUBJECT: Martin Luther King Review

Reference is made to my memorandum of April 30, 1976, to the Deputy Attorney General (with copies to you and Doug Marvin) requesting that certain named individuals be detailed as Task Force members to complete the review of the Martin Luther King files, etc.

1) In that memorandum I indicated the immediate need to regularize the part-time employment of Fred G. Folsom to full time. I hope that steps have been taken to secure that status.

2) The Task Force now requires the services of one full time secretary, and I recommend that OMF be requested to secure the detail of a secretary with Top Secret clearance as soon as possible. I shall appreciate a nudge from you to accomplish this with the dispatch that is now required.

3) I enlist your assistance in settling upon the appropriate mechanism that will permit the Task Force members to take the necessary trips to the several Bureau field offices with authorization for such travel resting in this Office. Neither Task Force members nor this Office have travel funds, much less any GTRs.

cc: Harold R. Tyler, Jr
Douglas R. Marvin



4) It is most likely that additional paralegals will be enlisted as detailees to aid in this review. Their names will, of course, be forwarded to you.

5) I leave to you and Glen Pommerening the decision as to where the funds for these various expenditures are to come.

I shall appreciate your assistance with respect to these matters.

Memorandum

NOV 4 1976

King

TO : Michael E. Shaheen, Jr.,
Counsel, Office of Professional
Responsibility

FROM : Fred G. Folsom, Leader
Martin Luther King, Jr., Task Force

SUBJECT: Task Force Access to FBI Files

DATE:

I have just been notified by our Bureau liason that the Task Force has been denied access to an informant file which we had requested. This informant was attached to the Atlanta Field Office and played a critical role in obtaining information about King for the FBI [redacted]. It is important in ascertaining the character of the Bureau's investigation of King that we be familiar with the Bureau's directions to and the extent of the actions taken by this informant. The Bureau's objection is unjustified particularly in light of the fact that the identity of the informant has already become known to us through our review of the SCLC file. Also, we do not plan to contact the informant without discussion with the Bureau and the prior approval from the Attorney General.

b7D, b6

The denial of access is also untimely. We are traveling to Atlanta on Monday, November 8 and had planned to review the field office file for this informant in conjunction with our review of other matters relating to the SCLC.

We would ask again that a resolution of this matter be made on an expedited basis.

*Hofis turned Bureau around Nov. 5.
Blakhurst satisfied.*



Memorandum

TO : Michael Shaheen, Counsel
Office of Professional Responsibility

DATE: October 8, 1976

FROM : *[Signature]*
Fred G. Folsom, Leader
Martin Luther King, Jr., Task Force

SUBJECT: Task Force Access to Stanley Levison FBI File

As you know, the review of FBI activities with respect to Martin Luther King, Jr. has become closely involved with the relationship which both King and the FBI had with Stanley Levison. This has necessitated a review of the Levison file by the Task Force particularly in light of the reliance which the Bureau places on the Levison history as a justification for its surveillance of King.

The Task Force has sought access to the file as a group not only because of its size (7029 serials) but because of the collective approach which we have employed in discharging our responsibilities. The Bureau position was to limit access to me alone as an additional precaution to protect the security of their informants. Such an approach is unwarranted. It would be burdensome to an expedited review and would hinder the free discussion among the attorneys which has prevailed thus far.

In keeping with the ground rules of permitting free access to all relevant files, the Bureau was to have taken this issue to the Attorney General for resolution. This apparently has not been done. Indeed, we thought that a compromise had been reached some four weeks ago which would have rendered the appeal unnecessary. In August, the FBI agreed in a rather inconsistent fashion to provide the Task Force with a security briefing concerning the informants involved in the Levison case while at the same time continuing to deny us access to the file. At the close of the briefing on September 2, 1976, the Bureau asked if we would object to an excision of the names of the informants from the file prior to its delivery. We agreed as a group to permit this as long as only the names were excised and on the assumption that the review itself did not disclose facts which would render it necessary for the identities of the informants to be divulged.



It was our understanding up until last week that as a result of the agreement on excision, we would be given access to the Levison file as a group. We have now been informed that the Bureau wishes to remove the informants names as well as permit only one attorney to see the file. At this point we would ask that a resolution be made so that we may proceed with a review of the Levison role in this matter.

Michael Shaheen

June 3, 1976

Jack W. Fuller

Dr. Martin Luther King documents

The Attorney General would like your recommendations about the requests made by the representatives of the estate of Dr. Martin Luther King. These requests, as I understand them, are as follows:

- 1) That representatives of the estate be given access to documents provided to the Church Committee with respect to the FBI's investigation of Dr. King and of his assassination.
- 2) That representatives of the estate be given access to other documents and material not provided to the Church Committee pertaining to the FBI investigation of Dr. King and his assassination.
- 3) That representatives of the estate be involved in some way in your investigation of the matters pertaining to Dr. King.

The Attorney General wants to know particularly what legal problems--for example, under the Privacy and Freedom of Information Acts and with respect to your ongoing investigation--might arise from giving access to documents to representatives of the estate. He is also interested in knowing the FBI's reaction to giving such access.

JWF/br

OPR #9



UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF PROFESSIONAL RESPONSIBILITY
WASHINGTON, D.C. 20530

filed

JUN 3 1976

TO: John A. Mintz, Assistant Director
Legal Counsel Division
Federal Bureau of Investigation

Mary C. Lawton
Deputy Assistant Attorney General
Office of Legal Counsel

Mike

FROM: Michael E. Shaheen, Jr., Counsel
Office of Professional Responsibility

Attorneys representing both Mrs. Martin Luther King, Jr. and the estate of the late Dr. King have requested the Department to permit them 1) access to all materials provided to the Senate Select Committee on Intelligence relating to Dr. King, and/or 2) access to all Department and FBI files relating to Dr. King and 3) the right to participate in the full Department and Bureau review of Dr. King's assassination, the Bureau's investigation of that assassination, and the Bureau's program of harassment against Dr. King presently being undertaken by this Office at the express order of the Attorney General.

The Attorney General has requested that this Office invite your advice and written views on the legal implications that would attend granting any of the three broad requests made by the Attorneys for the King family.

Please forward your views to this Office by early next week so we may transmit them to the Attorney General for his review and subsequent discussion.

↓
cc: Jack Fuller



OPR #10



UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF PROFESSIONAL RESPONSIBILITY
WASHINGTON, D.C. 20530

6
Dr. King
06/16/76

JUN 16 1976

Mika

TO: Jack W. Fuller, Special Assistant
to the Attorney General

FROM: Michael E. Shaheen, Jr., Counsel
Office of Professional Responsibility

SUBJECT: Request for Access to Materials Relating to
Dr. Martin Luther King, Jr.

This is in response to your request for my views as to the position the Department should take concerning the requests of the King Estate for access to FBI materials regarding Dr. King, and to participate in the Department's review of FBI activities relating to Dr. King.

1. Access to Materials Given to SSC

The attorneys for the King Estate have requested access to those FBI materials concerning Dr. King which were delivered to the Senate Select Committee. I think these materials can and should be made available subject to the following conditions: The names of third persons mentioned in the FBI documents will have to be excised unless the King attorneys can provide us with written waivers of privacy rights from the other persons mentioned in the documents. Also, certain classified materials concerning Dr. King were delivered to the SSC to which access cannot be given until the documents can be declassified.

My only reservation about making this material available now is that it seems unfair to other persons who have requested materials concerning themselves from FBI files, and inconsistent with Departmental policy of answering FOIA requests in the order in which they are



OPR # 24

received. Dr. King's status as a public figure and the fact that this is not a formal FOIA request, however, may outweigh this reservation.

2. Participation in the DOJ Review of the FBI Investigation of the Assassination of Dr. King.

I think it would be a serious mistake to allow attorneys for the relatives of the murder victim to participate in any way in a review of the thoroughness of the investigation of the murder.

3. Participation in the DOJ Investigation of FBI Harassment of Dr. King.

Because this investigation could lead to recommendations for prosecutorial or administrative actions against FBI personnel I have reservations about allowing the victim's representatives to participate in the investigation of the harassment. From a historical point of view, I think such participation might lead to a more complete and accurate picture of what the FBI did to Dr. King and may also give greater credibility to the results of the investigation. Therefore, I would recommend that we explore this matter further with the attorneys for the King Estate to determine whether their participation in the investigation would be feasible and desirable.

Memorandum

TO : Michael E. Shaheen, Jr., Counsel
Office of Professional Responsibility

DATE: June 9, 1976

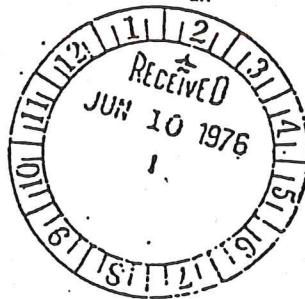
FROM : Assistant Director - Legal Counsel
Federal Bureau of Investigation

SUBJECT: REQUEST FOR ACCESS TO MATERIALS
RELATING TO MARTIN LUTHER KING, JR.

Your memorandum to me dated June 3, 1976, concerning captioned matter requested my advice and written views on the legal implications that would attend granting any of the three broad requests made by the attorneys for the King family.

Granting access to the materials and files as requested would afford the attorneys an advantage not granted others pursuant to the FOI and Privacy Acts and the Department regulations pursuant to those acts. Special considerations are involved due to the notoriety of Martin Luther King, Jr.; and the published allegations concerning him and the FBI. However, others may feel equally entitled to similar treatment if unusual access is granted in this instance, and they may call for a discretionary release by the Attorney General in other cases. The backlog of FOI and Privacy Acts requests would be further complicated by creating new categories of expeditious file review.

The May 27, 1976, decision of the court in Eldridge Cleaver, et al., v. Clarence M. Kelley, et al., Civil Action 76-0795, (U.S.D.C., D.C.), supported the FBI practice of serving all FOI - Privacy Acts requests equitably by responding according to the date of receipt. Judge Green's opinion is a significant development in the law which we would not like undercut by a policy of preferential handling of requests out of the order in which they were received. An FOI - Privacy Acts request



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FBI #7

Michael E. Shaheen, Jr.

by the King family attorneys would face some delay due to the existing procedures, but the material could be made available subject to the statutory exemptions. Disclosure beyond that required by the statutes would be of doubtful propriety in this matter because there remain serious questions of personal privacy of Martin Luther King, Jr., even though he is deceased. Moreover, broad disclosure does not seem to be necessary to private counsel in view of the in-depth study of this matter made by the Church Committee followed by their public report.

The question of private counsel participation in the Department and FBI review of Dr. King's assassination, the Bureau's investigation of that assassination, and the Bureau's alleged program of harassment against Dr. King being undertaken by your office at the express order of the Attorney General should require little discussion. It does not seem to me to be in the interest of justice to have private attorneys for those who may have a stake in the matter participate in reviews undertaken by the Department or by the FBI.

OLC

Michael E. Shaheen, Jr.
Special Counsel for Intelligence
Coordination

AUG 7 1975

Mary C. Lawton
Acting Assistant Attorney General
Office of Legal Counsel

Proposed Procedures to be Followed with Regard to
Senate Select Committee Requests for Materials
Pertaining to the Activities of Dr. Martin Luther King, Jr.

In Mr. Scalia's absence I have reviewed the proposed
Memorandum of Understanding concerning procedures for pro-
viding the Senate Select Committee with materials relating
to Dr. King.

I see no basic objection to the proposed procedures
although, as you know, I have not been involved in earlier
discussions of these matters. The procedures appear to be
consistent with procedures worked out earlier with Mr. Wachtel
and, if they are satisfactory to all concerned, should not pose
a problem for the Department.

OLC #1

AUG 22 1975

Michael E. Shaheen, Jr.
Special Counsel for Intelligence
Coordination

Mary C. Lawton
Deputy Assistant Attorney General
Office of Legal Counsel

out 8/22

Proposed procedures to be followed with regard to
Senate Select Committee Requests for materials
pertaining to the activities of Dr. Martin Luther
King, Jr.

Mr. Scalia discussed this matter with me briefly before leaving on vacation and asked that I respond to your memorandum of August 11, 1975 concerning the revised proposal on disclosure of materials relating to Dr. King.

In response to your specific question on possible Department waiver of rights to object to the legal standing of either the King family or estate to prevent transmittal of materials to the Select Committee, it would seem advisable to include in any agreement signed by the Department a disclaimer of any intent to waive similar to the disclaimer included for Mr. Wachtel in paragraph 5 b. Without such an express provision the Department would probably be required to litigate the question of waiver regardless of the ultimate outcome on the merits.

We defer to you with respect to the desirability of signing the agreement at all. We note that the Department is under no legal obligation to agree to these terms. The Privacy Act of 1974, P.L. 93-579, were it in full effect at this time would not prevent the disclosure of such material to a duly authorized

OLC #2

✓
congressional committee or recognize a right in the individual to block such disclosure. 5 U.S.C. 552a(b)(5). On the other hand, we know of no legal obstacle to the Department entering into such an agreement should it desire to do so.

UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF JUSTICE

TO : Michael E. Shaheen, Jr., Counsel
Office of Professional Responsibility

DATE: JUN 8 1976

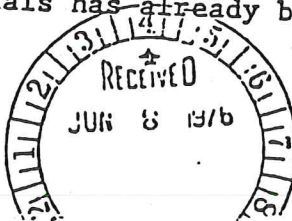
FROM : *MCL* Mary C. Lawton
Deputy Assistant Attorney General
Office of Legal Counsel

SUBJECT: Request of Estate of Dr. Martin Luther King

This is in response to your request for my views as to the legal implications of granting the request of attorneys for Mrs. Martin Luther King, Jr. and the King Estate for access to FBI materials relating to Dr. King and for participation in the Department's review of FBI activities relating to Dr. King.

1. The Access Request. I assume that the request for access to the materials furnished the Senate Select Committee and/or other materials related to Dr. King has been made informally and does not yet constitute a formal Freedom of Information Act request. If this is indeed the case, there are important reasons for handling the matter by direct, informal negotiation rather than as a formal Freedom of Information Act matter. The negotiation process would minimize questions such as the "right" of third parties to receive access to materials released to the King Estate, the time limits to be observed, the effect of granting preferred treatment to these requesters while others wait their turn, etc. These issues, as they relate to the Freedom of Information Act are discussed below.

The question of access to the materials can be considered separately from the question of participation in the review process of this Department although, of course, if participation in review were permitted access would be a necessary concomitant. The King Estate's strongest argument for access is to those materials which have already been released to the Select Committee. The nature, if not the substance, of at least some of these materials has already been released to the



1-1973-04

DLC # 3

public through the Select Committee Reports. It seems to me that we would be hard pressed to assert a blanket refusal of access to these materials. On the other hand, there may be a valid reason to insist on certain deletions either to avoid prejudice to our review of the case or to individual agents mentioned or to protect the privacy of others who may be mentioned in the materials. This would be a matter for negotiation. As a first step, I would suggest that the Attorneys be provided with a description or index of what was furnished to the Select Committee if they do not already have this.

I cannot comment in any depth on the request for access to other materials on Dr. King without knowing whether such materials exist, how extensive a search would be required to identify them, and what they contain. I would only note that an extensive search, at this time, to locate materials which have not been previously identified would almost certainly result in further delay in processing existing FOI requests since some of the same personnel would undoubtedly be required to make such a search.

Whether the question of access is considered under FOI or separately, I would strongly urge that the Department satisfy itself that Dr. King's immediate family is in accord with the access request? The Department should do everything in its power, even to insisting on written releases, to avoid getting caught in a crossfire between Mrs King, the children, and Dr. King, Sr. We should also take pains to protect the privacy of Dr. King's associates, in the course of any disclosure or access, unless we have a written waiver of privacy interests from them.

If the access request has been, or is subsequently, made under the Freedom of Information Act, several complex legal issues arise. These include the availability of exemptions as a basis for denying access, the general privacy issue as it relates to the status of the requesters, the possibility of giving preferred processing treatment as against our "wait in line" policy, and the question of fees.

a. Exemptions. The mere fact that some of these materials have already been furnished to the Select Committee does not preclude our claiming exemptions from access. Congress,

or its committees, acting in an official capacity, are essentially outside the FOIA, 5 U.S.C. 552(c), and the fact that Congress has received material does not place it in the public domain except to the extent that it may actually have been made public. Exemptions not claimed as against the Congress, might nevertheless be claimed against these requesters. Whether it is necessary and appropriate to claim such exemptions must be determined on the basis of the materials themselves, keeping in mind the possibility of future prosecution or other litigation.

b. Privacy. FOI exemptions 6 and 7(C) would be available to protect the privacy of individuals mentioned in the materials requested. The more difficult question is whether a privacy claim could be made on behalf of Dr. King to withhold materials from his widow or his estate. We know of no case law on the subject. We have, however, generally taken the position that a deceased has no legal privacy right under the FOI exemptions and that any privacy interest that exists concerning him is the derivative right of his personal representatives to protect their own privacy interest in the family name. Under this theory, information could not be denied to the personal representative on the theory that disclosure would constitute an invasion of Dr. King's privacy, but information furnished to the personal representative could be denied to some other person requesting it, on the theory that disclosure would invade the personal representative's derivative privacy interest. Such an approach, we would argue, would constitute an exception to the theory suggested in Ditlow v. Schultz, 517 F.2d 166 (D.C. Cir. 1975), that once information has been released to one party after a consideration of privacy exemptions under FOI it must be released to any party who seeks it. We repeat, however, that there are no court decisions on point and the risk is there that if we release information to the King Estate under FOI the claim will be made that the public at large then becomes entitled to it.

We have not discussed the Privacy Act since it more clearly applies only to living individuals who request their files from a system of records and that is not the case here.

c. Preferred processing. Due to our inability to handle the volume of requests received under FOI within the time limits imposed by that Act, we have adopted a policy of first come-first served with respect to the processing of FOI requests. While I am advised that three exceptions to this policy have been made, it may not be advisable at this time to make such an exception with respect to all or part of the King materials.

The reasonableness of our first come-first served policy is presently in litigation in several Courts of Appeals and has been briefed and argued in the Open America case in the D.C. Circuit. I am advised that the Court, in oral argument, specifically focused on the aspect of discrimination in our policy because of exceptions made in the past. If we make yet another exception in the King case, we can expect the discrimination argument to be raised anew.

On the other hand, it might be argued that preferred processing is justified in the King matter at least as to those materials already furnished the Select Committee. These materials have already been searched for and located and, I would assume, segregated in an easily retrievable form. Possibly some processing of the type which would be done under FOIA, such as deletion of the names of third parties, has already occurred. It might be argued then, that completion of this processing of the materials is not an exception to our first come-first served policy. Indeed, giving preferred treatment to the completion of processing on this material might, as a practical matter, strengthen an argument that the processing of any other materials should await its turn.

While I understand that the Civil Division feels strongly that we should not deviate from the first come-first served policy at this time, on balance I would recommend that, if there is an FOI request, preferred treatment be given to the Select Committee materials but any request for other materials be handled under the first come-first served policy.

d. Fees. Whether this request for access is handled as a unique negotiating matter or as an FOI request will, to some extent, inject the question of fees -- both search and duplication fees for material and attorneys' fees. This Department has no established procedure for collecting search or duplication fees for material made available outside the

FOIA. Under the FOIA, however, we have established fee schedules both for searching for information and providing copies of it. Fees are established pursuant to the express provisions of 5 U.S.C. 552(a)(4)(A) but the Act encourages the waiver of such fees "where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public." If a request for this material is made under FOIA we will be faced with the decision of whether or not to charge the King Estate the FOIA fees. An attempt to charge the fees would, I think, be viewed as outrageous; to waive the fees, however, we would have to find that disclosure to the King Estate would primarily benefit the general public. It is not clear at this time that the general public would ever be given access to any materials furnished the King Estate, thus making the finding of benefit to the public difficult. This underscores the desirability of handling the request outside the FOIA if at all possible.

The FOIA specifically provides for the award of attorneys' fees and other litigation costs to a party who substantially prevails against an agency in connection with an FOIA request. Here again, there are no definitive court decisions as to when such fees would be available. We are presently litigating the question whether attorneys' fees may be awarded when information has been made available prior to judgment, either because an agency which had refused information made it available after suit was brought or because an agency was sued prior to completion of the processing of a request and ultimately decided to make the information available. As far as I know, attorneys' fees have not been awarded prior to the filing of litigation for the cost incurred in agency negotiations. Nevertheless, the attorneys may see an advantage to pressing their claim as an FOIA matter in the hopes of obtaining fees; it is, of course, to our advantage to handle the matter outside of FOIA.

2. The Participation Request. The request to participate in the Department's review of the King matter would, of necessity, involve access to all or at least some of the material requested with the attendant problems of privacy already discussed. It would raise even more serious questions of due process and the exercise of prosecutorial discretion.

If private parties representing the interest of the victim were allowed to participate in the Department's review of the King assassination and the FBI's investigation of that assassination then it can be argued, as a matter of fundamental fairness, that James Earl Ray or his representative would have an equal right to participate. Similarly, any Bureau personnel who might be subject to disciplinary action because of their handling of the matter might also claim a right to participate. Should a review of the matter lead to a reopening of the assassination case and, subsequently, the indictment of someone other than Ray for participation in the crime, that individual might well move to dismiss such an indictment arguing that the victim's family exerted undue influence on the Department's decision to reopen and charge. Review by members of the public in a commission or other body especially established for that purpose would not necessarily create the same problems in an assassination case as prominent as the King case, but selective participation of the King Estate in a review otherwise being conducted by a governmental agency would create an unfortunate precedent and open this Department to charges of undue influence in the exercise of its responsibilities. In my view, we cannot risk either the charge of influence or the precedent.

The precedent that would be established by permitting the attorneys for the King Estate to participate in the Department's review of FBI harassment against Dr. King would have even worse impact. It would essentially involve the "victim's" family in the investigative stage of a case which could conceivably lead to prosecution or administrative action against FBI personnel. This would be the first step toward what Kenneth Culp Davis, in Discretionary Justice has proposed as an administrative proceeding for the exercise of prosecutorial discretion, a hearing on the decision to prosecute or not at which interested parties could present their conflicting views. Davis, of course, was primarily concerned with the ability of the prospective defendant to argue against a decision to prosecute, but if the victim's family can appear and present views fairness would seem to demand that the prospective defendant be represented as well.

I cannot believe that the Department would seriously consider the prospect of undertaking "hearings" at which victim and defendant could appear and be heard each time it investigates with a view toward possible prosecution. Yet if the King attorneys are invited to participate in this investigation, we would be hardpressed to deny either potential defendants or other victims' families the same right in the future. I would suggest that the Department categorically refuse actual participation by the attorneys for the King Estate in its review of this matter.

RECEIVED
OFFICE OF THE
ATTORNEY GENERAL
APR 19 1976Department of Justice
Washington, D.C. 20530

APR 19 1976

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Martin Luther King Investigation

In response to your memorandum of April 15 on the above subject, I have the following comments on the principal recommendations:

1. Continuation of Investigation

Although it seems to me (as it apparently seems to Mr. Murphy) that little significant additional material is likely to be unearthed by further investigation, I believe further investigation is necessary. We must be able to state categorically that all pertinent files have been examined and all relative leads pursued, both with respect to the assassination issue and with respect to FBI harassment.

2. Personnel to Continue Investigation

In my view it would be undesirable to bring on an entirely new team at the present time. Such a transfer of responsibility is not only wasteful, but can possibly impair the thoroughness of the investigation. I do not believe we should needlessly expose the study to criticism on that score. It seems to me the present personnel, or at least a number of them, should continue to manage the project; they can be assigned additional assistance as needed, particularly for the Regional Office searches.

3. Advisory Committee

It does not seem to me that we would or should be governed by the recommendations of an advisory committee with respect to such issues as who should be prosecuted, who should be disciplined, and whether compensation should be made. The first two of these matters cut too close to the heart of prosecutorial discretion and governmental management; the last has a substantial effect on many cases other than the King investigation. If we are not prepared to be bound by advice on these subjects, we should not ask for it, since rejecting it will be extraordinarily difficult.

A second conceivable category of advice which we might receive from such a committee is recommendation on how to



OLC # 4

prevent recurrence of the identified abuses. But it would be strange to base such advice upon the King file alone. If we wanted it, we should have sought it in connection with COINTELPRO and the issuance of the Guidelines. It seems to me, in other words, that we have already made the decision on how to prevent abuses, and are proceeding to implement it.

That leaves, as a possible role of the advisory committee, only the function of increasing public confidence in the conduct of the investigation. It does not seem to me this function is really necessary if -- as I will suggest below -- the Department issues its own report which can not conceivably be characterized as a coverup but describes in detail the abuses which occurred.

In sum, I do not think the creation of an advisory committee is worth the practical difficulties which it would entail.

4. Disposition of Tapes

It seems to me there is no reason to await completion of the investigation in order to resolve this issue. The longer these materials are retained, the greater the risk of their disclosure. Now that retention in deference to pending legislative inquiries need no longer be continued, I think we should move promptly with respect to this matter. Procedurally within the Department, it should be handled in the same fashion as was the matter of the Kraft tapes.

5. Prosecution and Disciplinary Action

Obviously, no decision should be made on either of these issues until the investigation is completed. I would not leave the latter issue to the FBI alone; in fact, I think it best resolved by the Department, in consultation with the Bureau.

6. Compensation

I see no basis for affording Mr. King or his widow special treatment in this regard. We have not, as I understand it, sought to make voluntary compensation to other victims of COINTELPRO activities. The prominence of the victim should surely make no difference.

I suggest, therefore, that the fundamental issues of whether compensation should be paid, and on what basis it should be computed, must be handled independently of the King investigation. I see no reason why they can not be resolved within your own Office. Once they are resolved, and if compensation is to be the rule, the task force might be asked to apply the established standards to the King case.

7. Task Force Report

I am not sure that I agree with your suggestion that the task force should prepare two separate reports, one for internal use and another (eliminating only such portions as would constitute an unwarranted invasion of privacy) for public distribution. It seems to me that the task of eliminating only those portions which would violate privacy interests would better be assigned to your Office. The Department can then release a report described as the complete product of the investigation, with only those deletions which the Attorney General himself believes necessary to protect privacy interests.

The task force might be instructed to draw its report in such a form as to facilitate excision of privacy-related material, but I would not involve it any further in the difficult process of editing.

8. Immediate Announcement

I fear I do not have the necessary factual premises to advise you adequately on this point. I have not kept track of media disclosures and legislative pressures with respect to these issues.

Given your judgment that "an interim public statement will have to be made now," my uninformed inclination is to make it as low-keyed as possible. Specifically, I would not issue any press release, but would respond, in reply to specific press inquiry, that investigation into all these matters is proceeding; that substantial but incomplete efforts indicate that abuses have occurred, but indicate

no involvement in the assassination; and that a detailed public report will be issued when the investigation is completed at the end of the year.



Antonin Scalia
Assistant Attorney General
Office of Legal Counsel



Office of the Solicitor General
Washington, D.C. 20530

RECEIVED
OFFICE OF THE
ATTORNEY GENERAL

APR 16 1976

April 16, 1976

MEMORANDUM TO THE ATTORNEY GENERAL

FROM: The Solicitor General

RHTB

SUBJECT: Recommendations Regarding the
Martin Luther King, Jr. Matter

What follows are my thoughts on the recommendations made by Mr. Pottinger concerning the review of the FBI's actions with respect to Dr. Martin Luther King, Jr. They are necessarily somewhat impromptu and made without any knowledge other than that derived from reading the memoranda you forwarded.

1. The Department ought to press this investigation to a conclusion as rapidly as possible consistent with the necessity for thoroughness. That means, I think, that the attorneys now working on the review should be kept in place but their numbers ought to be augmented. Perhaps some experienced and able attorneys from other divisions should be drafted for the task, and perhaps some from Mike Shaheen's office.

We ought not appoint a whole new group which would have to retrace work already done. For this reason, I recommend against the appointment of an Advisory Committee. Such a committee would have to begin afresh and would have to hire its own staff, since persons of the requisite stature could not be expected to devote six months and probably more to reading files and conducting interviews. Counting necessary start up time for such a group, I suspect using this device would delay conclusion of the review for over a year. There are, moreover, obvious risks to privacy. Finally, I think the Department should demonstrate its ability to cleanse itself.

2. The question of the statute of limitations should be researched. If there was a conspiracy and an element of the conspiracy was its concealment, the statute may not have started running until public disclosures were made.

SG #1

3. The subject of the destruction of tapes, transcripts, and information that have no or only tenuous relation to a proper law enforcement function puzzles me. At a minimum, and quite aside from technical questions of statutes mentioned in your memorandum, the King family should be consulted. It would be most unfortunate if we were charged with the destruction of evidence. More troublesome is the problem of other persons whose rights were violated in the course of the surveillance of Dr. King. Should we destroy the tapes, etc., such persons could claim that we had destroyed evidence which showed the liability of the government or individuals within the government to them. On the other hand, notifying such persons of the violation of their rights might trigger law suits that would result in publicity and further damage to the privacy interests of the King family. The existence of these surveillances has already been publicized and will be publicized again when the Department makes a public report. It may be worth considering whether such publicity does not provide sufficient notice to persons who dealt with Dr. King so that it would be proper to retain the tapes, etc., only until the various statutes of limitations on civil actions have run out.

4. The question of disciplinary action against agents not at the policy-making level should be addressed by the augmented group of attorneys that completes the review. Do the new guidelines instruct an agent how to report the matter if he is instructed to do an illegal act?

5. Compensation to King's survivors seems in order. Stan Pottinger's memorandum suggests that they would sue us and win but for the fear of further bad publicity concerning the information that was unlawfully acquired. If so, we ought not accept a shield that exists only because of official misconduct. The decision as to the appropriate amount of compensation should be deferred until the review is complete and you know the facts.

CC: Mr. Pottinger

SG # 1A

SOL. GEN.

4/16/76

4/16 memo to the AG from Mr. Bork, Re: Recommendation re the Martin Luther King, Jr. matter. Refers to AG's memo of 4/15. The Dept. ought to press this litigation to a conclusion as rapidly as possible. Recommends against appointment of an Advisory Committee. Compensation to King's survivors seems in order.

4/19 to AG

See Civil Rights 4/9/76 (

Memorandum

RECEIVED
OFFICE OF THE
ATTORNEY GENERAL

APR 21 1976

DATE: April 20, 1976

TO : The Attorney General

FROM : Harold R. Tyler, Jr.
Deputy Attorney General *HTJ*

SUBJECT: Civil Rights Division Report -
Your Memorandum of April 15, 1976

As best I can understand the Civil Rights memorandum to you dated April 9, 1976, it makes three "qualified" recommendations as follows:

1. That a task force of Department attorneys, etc., be established to take charge and complete the investigation of all three allegations.
2. That an advisory committee of "distinguished citizens" be appointed to oversee the investigation and somehow approve or endorse the recommendations.
3. That the Department consider an appropriate remedy or remedies for damage allegedly done to the family of Dr. King.

In my opinion, the second and third recommendations are at the very least premature - and I am tempted to add that they do not make much sense in any event for the simple reason that if we are capable of doing this investigation, we ought to complete the job without any outside help.

In any case, the key point in all of this is that we should finish the investigation as speedily as can properly be accomplished. In fact, I read the Civil Rights Division report to indicate that the investigation is pretty much completed in any case. I think the real problem may be that the lawyers working on the matter are not sure what to conclude. To accomplish the completion, I would suggest that we consider bringing in two or three young assistants from the east coast offices who can lend an immediate hand. There is no reason why the Civil Rights Division, with a little outside help cannot do this job fairly soon. I recognize that the work is tedious, particularly for lawyers in the Division who have been through this subject in some way before. But, I believe that Mr. Pottinger can be



Page 2
April 20, 1976

persuaded to get a minimum of outside help with the expectation that the job can be completed quicker and better than he now seems to advise you.

Memorandum

TO : DAG, R. Bork, R. Lee, A. Scalia,
R. Thornburgh

DATE: April 15, 1976

FROM : Attorney General

SUBJECT:

I attach a document which is the recommendation of Stan Pottinger and the report of Robert Murphy on the review of the Bureau's activities with respect to Martin Luther King and recommendations as to what further actions the Department should take.

I would like to have in writing as soon as possible your reaction to these recommendations; that is either your approval of them or if you do not approve, your statement of the course of action you think should be followed.

It may help if I indicate certain concerns or questions which I have with respect to the report and recommendations as they now stand.

1. The review which has been conducted is incomplete and has stopped midway or somewhere along the lines of a complete review. Obviously the review needs to be completed, and I should think this is the first order of business. The recommendation is that a new team come in to complete this review. I do not see how this will work, since it would seem strange to have a new group start all over again (which I don't think is the recommendation). But if the new group is to continue the investigation, then in some way what has already been done has to be fully understood and taken into account as further material is looked at. Moreover, apparently one cannot divide what has been done and what needs to be done on a strictly chronological basis, because the point has been made that the field office material will have to be looked at. While I can understand why the present group may not wish to continue, I believe that some means must be found to connect the work of that group with any successor group. Normally, this would suggest that some members would hold over.



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AG # 5

2. No recommendation is made as to how the new group is to be assembled. Reading the report suggests that the members of any new group must be extremely knowledgeable and expert.

3. Various recommendations are made which either have to be decided now or deferred, but if they are deferred, I believe we ought to consider deciding now at least how they are to be decided--that is by what group. For example, there is the suggestion of possible redress payments. The report also discusses the possible disposition of the King materials.

4. The report suggests that an advisory committee from outside the Department be appointed, but it is not clear to me what this advisory committee will be asked to advise upon. That is, is this the group which is to decide whether there should be redress, or whether the review has been thorough, whether there are any matters for criminal investigation, whether there are any matters to be looked at for disciplinary purposes, or whether there should be notification to various parties.

Moreover, since we have not completed the review, is it desirable to now announce an advisory committee or is it the intention that the advisory committee is supposed to supervise what is essentially a new review either starting from the beginning or starting in the middle?

I would suppose the main function of an advisory group would be either to give assurance of the authenticity of the review or to write a report which can be made public. If it is the latter, then this really means that the review group would either have to write the report for the advisory group or write its own report which the advisory group will then review. I am not sure that this complicated framework at this point will serve any purpose. Moreover, I am concerned about the invasion of privacy and the justification for it if at this point the Department of Justice, not having finished its own review, now appoints an advisory group which inevitably will be the target for

inquiries from the press as to what circumstances have been found to exist.

I note that Mr. Murphy is not in favor of the advisory group, and I don't know whether I am or not, since I don't know what the advisory group is supposed to do. At the present time, I am inclined to the view that the best thing for the Department of Justice to do is to finish the review and to have it be as thorough as possible. Moreover, I should suppose that the Department of Justice itself has to have some recommendations of its own, deciding the questions left open, such as notice, redress, etc. And conceivably the Department of Justice itself ought to have two reports--one which is quite complete but which would not be made public, because it would be damaging to right of privacy, and another report which would make the difficult determinations as to what is appropriate in view of these rights to make public. I think a public statement is required in view of the fact that there have been so many public statements already in the course of the incomplete review. Indeed, I am quite sure that an interim public statement will have to be made now. In any event, this seems to me to be a difficult set of problems which we must answer very quickly.

cc: Stan Pottinger

Attachment

UNITED STATES GOVERNMENT

Memorandum

File - FBI - M.L. King
Investigation

TO : THE FILE

DATE: April 22, 1976

FROM : *J* Jack Fuller

SUBJECT: April 21 Meeting on the King Investigation

Mssrs. Tyler, Bork, Lee, Thornburgh, Pottinger, Shaheen, Turner, Marvin, Fuller and Blackhurst attended the meeting.

The Attorney General said everyone who reviewed the Pottinger recommendations agrees that the present review of Bureau files should continue to its completion. Thornburgh recommended the people now doing the investigation should continue it.

Pottinger, after rehearsing the origin of the investigation, explained that the three in the Division doing the review--Pottinger, Murphy and Turner--cannot complete it. They have no time.

The Attorney General said there has already been a rather thorough partial review.

Pottinger said that the review had not scratched the surface. Bork asked couldn't one of the three continue on? Pottinger said the three had the obligation to brief the successors on what has already been done.

The Attorney General pointed out that the initial review has taken far longer than expected. The point is that the review cannot be started all over again.

Pottinger said that one work week and a reading of the report would bring a new group up to date on the investigation.

Scalia arrived.

The Attorney General said there is a history of reviews that do not amount to real reviews and if this is to happen again, it would be an embarrassment.



AG #7

Rex Lee said that on the basis of the Murphy report, it would seem the investigation should be closed. The risks to Dr. King's reputation in dragging out the investigation. If not enough of a review has been done to say anything definitive, then perhaps a short period of continuing review should be undertaken.

Pottinger said he cannot say definitively that there is nothing linking in the files. "On the basis of my experience with the FBI recently," he said, "I will not say there is nothing."

The Attorney General said that ~~one~~^{the only} position is that the investigation should be completed.

Scalia asked what could be expected to be found in the other files?

Pottinger said some documents might be found in the field that nobody has seen showing other FBI acts.

Select Committee on Assassinations
U.S. House of Representatives
3342 HOUSE OFFICE BUILDING, ANNEX 2
WASHINGTON, D.C. 20515

March 9, 1977

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The Honorable Griffin B. Bell
Attorney General
Department of Justice
Washington, D. C. 20535

Dear Mr. Attorney General:

I appreciate the opportunity to meet with you and propose to discuss the following items:

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1) To continue even a threshold investigation, it is necessary that our staff have access to the unclassified materials in the custody of the Federal Bureau of Investigation. Consequently, we would appreciate your removing any impediments to these materials.

2) So that we might continue our investigation as expeditiously as possible when reconstituted, it is important that we discuss the procedures for security clearances of our staff, so that we might obtain access to classified materials at the appropriate time.

3) Certain materials are extremely vital which are presently in the custody of the Justice Department and the Federal Bureau of Investigation, pertaining to the investigation into the death of Dr. Martin Luther King, Jr. Accordingly, we would respectfully request that you provide our staff with the following information:

- OK a) Reports, memoranda, statements, etc. concerning Miami Police Intelligence and WILLIE AUGUSTUS SOMERSETT
- OK b) Prison records, arrest records, reports, memoranda, statements, etc. concerning JOHN LARRY RAY a/k/a Johnny Larry Ray dob 2/14/1931
- OK c) Prison records, arrest records, reports, memoranda, statements, etc. concerning GERALD RAY a/k/a Jerry W. Ray dob 7/16/1935

AG # 25

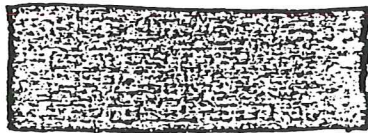
- OK d) Reports, memoranda, etc. on JAMES EARL RAY concerning:
- (1) Automobile licensing,
 - (2) Automobile insurance,
 - (3) Driver's licensing,
 - (4) Birmingham bank safety deposit box,
 - (5) Louisiana Department of Motor Vehicles
 - (6) Investigation of Canadian movements and whereabouts,
 - (7) Investigation of Canadian passports.

see Mike Shaban

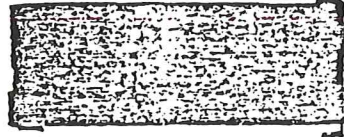
e) Report of the Department of Justice Task Force to review the FBI Martin Luther King, Jr., Security and Assassination Investigations - Appendix B - Interview Memoranda.

f) Most urgently, I request that any and all information in the possession of both aforementioned agencies with respect to the following names or any variations of these names be made available to the Committee as soon as possible:

Copy of shared letter agreement



LOUIS LOMAX



JAMES ROSE

b6

g) The Select Committee is aware that the Bureau's MURKIN files contain most of the investigative data related to the King assassination. Nevertheless, we solicit your cooperation in assuring that the agency's response to the aforementioned requests will include all information in any additional files, here in Washington or in the Bureau's field offices.

under anything under review

h) I respectfully request that any and all indices in the possession of the Bureau or the Justice Department's Task Force related to the King assassination be made available to the Select Committee.

David Kramer

outside scope

The Honorable Griffin B. Bell
March 9, 1977
Page Three

outside
scope

The Honorable Griffin B. Bell
March 9, 1977
Page Four

Outside
scope

Additionally, I request that Department of Justice Attorney Michael Shaheen meet with members of the staff of our Committee to discuss the Department of Justice Task Force to review the FBI Martin Luther King, Jr., Security and Assassination Investigations.

I thank you in advance for your anticipated cooperation.

Sincerely,



LOUIS STOKES
Chairman

LS/alj

AGENDA OF MEETING
WITH
ATTORNEY GENERAL GRIFFIN BELL

Levi. Downing
Approved
Agreement

GENERAL MATTERS:

- ① 1. Access to unclassified FBI material. - *as all 800 volumes unclassified and readily available*
- ② 2. Establish procedures for and expedite security clearances. *2 or 3 now 15, then another 15*

MATTERS PERTAINING TO THE ASSASSINATION OF DR. MARTIN LUTHER KING, JR.

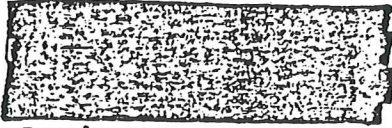
- ③ *Shaheen I don't know of any problem* 1. Authorization for Michael Shaheen to meet with Committee Staff regarding Justice Department report on the assassination of Dr. King.
- ④ *7-11-2.* 2. Appendix B - Interview Memoranda of Task Force Report on assassination.
- ⑤ *Stavle/Pittique meeting* 3. Copies of indices of FBI or Justice Department Task Force related to King assassination.
- ⑥ *Letter from Oswald to Hunt* 4. Specific requests for information. From any source:
 - a) Reports, memoranda, statements, etc. concerning Miami Police Intelligence and Willie Augustus Somerset;
 - b) Prison records, arrest records, reports, memoranda, statements, etc. concerning John Larry Ray a/k/a Johnny Larry Ray dob 2/14/1931
 - c) Prison records, arrest records, reports, memoranda, statements, etc. concerning Gerald Ray a/k/a Jerry W. Ray dob 7/16/1935
 - d) Reports, memoranda, etc. on James Earl Ray concerning:
 - (1) Automobile licensing,
 - (2) Automobile insurance,
 - (3) Driver's licensing,
 - (4) Birmingham bank safety deposit box,
 - (5) Louisiana Department of Motor Vehicles,
 - (6) Investigation of Canadian movements and whereabouts,
 - (7) Investigation of Canadian passports.
- ⑦ *Cooper's Liaison Committee by Monday*
- ⑧ *Troffice*

Secret Service
Mack
Carson
634-5771
AG #26

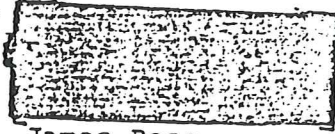
Griffin Bell

Page Two
March 11, 1977

5. Any information in FBI or Task Force possession
pertaining to:



Louis Lomax



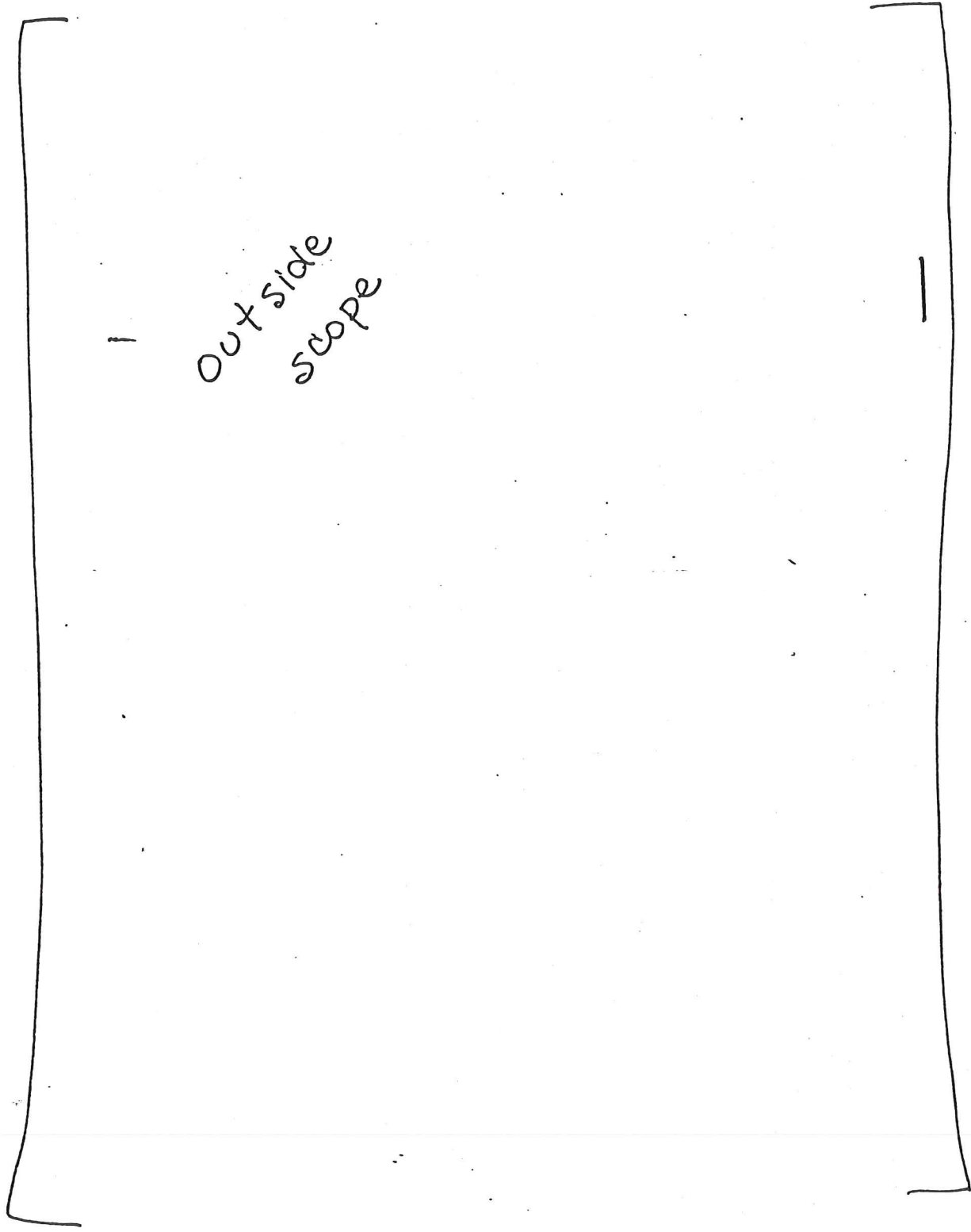
James Rose

b6

outside
scope

Griffin Bell
Page Three
March 11, 1977

Attorney General



Suggested Supplemental Agenda

- I. FBI and Justice Departments continuing investigations of Kennedy and King assassinations and relationship with Select Committee
 - a. Problem of simultaneous investigation
 - b. Coordination and cooperation
 1. Notification to Select Committee of current FBI investigative steps
 2. Timing of notification
- IA. FBI Request for test bullets from Archives
- II. Liaison procedures with Justice Department
- III. Addition specific information of King case
 - a. Reports, memoranda, etc., on James Earl Ray's trip from California to New Orleans and Justice Department analysis of Louis Lomax articles on trip.
 - b. Reports, memoranda, etc., on Ray aliases: Paul Bridgman, George Ramon Sneyd, John Willard, James O'Connor, Eric S. Galt.
 - c. Alabama Department of Motor Vehicle records relative to Eric S. Galt.
 - d. FBI Forensic Reports
 - e. Information on Clifton E. Baird, Louisville, Kentucky
- IV. The Matter of Stanley Pottinger meeting with Committee staff.
- V. All reports and memoranda relative to the FBI surveillance of Dr. King and the Southern Christian Leadership Conference.

?
Underline do.

memorandum

APR 22 1977

DATE:
REPLY TO
ATTN OF:

RLK
Robert L. Keuch
Special Counsel to the Attorney General

RLK:mal

SUBJECT:

Status Report

RLK -

Approved - Good job

4/28/77 GBB

APR 25 1977
OFFICE OF THE
ATTORNEY GENERAL

TO: The Attorney General

This is to brief you on the steps I have taken in establishing and conducting liaison with the House Select Committee on Assassinations. In accordance with my conversation with Mike Kelly, it is my present intention to provide you with such reports approximately every two weeks.

I have met personally with the Chairman and the ranking minority member of the full Committee and with the Chairman of the Subcommittee on the Kennedy assassination matter and will meet in the very near future with the Chairman of the King Subcommittee. I informed each of the gentlemen that it is the Department's desire to be cooperative and as open and candid as we can possibly be and that in those areas where there are disagreements I will make every attempt to explain fully our position and to work the matter out consistent with their interests and the needs of the Department. These meetings, being the first, were cordial and of no great import.

I have agreed to expand the number of individuals to be given priority clearances to approximately 12-15 in order to take care of the major staff positions of the full Committee and the major staff positions for each Subcommittee. The Chairman of the Committee executed the Agreement of Understanding concerning the use to which information developed by the clearance procedures would be put and which you had previously executed and the Bureau has initiated a number of these clearances. I have been informally advised by the Security Director for the Committee staff that the Committee may wish to ultimately request clearances for as many as 80-90 members of the staff. It is my intent, should the number of requested clearances go significantly beyond 15-20 positions to raise the question of reimbursement by the Committee for the costs of the clearance procedures for people other than the most essential staff.

cc: Records
RLK



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AG # 27

In numerous conferences with Committee staff we have worked out generally procedures to be followed in processing the Committee's requests for information. I have required that all requests be signed by the Chairman and that the number of individuals in the staff who would contact either me or the designated Bureau representatives be limited to approximately four people. After consultation with the Committee staff and Bureau representatives, I have set up a procedure for providing the Committee with information relating to any ongoing investigations in their areas of interest and have agreed that in special circumstances I will, after consultation with the Bureau, direct special notification on a priority basis when appropriate.

In response to questions from the Chairman of the Committee relayed by Committee Counsel, I stated that the Department is not and will not conduct a full de novo investigation into either the King or Kennedy assassinations but that our investigative efforts will be limited solely to exploring any new allegations or leads which may develop. The Committee staff has stated that they will provide us promptly with any information involving criminal activities.

After numerous attempts to develop a full set of written procedures to cover all contingencies, I have concluded that the appropriate method to follow is to process each request on an ad hoc basis. Those materials that can be provided will, of course, be provided and those areas in which I determine that information cannot be provided to the Committee staff because it involves extremely sensitive national security information or information otherwise critical to our investigative efforts, I will notify the appropriate Chairman, either the Chairman of the full Committee or the Chairman of the appropriate Subcommittee and explain the Department's concerns. Should these gentlemen disagree with my judgment then the matter, of course, will have to be referred to you for decision. I believe such material will constitute a very minute amount of the materials requested and will make every effort to make your necessary participation in these decisions as limited as possible.

The Bureau and I are presently processing the lists of requests made by the Committee in the Chairman's letter to you of March 9. This will include among other things making Mr. Pottinger and Mr. Shaheen available for interviews with the staff and producing the interview reports related to the King Task Force report. At the present I see no problems in providing the items that they have requested to date.

As you are aware the Committee received information that a Louisville police officer claimed he was approached by FBI agents to kill Dr. King. The Committee has obtained a tape from the officer which is allegedly of this conversation. The Bureau was authorized to interview the police officer in the presence of the United States Attorney, however, the police officer, Mr. Baird, has refused to be interviewed by the Bureau. The Committee has agreed to provide the tape recording for duplication by the Bureau and have further agreed to maintain strict custody control of the tape so that the necessary chain of custody could be established should the tape possibly be ever used as evidence.

outside
scope

outside
scope

AUG 3 1977

UNITED STATES GOVERNMENT

memorandum

DATE: RLK
REPLY TO
ATTN OF:

Robert L. Keuch

Special Counsel to the Attorney General RLK:mal

SUBJECT:

House Select Committee on Assassinations

TO:

Director
Federal Bureau of Investigations

This is in partial response to your memorandum of April 28, 1977. In that memorandum you informed the Attorney General that the Bureau would refer all allegations relating to the investigations of the assassinations of Dr. Martin Luther King, Jr., and President John F. Kennedy, for Departmental consideration as to whether any investigation is required of the FBI. As you are aware those matters relating to the President Kennedy assassination are referred to the Criminal Division, while those matters related to Dr. King's assassination are referred to the Civil Rights Division and the Office of Professional Responsibility; all such reports, however, are directed to my attention in addition to this distribution.

This is to confirm that, absent a specific request from the Department, either by the Civil Rights Division, the Criminal Division, the Office of Professional Responsibility, or myself, no further investigation of the allegations which you are reporting related to these two assassination investigations is required or requested by the Department. I have discussed this procedure personally with representatives of the Civil Rights Division and the Office of Professional Responsibility and confirm that this procedure is understood by and satisfactory to that Division and Office, as well as to the Criminal Division.

cc: Mike Kelly ✓



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AG # 30

OPTIONAL FORM NO. 10
(REV. 7-76)
GSA FPMR (41 CFR) 101-11.6
5010-112

memorandum

OCT 3 1977

DATE:

REPLY TO
ATTN OF:121
Robert L. Keuch
Special Counsel to the Attorney General

RLK:mal

SUBJECT:

House Select Committee on Assassinations - Status Report

TO: The Attorney General

This is to provide you with an overall summary of the proceedings to date involving the Department of Justice compliance with requests made by the House Select Committee on Assassinations.

In general I feel we have been extremely cooperative with the Committee. I would like to note that the FBI has in my judgment been doing an outstanding job in processing the various requests made by the Committee. To date the Bureau has processed for Committee access, approximately 650 sections of their files concerning the Martin Luther King investigation and the John F. Kennedy assassination investigation. In addition to this they are in the process of reviewing approximately 150 sections of field office files which will be made available for Committee review in the very near future.

In addition to my general observation, however, I believe a few individual matters should be brought to your attention:

(1) With my authority the Bureau has made available for the Committee's use a mock-up which had been prepared of the assassination site in Memphis which relates, of course, to the King investigation. We have provided this to the Committee on a "loan" basis.

(2) After consultation with the Office of Legal Counsel it has been determined that the records which had been forwarded to the Criminal Division by the Rockefeller Commission under specific limitations imposed by President Ford, should be transmitted to the Archivist of the United States for permanent storage. This is being accomplished by letters of agreement which will reserve to the Department of Justice the right to access upon your authority or the authority of the Deputy Attorney General. The Committee had requested access to numerous Rockefeller documents and these requests will now be handled in normal course by the Archivist.

cc: Records
RLK



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

AG #31

RECEIVED
OFFICE OF
ATTORNEY GENERAL
OCT 11 1977
OPTIONAL FORM NO. 10
(REV. 7-76)
GSA FPMR (41 CFR) 101-11.6
5010-112

outside
scope

In addition to what I consider these positive results, there is one matter in which your participation may be necessary and I have made this the subject of a separate memorandum previously forwarded. Briefly stated, this is the issue as to whether or not the Committee staff will be permitted access to a random selection of the raw documents in the Bureau's files as a means of checking on the validity of the excision process we are applying.

UNITED STATES GOVERNMENT

Memorandum

TO : DAG, R. Bork, R. Lee, A. Scalia,
R. Thornburgh

DATE: April 15, 1976

FROM : Attorney General

SUBJECT:

I attach a document which is the recommendation of Stan Pottinger and the report of Robert Murphy on the review of the Bureau's activities with respect to Martin Luther King and recommendations as to what further actions the Department should take.

I would like to have in writing as soon as possible your reaction to these recommendations; that is either your approval of them or if you do not approve, your statement of the course of action you think should be followed.

If may help if I indicate certain concerns or questions which I have with respect to the report and recommendations as they now stand.

1. The review which has been conducted is incomplete and has stopped midway or somewhere along the lines of a complete review. Obviously the review needs to be completed, and I should think this is the first order of business. The recommendation is that a new team come in to complete this review. I do not see how this will work, since it would seem strange to have a new group start all over again (which I don't think is the recommendation). But if the new group is to continue the investigation, then in some way what has already been done has to be fully understood and taken into account as further material is looked at. Moreover, apparently one cannot divide what has been done and what needs to be done on a strictly chronological basis, because the point has been made that the field office material will have to be looked at. While I can understand why the present group may not wish to continue, I believe that some means must be found to connect the work of that group with any successor group. Normally, this would suggest that some members would hold over.



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CRIM #1

2. No recommendation is made as to how the new group is to be assembled. Reading the report suggests that the members of any new group must be extremely knowledgeable and expert.

3. Various recommendations are made which either have to be decided now or deferred, but if they are deferred, I believe we ought to consider deciding now at least how they are to be decided--that is by what group. For example, there is the suggestion of possible redress payments. The report also discusses the possible disposition of the King materials.

4. The report suggests that an advisory committee from outside the Department be appointed, but it is not clear to me what this advisory committee will be asked to advise upon. That is, is this the group which is to decide whether there should be redress, or whether the review has been thorough, whether there are any matters for criminal investigation, whether there are any matters to be looked at for disciplinary purposes, or whether there should be notification to various parties.

Moreover, since we have not completed the review, is it desirable to now announce an advisory committee or is it the intention that the advisory committee is supposed to supervise what is essentially a new review either starting from the beginning or starting in the middle?

I would suppose the main function of an advisory group would be either to give assurance of the authenticity of the review or to write a report which can be made public. If it is the latter, then this really means that the review group would either have to write the report for the advisory group or write its own report which the advisory group will then review. I am not sure that this complicated framework at this point will serve any purpose. Moreover, I am concerned about the invasion of privacy and the justification for it if at this point the Department of Justice, not having finished its own review, now appoints an advisory group which inevitably will be the target for

inquiries from the press as to what circumstances have been found to exist.

I note that Mr. Murphy is not in favor of the advisory group, and I don't know whether I am or not, since I don't know what the advisory group is supposed to do. At the present time, I am inclined to the view that the best thing for the Department of Justice to do is to finish the review and to have it be as thorough as possible. Moreover, I should suppose that the Department of Justice itself has to have some recommendations of its own, deciding the questions left open, such as notice, redress, etc. And conceivably the Department of Justice itself ought to have two reports--one which is quite complete but which would not be made public, because it would be damaging to right of privacy, and another report which would make the difficult determinations as to what is appropriate in view of these rights to make public. I think a public statement is required in view of the fact that there have been so many public statements already in the course of the incomplete review. Indeed, I am quite sure that an interim public statement will have to be made now. In any event, this seems to me to be a difficult set of problems which we must answer very quickly.

cc: Stan Pottinger

Attachment

UNITED STATES GOVERNMENT

Memorandum

TO : The Attorney General

DATE: April 21, 1976

FROM: *pu* Richard L. Thornburgh, Assistant
Attorney General, Criminal Division

SUBJECT: Martin Luther King - Your Memorandum of April 15, 1976

Per your request, I offer the following reactions to the material forwarded by the subject memorandum.

1. The review of Bureau files should be completed by the same group which has carried it forward to date.
2. No "advisory committee" or detailed "public report" should be contemplated. Since criminal prosecution is barred by the statute of limitations and the majority of those potentially subject to administrative action are deceased, retired or in very poor health, sanctions based on any culpability disclosed by the review process appear to be out of the question. It would warp the mandate of this Department for any gratuitous "report" to be issued which would usurp the traditional and proper role of the criminal justice or administrative processes.
3. A "report" which stated (if such proves to be the case) no FBI complicity in the assassination and concludes that the investigation was properly processed would be in order.
4. Without the filing of any claim or lawsuit, it would seem inappropriate to single out any person or group of persons (let alone a private charitable foundation) for a payment of the type suggested. Of no little concern here is the perceived (or actual) precedential character of any such payment.
5. As to the disposition of the King material, I have no particular insight into the scope of the questions which might be involved.
6. Because of the importance of these matters, I requested the separate views of my Deputies as well and forward same herewith. *(not attached yet)*.



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

CRIM # 2

(2)

TO (Name, office symbol or location)		DATE	CO-ORDINATION
The Attorney General		INITIALS	FILE
		DATE	INFORMATION
		INITIALS	NOTE AND RETURN
		DATE	PER CUM - VERBATION
		INITIALS	SEE ME
		DATE	SIGNATURE
REMARKS			
<p>Attached are the missing attachments to my Memorandum to you of even date hereto.</p>			
<p>Do NOT use this form as a RECORD of approvals, concurrences, disapprovals, clearances, and similar actions</p>			
FROM (Name, office symbol or location)		DATE	
Assistant Attorney General. Criminal Division.		4/21/76	
		PHONE	

OPTIONAL FORM 41
AUGUST 1967
GSA FPMR (41CFR) 100-11.206

44-10-81824-1 532-103 GPO 5041-101

CRIM #3

UNITED STATES GOVERNMENT RECEIVED
OFFICE OF THE
Memorandum ATTORNEY GENERAL

JUL 12 1976

TO : The Attorney General

DATE: 12 JUL 1976

FROM :  Rex E. Lee
Assistant Attorney General
Civil Division

RMRader:dpb
Tel: x3374

SUBJECT: Request of Estate of Dr. Martin Luther King, Jr.
for Tapes, Transcripts and other Materials Re-
sulting from FBI Wiretapping and Surveillance

This will respond to the request from Mr. Jack Fuller of your office on July 2, 1976 for advice as to whether certain FBI tapes, transcripts and other materials relating to the late Dr. Martin Luther King, Jr. and the civil rights movement should be provided to the King estate without a formal request under the Freedom of Information or Privacy Acts or court order. You have asked for our views in light of two pending-lawsuits which were recently filed entitled Bernard S. Lee v. Clarence M. Kelley, et al., U.S.D.C., D.C., Civil No. 76-1185 and Southern Christian Leadership Conference v. Clarence M. Kelley, et al., U.S.D.C., D.C., Civil No. 76-1186. Both actions seek production of certain tape recordings, transcripts and memoranda resulting from alleged electronic eavesdropping and wiretapping. Total money damages of \$6,000,000 are also sought. The SCLC suit, brought by the organization with which Dr. King was associated, is primarily concerned with alleged wiretapping and electronic surveillance of its New York and Atlanta offices in 1964, while the Lee suit alleges an illegal surveillance of the Willard Hotel in the spring of 1963 during a civil rights meeting of Dr. King and associates which Mr. Lee attended.

In testimony before the Senate Select Committee to Study Governmental Operations (the Church Committee), the FBI acknowledged wiretapping the SCLC headquarters for some time during the 1960's, as well as bugging Dr. King's hotel rooms on at least 16 occasions, including an electronic surveillance of the Willard Hotel in January 1964. See Supplementary Detailed Staff Reports of Intelligence Activities and the Rights of Americans, Book III, S. Rep. No. 94-755, 94th Cong., 2d Sess. 81, 120 (1976). According to the FBI, the Church Committee did not request and was not furnished the tapes and transcripts of the surveillances themselves, but only testimony and documentation as to their occurrences and durations. Thus, release of information provided to the Church Committee, now in the public domain, would probably have little,



CIX #1

if any, effect on the SCLC or Lee lawsuits. On the other hand, release of FBI tapes, transcripts and other materials resulting from FBI bugging of Dr. King, SCLC, Bernard Lee or others has the potential for impairing the defense of these lawsuits and encouraging the filing of new lawsuits as well. This conclusion is based upon the assumption that materials released to the King estate will become available to the plaintiffs in these actions, either directly or because it will result in the waiver of any privilege the government may have with respect to these materials.

We understand from Mr. James Farrington of the FBI and his staff, with whom attorneys from our office recently met, that some of the surveillance materials held by the FBI on Dr. King and the civil rights movement have been classified as high as Top Secret. We are told that the transcripts and related materials are in a voluminous file in which classified matter has not been segregated from nonclassified matter. Accordingly, our attorneys were not permitted to review even the material which would be arguably relevant to the SCLC and Lee lawsuits to determine how damaging substantively its release at this time might later prove.

Of course, any unauthorized wiretapping or surveillance would give rise to a cause of action under the Bivens doctrine against individual FBI agents and their superiors, regardless of the fruits of the unauthorized surveillance, if those individuals acted without good faith and a reasonable belief in the validity of their actions. But it may be that the instant lawsuits are primarily concerned with production and/or ex-pungement and destruction of FBI tapes and transcripts rather than money damages against individual FBI agents and their superiors. Release of unedited tapes and transcripts could therefore undermine the agents' bargaining position with respect to the damage claims in these lawsuits.

In addition, the claims of these plaintiffs and potential plaintiffs for production of the FBI tapes and transcripts in their unedited state, based upon a fear of public disclosure and embarrassment, are mutually inconsistent. If the purpose of releasing the materials to the King estate or other parties is simply to inform the individuals of the data on record, appropriate deletions can be made by the FBI so as not to compromise classified information, the identity of informants with a reasonable expectation of anonymity, or the identity of

innocent third parties whose names have also been recorded. If, on the other hand, the FBI files are to be expunged by release of this material to the King estate, such an action would be inconsistent with relief sought by plaintiffs in the SCLC and Lee actions, which seek court impoundment of these materials under a protective order to avoid such public disclosure of their contents. Under these circumstances, we might consider filing a third-party action in these cases or a separate action in which we interplead the nonclassified materials and ask that the Court determine to whom and under what circumstances these materials should be surrendered. We are led to understand that the FBI has no need or desire to retain the unclassified materials subject to the demands in question.

We conclude that the unrestricted release of the requested materials to the King estate might well impair defense of the two lawsuits already filed and others that may be filed, although to what degree cannot be determined without examination and analysis. More significantly, the materials are already the subject of competing and inconsistent claims, some of which will be defeated by turning the material over to the estate. The procedure which appears likeliest to protect the government from these risks is to obtain a court adjudication regarding the nonclassified material (while attempting to protect information which necessarily must remain classified), in a proceeding in which all, or at least the principal, claimants can be made parties. Our recommendation is not to turn over the materials as requested but, instead, to explore this latter approach.

A copy of this memorandum was shown to Mr. George Calhoun, Acting Chief, Special Litigation Section, Criminal Division, who agrees with our conclusions. Mr. Calhoun suggests an additional objection to voluntarily surrendering the FBI materials to the King estate.

 66
Thus, release of the materials to the King estate might compound any legal injury caused to King by the FBI wiretapping and electronic surveillance.

April 9, 1968

Honorable Ramsey Clark
Attorney General
Washington, D. C.

Dear General Clark:

I am providing the following information regarding the assassination of Martin Luther King, for whatever value it may have in your investigation.

During the years 1963 and 1964 an investigation involving extremist groups was conducted by the Miami Police Department and the Dade County State Attorney. I coordinated that investigation and the records will reflect that two individuals planned to assassinate Martin Luther King.

1. In October, 1963, an informant reported a conversation with [one, Jack Brown,] in which [Brown] planned to kill King. [Brown] then resided in Chattanooga, Tennessee, and was [Imperial Wizard of the Dixie Klan.]

2. In May, 1964, [redacted] a Miami [Housepainter] made plans to kill King on May 17, 1964, in Mobile, Alabama. [redacted] at that time planned to move to Atlanta or Mississippi.

The above information was provided to the FBI during the course of our investigation.

Trusting the above may be of some assistance to you, I am

Sincerely,

Seymour Gelber
Assistant Attorney General

SG/cg

CIV #2

UNITED STATES GOVERNMENT

Memorandum

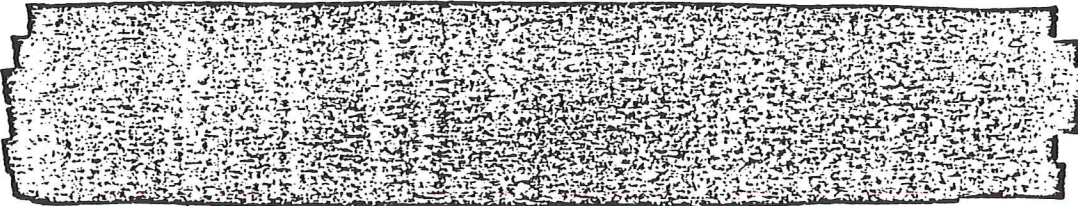
TO : Richard L. Thornburgh
Assistant Attorney General
Criminal Division

DATE: April 21, 1976

FROM : Robert L. Keuch, Acting
Deputy Assistant Attorney General

RLK:mal

SUBJECT: The Attorney General's memorandum of April 15 re Dr. King
Investigation



b5

My reasons are as follows:

b5



CRIM #5 ...

Tim.

(3)

65

b5



OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Richard L. Thornburgh

DATE: April 21, 1976

FROM : Jay C. Waldman

SUBJECT: Martin Luther King Report

Pursuant to your request of April 19, 1976, I have reviewed the 67 pages of material, including AAG Pottinger's recommendations, arising out of the preliminary investigation by the Civil Rights Division into allegations of F.B.I. harassment of Martin Luther King, Jr. Because of the very short time span, my response to your request for comments is more or less "off the top of the head." My present thoughts are as follows.

Creation of a Task Force

b5



CRM #6

~~CONFIDENTIAL~~

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Declassified Data
(Reference to 28 C.F.R. 1.101)

George V. Calhoun

(14)

b5

Creation of an Advisory Committee

b5

b5

Remedial Action

(a) Disposition of the Material:

b5

b5

(b) Prosecutive or Disciplinary Action:

b5

(c) Redress:

b5

b5

UNITED STATES GOVERNMENT

Memorandum

TO : Richard L. Thornburgh
Assistant Attorney General
Criminal Division

FROM : *JCK* John C. Keeney
Deputy Assistant Attorney General
Criminal Division

SUBJECT:

DATE: APR 20 1976

JCK:mez

Pursuant to your request, I have reviewed the 51-page report of Robert Murphy, the memorandum of Stan Pottinger and the Attorney General's memorandum of April 15 with respect to the Civil Rights Division's review of the Martin Luther King, Jr. matter. My understanding is that the review was for a twofold purpose:

1. To determine whether or not the FBI was involved in any way, directly or indirectly, in the death of Dr. King; and
2. Whether or not the investigation of King's death by the FBI was thorough and complete.

Based upon the review of these materials, the following comments are offered:

b5

~~SECRET~~
ATTACHMENT



CRIM #7

(5)
T.

b5