

UNITED STATES GOVERNMENT

Memorandum

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

- 1 - Mr. Adams
- 1 - Mr. McDermott
- 1 - Mr. Bassett

DATE: 11/16/78

- 1 - Legal Counsel Division
- 1 - Public Affairs Office
- 1 - Criminal Investigative Division

Assoc. Dir. _____
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 Director's Sec'y _____

TO : Mr. Bassett *NTB/2*

FROM : Mr. D. Ryan *DR*

SUBJECT: HOUSE SELECT COMMITTEE ON ASSASSINATIONS (HSCA)
 STAFF REPORT
 INVESTIGATION INTO THE ASSASSINATION OF
 DR. MARTIN LUTHER KING, JR:
 AN ANALYSIS OF THE PERFORMANCE OF
 THE DEPARTMENT OF JUSTICE AND THE
 FEDERAL BUREAU OF INVESTIGATION

- 1 - Mr. Ryan
- 1 - Mr. Foster

G. Foster

PURPOSE:

To summarize captioned report, furnish internal observations, identify items of media interest and recommend that certain observations concerning the report be furnished to the Department of Justice and the HSCA.

SYNOPSIS:

In connection with the investigation into the assassination of Martin Luther King, Jr., and resulting public hearings, the HSCA plans to release captioned report on 11/27/78. A copy was provided the FBI and our objections and observations concerning the report should be submitted to the Department and the HSCA by 11/16/78.

Details set forth in chapter-by-chapter summary of report, which concludes the FBI and Department remained consistent in the belief that Ray acted alone in killing King. Although investigation was pursued in search of a conspiracy, investigation in this area was limited, with the issues of Ray's finances and possible family involvement still undetermined. This resulted from the FBI's preoccupation with the fugitive investigation.

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Report states that, based on a review of evidence in FBI files and techniques employed by the Department and the FBI to resolve leads, the HSCA review has not disclosed a basis for confidence in the official conclusion that Ray

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Enclosure

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acted alone. The HSCA believes that the grand jury, search warrants, immunity grants and court-authorized electronic surveillances could have been used to produce more effective results. The FBI is criticized for its "one way street posture" and not fully utilizing local police expertise, failure to pursue leads conflicting with protection of our public image, and violating the constitutional rights of citizens and the defendant. The HSCA found no evidence that any deficiencies in the investigation were directly or indirectly the result of what the Committee describes as the "Bureau's well-documented hatred for Dr. King and his movement."

Our observations are that the HSCA summary of facts regarding the Murkin investigation is accurate and well documented, but also contains other information and conclusions. Major observations which should be provided the Department and the HSCA are: removal of identities of Agents in the investigation below the level of Section Chief; that the Attorney General left up to the FBI the decision on where to file the complaint against Ray; that the FBI was restricted in use of court-authorized electronic surveillance, contrary to HSCA view; final determination if electronic surveillance violates constitutional rights of individuals rests with the Department, not the FBI; that our informant coverage of hate groups would have been adequate to learn of any group's involvement in King's assassination; that the HSCA fails to objectively detail the extent of FBI interviews with Ray's relatives; that the HSCA analysis fails to address the central point as to whether or not it determined Ray's guilt or innocence; and the use of inflammatory, nonessential language in the report primarily designed to malign the FBI. Items of concern in the report, as to informants, [REDACTED] b1

[REDACTED] (S)

Items in report likely to be subject of media attention are general findings, such as FBI's preoccupation with identifying and locating Ray, which resulted in a limited effort to detect a conspiracy; the FBI's failure to pursue investigation of Ray's family, involvement of hate groups, or identification of Ray's financial sources; that HSCA review has not disclosed basis for confidence in the official conclusion that Ray acted alone; that the FBI failed to pursue leads which conflicted with protection of its public image; that our investigation violated constitutional rights of Ray and his attorney-client relationship; and that the HSCA found

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no evidence that any deficiencies in the investigation were results of the "Bureau's well-documented hatred for Dr. King and his movement."

The report shows no final conclusions as to the guilt or innocence of Ray or the involvement or non-involvement of any persons. It is anticipated that additional HSCA reports will be issued regarding our security investigation of King, the HSCA's investigation of the assassination, and the HSCA's complete findings in both the security and assassination investigations of King.

RECOMMENDATION:

That approval be granted to forward to the Department and the HSCA the attached letter and memorandum listing our observations and objections concerning captioned report.

APPROVED:	Adm. Serv. _____	Legal Coun. _____
Director _____	Crim. Inv. _____	Plan. & Insp. _____
Asst. Dir. _____	Ident. _____	Rec. Mgmt. _____
Dep. AD Adm. _____	Intell. _____	Tech. Servs. _____
Dep. AD Inv. _____	Laboratory _____	Training _____
		Public Affs. Off. _____

DETAILS:

BACKGROUND:

For the past two years the HSCA has been conducting investigation into the assassination of Martin Luther King, Jr., reviewing pertinent FBI files and interviewing present and former Agents familiar with the aspects of our assassination and security investigation of King. After holding several days of public hearings in the King case during August, 1978, the HSCA resumed hearings on 11/9/78 and issued a Staff Report scheduled for release 11/27/78. An advance copy of this report (attached) was received by Legal Counsel Division on 11/7/78, transmitted by HSCA Letter to the Attorney General dated 11/6/78. This letter advised that the report should be reviewed by appropriate officials of the Department of Justice and unless notified otherwise within five days, the HSCA would assume the Department has no objection to publication of the report in its entirety.

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On 11/8/78 Mr. Robert L. Keuch, Deputy Assistant Attorney General, Criminal Division, advised that HSCA Chief Counsel and Director G. Robert Blakey agreed to extend the deadline for review of captioned report and submission of observations of same to the close of business 11/16/78.

Copies of captioned report were furnished appropriate officials at FBIHQ in order that the report could be reviewed for classification, privacy rights, sensitive informants and methods and inaccuracies. Advance copies were also furnished to the Director, Mr. Adams and Mr. McDermott. Based upon review at FBI Headquarters the following consists of a chapter by chapter summary of captioned report with internal observations where appropriate, highlighting portions of the report likely to attract media attention. Also set forth are our objections and observations which should be furnished to the Department of Justice and the HSCA within the HSCA deadline of 11/16/78.

I. INTRODUCTION

SUMMARY:

Because of counterintelligence operations against King and SCLC during the 1960's, the HSCA faced the troubling question as to whether or not the FBI could conduct a thorough and far-reaching criminal investigation into the assassination. Besides this over-riding issue, the HSCA attempted to resolve if the Justice Department properly exercised its authority over the direction and conduct of the investigation, if available investigative resources were committed to identify and locate person(s) responsible, what was the nature of the FBI's coordination with and use of local authorities and was the investigation conducted with due regard for the constitutional rights of citizens, investigative targets and the defendant.

OBSERVATIONS: None.

II. THE COURSE OF THE INVESTIGATION

SUMMARY:

This chapter identifies Agents at various levels of supervision in the King assassination (MURKIN) both in the field and at FBIHQ. Their duties are described. Then follows a

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narrative of the crime, the immediate response of the Department and the FBI, details concerning the identification and location of Ray, his extradition from England and his guilty plea in Memphis on 3/10/69.

OBSERVATIONS:

(1) The HSCA's narrative summary of facts regarding our investigation to identify and apprehend Ray is accurate and well documented. This is based on a random comparison of selected footnotes with material content. This chapter is however, supplemented with other information and HSCA conclusions.

(2) The identification of Agent names in this report is a concern. In previous reviews of our King investigation the Senate Select Committee in 1975 and a Task Force of the Department of Justice in 1976-1977 agreed at our request not to publish the identities of Special Agent personnel below the level of Section Chief. Although no written verification was received from the HSCA on this point, Mr. Blakey has orally stated to representatives of the Legal Counsel Division and the CIU that the HSCA would also follow this practice. It is not done so in this Chapter or in Chapter IX where the security case agent in Atlanta is identified by name. This matter should be brought to the attention of the HSCA, particularly with reference to the King Security Case, where disclosure of an Agent's identity could jeopardize his personal safety.

(3) On page 28 the FBI's investigation cost figures show marked decrease in cost and miles driven on a nationwide basis after Rays's arrest. Although figures quoted are accurate, it should be pointed out to the HSCA that in any major investigation the cost and miles driven will be reduced drastically after its initial stages. At first the investigation is broadly based with leads in many areas. As the investigation narrows, the cost and miles driven will logically decrease.

III. COORDINATION BETWEEN THE DEPARTMENT OF JUSTICE
AND THE FEDERAL BUREAU OF INVESTIGATION

SUMMARY:

This chapter identifies Department of Justice personnel which had the ultimate responsibility for conduct of the King assassination investigation. In its "background X

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role" the Department was furnished "sanitized and digested" information by the FBI, which maintained the course and direction of the investigation. Excluded from the case were U.S. Attorneys in large cities where major portions of the investigation were conducted. Also discussed are personnel relations between the Department and FBI officials at the time, the "arrogant independence of the Bureau", failure of the Department to supervise and control the FBI and the Bureau's "apparent inbred fear" of Department intrusion into its activities. Cited are specific instances of difficulty between the Bureau and the Department, such as notifying the Department after the fact regarding filing the complaint against Ray in Birmingham; criticism by the Director of the Attorney General's public statements on the case; and FBI resentment of a Department official being sent to London to handle Ray's extradition. Examination of these and other instances helped gain an overall understanding of the quality of the King assassination and the roles played therein by the Bureau and the Department. X

OBSERVATION:

With respect to the filing of the complaint against Ray, on page 45 it states "there is no indication in FBI files that the selection of a filing location was discussed with the Attorney General in Washington until after the fact". This criticism was also made by the Office of Professional Responsibility (OPR) of the Department during its review of the King case. However, according to an internal memorandum of the Birmingham Office, the United States Attorney in Birmingham informed the SAC that he had contacted the Attorney General who stated that he authorized prosecution of Ray, but he (Attorney General) was not aware where the process was to be filed since that was a decision for FBI officials. The HSCA had access to this memorandum in Birmingham file 44-1740-1005. While it is true that no documents could be found indicating a filing location was discussed with the Attorney General before the fact, the Birmingham memorandum indicates the Attorney General was willing to leave location selection up to Bureau officials.

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IV. COORDINATION BETWEEN THE BUREAU AND OTHERS

SUMMARY:

Here the HSCA comments upon the FBI's relationship with outside organizations and individuals, an analysis of which will gain "a clearer picture of the strengths and weaknesses of the agency itself." To the FBI the outside world was divided into friends and foes and a "curious conflict" arose when a potential witness had a "questionable or anti-Bureau reputation" and thus was seen as a threat to the FBI's public image. The "one way street" posture of FBI precluded possibility of a close working relationship with local authorities on matters within their expertise. While cooperation between the FBI and local authorities in Memphis was harmonious, the limited distribution of information from the FBI during the on-going investigation remained an excellent example of the extent to which the FBI guards the substance of its on-going cases.

OBSERVATION:

On page 52 the above HSCA statement concerning the "one way street" posture of the FBI is unwarranted and should be corrected. Our relationship with local authorities in the MURKIN investigation was highly satisfactory and productive. The Committee report describes our relations with Memphis authorities as "harmonious". Further, in its own investigation the HSCA asked the FBI on two occasions to mediate a matter with a local police department. This may not have been possible if our one way relationship with local authorities is described accurately by the HSCA.

V. PROTECTING THE BUREAU'S IMAGE

SUMMARY:

In this chapter the HSCA cites examples where concern for our public image made us reluctant to pursue leads in the Murkin investigation. These were: (1) Refusal to interview an editor because he was a "rabble-rouser and hate monger" after he claimed Ray's brother told him of a conspiracy in the assassination. (2) Monitored activities of an investigative reporter working on the assassination and avoiding interview with him; (3) Restricted covering of several investigative leads which were associated with District Attorney General

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Jim Garrison in New Orleans, a controversial figure. To support its allegation that the FBI supplied information to assist friendly writers, the HSCA cites one article which was submitted to the Bureau only for editing and a proposal to assist writer Gerold Frank. This proposal was initially approved, but later rejected. The HSCA then concluded Frank must have received assistance because "striking similarities to the FBI reports covering the same subject matter" appear in his book.

OBSERVATIONS:

(1) On page 55 of this chapter paragraph two, the date of Ray's guilty plea is 3/10/68. This date should be 3/10/69.

(2) The HSCA states on page 58, paragraph 1 that, underlying memoranda regard the reporter was a clear concern on the part of the FBI that "a private investigative reporter would break the case before the nation's largest and most famous investigative agency." This statement is a good example of pure conjecture by the Committee and removal of the statement should be requested.

(3) In spite of the statement of former Assistant Director Bishop that the Bureau did not cooperate with any author on the King case and HSCA statement on pages 61-62 that no evidence to that effect was found in FBI files, the HSCA still attempts to leave that impression. It should also be pointed out to the HSCA that the "striking similarities" in the author's book could have resulted from the data in possession of the Department or local prosecuting authorities, and not the FBI.

VI. INVESTIGATIVE METHODOLOGY

SUMMARY:

The HSCA states that conspicuously absent in Murkin were investigative methods such as search warrants, electronic surveillance, immunity grants, and the grand jury. The use and advantages of a federal grand jury in an investigation are discussed along with the reasons.

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the FBI did not employ its use. Primarily, the HSCA believes this method could have been useful in handling uncooperative witnesses, Ray's brothers, suspects who were members of hate groups or any other individuals who could not normally be relied upon to be totally candid in interviews with FBI Agents.

With respect to electronic surveillance the HSCA faults our failure to utilize court authorized monitoring upon passage on 6/19/68 of the Ominous Crime Control and Safe Streets Acts of 1968 which permitted such use in certain crimes, including murder. The Committee is critical of our one request to conduct non-consensual electronic surveillance of Ray's sister and brother-in-law, citing as "insubstantial" our basis to apprehend Ray and reduce the stresses and tension placed on the national security subsequent to the death of King. It further states that such surveillance, if installed, would almost certainly be judged illegal under the 1968 constitutional standards and would violate the rights of surveillance targets. Later withdrawal of this proposal was a clear indication of the Bureau's failure to seriously consider conspiratorial involvement of the family or the damage this investigative approach could have done to any prosecution of Ray's family.

OBSERVATIONS:

(1) As the HSCA points out in this chapter officials of the Department and the Bureau interviewed by the HSCA were in general agreement that a grand jury investigation was unnecessary and would not have aided the investigation. Ray was offered an opportunity to appear before the Federal Grand Jury in 1970, but he refused.

(2) On page 76 the HSCA notes that despite the potential for imaginative investigative efforts offered by the use of court authorized electronic surveillance in the Ominous Crime Control and Safe Streets Acts of 1968, there were no further attempts to implement same. It should be pointed out to the HSCA that even after passage of this act, the FBI was precluded by Departmental Order from using court authorized electronic surveillance in criminal cases. On 6/19/68 when President Johnson signed Title III of that statute into law, he publicly stated "the policy of this administration has been to confine wire tapping and eaves-dropping to national security cases only...This policy, now in its third year, will continue in force". President Johnson went on to say that on that date he instructed the Attorney General to assure this policy

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was followed by all law enforcement officers. Subsequent attempts to obtain Attorney General approval to seek a court order in criminal cases were disapproved, citing this policy. Therefore, the "potential for imaginative investigative efforts offered by the act," according to the HSCA, was not available to the FBI. Also, the HSCA has personnel familiar with passage of this act who can be consulted as to its application concerning the FBI.

On page 74, the HSCA states that the willingness of the FBI to propose electronic surveillance against Ray's family, after recognizing internally its unconstitutional nature, showed an absence of concern for the rights of surveillance targets. This recognition of unconstitutionality of this surveillance was recorded in an internal FBI memorandum discussing all legal aspects of the installation. It should be pointed out to the HSCA the final determination as to such legality rests not with the FBI, but the Department of Justice, which can approve or disapprove the request.

VII. JAMES EARL RAY - THE ULTIMATE SOURCE OF INFORMATION

SUMMARY:

This chapter explores steps taken by the Department of Justice and the FBI to interview Ray, noting that he may have information in his possession regarding a conspiracy. In detail the report documents that no interview of Ray was conducted in England or during his flight back to the United States. Following his guilty plea in March, 1969, consideration was given to directly approaching Ray and, under Department authority, interview was conducted 3/13/69 by SAC Robert Jensen. The report states, supported by Jensen's HSCA interview, that an inadequate Miranda warning was given Ray. Ray refused a second interview by Jensen on 3/14/69 and subsequently refused to appear before the Grand Jury in 1970 and to be interviewed by the Department of Justice Task Force in 1976.

This chapter relates that local authorities, in violation of a court order, furnished the FBI copies of three letters from Ray to his attorney, Arthur Hanes. These copies were forwarded by the Memphis Field Office to FBI Headquarters. SAC Jensen acknowledged in his HSCA interview initialing two memoranda, but stated that the letters were volunteered to him. Several other examples of mail intercepts were noted, and the HSCA concludes that such activities were illegal and potentially injurious to prosecution of Ray.

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OBSERVATIONS: None.

VIII. THE CONSPIRACY INVESTIGATION

SUMMARY:

This chapter gives the Department and FBI view to support the conclusions that Ray acted alone in killing King. The HSCA believes, based on review of FBI files, that from the start there was a consciousness within the Bureau of a conspiracy possibility and memoranda to this effect are cited both in early stages of the investigation and subsequent to Ray's capture. The HSCA concludes that its review of evidence within FBI files and techniques employed by the Department and FBI in the case has "not disclosed a basis for confidence in the official conclusion that responsibility for Dr. King's death does not extend beyond the triggerman."

The HSCA outlines the defects it found in our conspiracy investigation as (1) conspiracy leads were resolved solely by establishing alibis of potential co-conspirators on the day of and several days before King's death. (2) limited effort to investigate involvement of hate type organizations. (3) total reliance on field interviews to resolve conspiracy and funding questions, grand jury not utilized. (4) failure to focus on Ray's family, noting numerous instances wherein Ray mentioned "a brother" to witnesses during significant pre-assassination periods and coincidences between Ray's own story of Raoul and association with his brothers. (5) no significant effort was made to determine the extent of criminal involvement of Ray's brothers. (6) failure to check alibis of John or Jerry Ray at time of the rifle purchase and John Ray's alibi on the day King was killed. (7) no efforts to investigate Ray's brothers through interviews of their associates.

OBSERVATIONS:

(1) Some of the HSCA's findings outlined above closely parallel findings of the OPR Task Force and are therefore already in the public domain. The Task Force determined that more investigation could have been conducted concerning Ray's brothers and that sources for Ray's funds are still a mystery.

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(2) On page 92 the HSCA states, other than canvassing informants during various stages in the investigation, the Bureau's investigation of possible hate groups involvement was "both limited and unimaginative." The HSCA fails to note that regarding hate groups in 1968 our informant coverage was more than adequate to detect information of such substance as a hate group plotting assassination of King. The HSCA fails to take this into consideration. Further, alibis of key hate group officials were checked out and any positive information received alleging hate group involvement was thoroughly investigated.

(3) The HSCA notes FBI emphasis on interviews of Ray's relatives, but no objective effort was made to provide in detail the extent of such contacts. The files reflects relatives of Ray were interviewed on approximately 102 separate occasions. The majority of these, in the period of a few months, involved Jerry Ray, brother, 22 interviews; John Ray, brother, 18 interviews; Jerry Raynes, father, 15 interviews; Carol Pepper, sister, 14 interviews; John Gawron, step-father, 16 interviews; Albert Pepper, brother-in-law, 4 interviews; and Susan Donian, sister, 5 interviews.

IX. HOOVER, COINTELPRO, AND THE ASSASSINATION INVESTIGATION

SUMMARY:

One example of COINTELPRO activity against King is outlined in this chapter. There follows statements by Bureau and Department officials interviewed by the HSCA that our COINTELPRO efforts had the ironic effect of increasing the intensity of our investigative efforts in the assassination. Examples are given of Agents who worked on both the security and assassination investigation. Regarding Mr. Hoover, the HSCA implies that his scribbled notes on memoranda indicate closest attention to details of the investigation regarding conduct of his Agents or image of the Bureau. Files reflect Hoover placed neither positive or negative additions or restrictions on the scope of the investigation. In its concluding paragraph, the HSCA states that while there were serious problems with the investigation, both in the FBI's failure to pursue conspiracy possibilities and disregard for constitutional rights of citizens and the defendant, there is no clear evidence that these deficiencies or any others were directly or indirectly caused by the Bureau's well documented hatred of King and his movement.

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X

OBSERVATION:

(1) As outlined in observations in Chapter II, the HSCA should be requested to remove identities of Agents below the level of Section Chief. In this chapter two Agents who handled the security and assassination investigation of King in Atlanta are identified.

GENERAL COMMENTS:

(1) The analysis does not state whether or not the HSCA determined if Ray actually killed King. No doubt future findings in this regard will be issued. However, it is believed that any analysis of the Department and FBI's performance in the assassination investigation cannot be complete without an assessment of Ray's guilt or innocence. In this regard, the HSCA's analysis fails to address this central point and, therefore, its value to the American people is weakened.

(2) It should be pointed out to the HSCA that the FBI objects in some instances to the language in the report which is considered inflammatory, nonessential to the facts of the case, and obviously used to malign the FBI. These instances are: page 43, paragraph 1, "agency's arrogance"; page 57, paragraph 2, "remarkable memo"; page 75, paragraph 1, "reckless disregard"; page 79, paragraph 2, "insatiable curiosity"; page 80, paragraph 2, "no less than three letters"; page 92, paragraph 1, "a simplistic view of the law of conspiracy"; and page 98, paragraph 3, "patently illegal."

(3) On page 81, the report discusses receipt of information from [REDACTED] on [REDACTED]. This information, so specifically written, tends to identify this informant. The HSCA should be requested to delete the specific date and any reference to information coming from [REDACTED]. Unless this action is taken, it will be necessary to classify this portion of the report.

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Also regarding informants, reference is made to page 57 where it is stated that to monitor the activities of an investigative reporter, [REDACTED]

[REDACTED] While this passage does not tend to identify any specific individuals, the FBI would prefer the HSCA avoid such direct reference to the location of FBI sources.

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Other than the above, release of the report publicly will not identify FBI sources, informants or sensitive ongoing operations. X

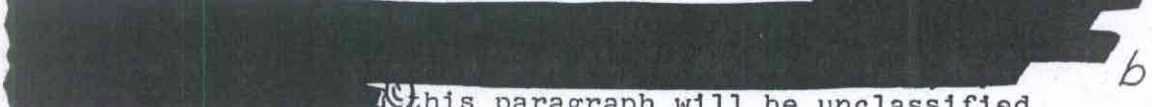
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(5) It is anticipated that additional HSCA reports will be issued regarding our security investigation of King, and the HSCA's investigation of the assassination and HSCA complete findings in both the security and assassination investigations.

(6) The Privacy Unit has advised that, since the report was created and is controlled by the House of Representatives, the provisions of the Privacy Act do not apply.

CLASSIFICATION:

Captioned report was reviewed by the Projects Unit, Document Classification and Review Section. 

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This paragraph will be unclassified. Other than this item, there are no problems concerning the report as to classification.

NEWS MEDIA ITEMS:

The following items extracted from captioned report are believed to likely be the subjects of considerable media attention:

1. Of interest will be HSCA general findings, such as the FBI's preoccupation with identifying and locating Ray which resulted in a limited effort to detect a conspiracy in the case. Also noted may be the FBI's failure to pursue

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investigation of Ray's family more aggressively, inadequately investigating possible involvement of hate groups, and failure to identify sources of Ray's finances.

2. A finding which may be of interest is that the HSCA review "has not disclosed a basis for confidence in the official conclusion that Ray acted alone." This finding may alert media interest to the effect that the HSCA has come up with "something" which will be announced later.

3. The FBI failed to pursue leads which conflicted with protection of its public image.

4. The investigation violated the constitutional rights of Ray and his attorney-client relationship. This resulted from interception, in violation of a court-order, by local authorities of letters Ray wrote to his attorney while in jail. Copies of these letters were received from local authorities by the SAC, Memphis, and forwarded to FBIHQ.

5. The HSCA found no evidence that any deficiencies in the assassination investigation were the results of the "Bureau's well-documented hatred for Dr. King and his movement."