

'60s Files on King Confidant: Still Under

Lawyer's Alleged Communist Status Was Basis for Wiretaps, Bugging of

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By George Lardner Jr.
Washington Post Staff Writer

"Are you now or have you ever been a member of the Communist Party of the United States?"

That question, a hallmark of the 1950s when Sen. Joseph McCarthy (R-Wis.) and the House Un-American Activities Committee were riding high, lingers curiously in a lawsuit at the federal courthouse here involving the origins of the FBI's smear campaign against the late Rev. Martin Luther King Jr.

The dispute involves another dead man, New York lawyer Stanley Levison, a backstage confidant of King whose alleged status in FBI files as "a secret member of the Communist Party" was the main basis for the FBI's wiretapping and later bugging of the civil rights leader in the 1960s.

Eleven years ago, the Senate intelligence committee disclosed the stark details of the bureau's effort to discredit and destroy King, a campaign that the committee said in a staff report was "marked by extreme personal vindictiveness" and driven by the animosity of then-FBI Director J. Edgar Hoover.

But the Senate investigators were unable to reach a conclusion "concerning the accuracy of the FBI's charges" about Levison, because the bureau refused to provide the committee with "the full factual basis" for its allegations "on the grounds that to do so would compromise informants of continuing use to the bureau."

The Federal Bureau of Investigation still refuses to produce the records, all of them at least 25 years old, saying they must be kept secret in the interest of national security and to keep its sources confidential.

Author Taylor Branch, who is suing the bureau under the Freedom of Information Act, suspects that the FBI is simply trying to save itself from public embarrassment. But government lawyers have frustrated his attempts to provoke a

substantive courtroom debate. The records are properly classified, they say—and that, they say, is that.

"Essentially the government argues here that the documents are classified because it says so, period," Branch protests.

Several years ago, in a book about the FBI's smear campaign, author David Garrow disclosed that the principal source of allegations against Levison was two brothers, Jack and Morris Childs, identified by a single code name, "Solo." One of the brothers reportedly became the courier for up to \$1 million a year in secret contributions from the Soviet Union to the U.S. Communist Party. Their information was sometimes considered important enough to be handed to presidents.

Jack Childs died seven years ago, Branch points out, and Morris Childs "is presumably also dead, since he was known to be extremely ill in 1981 at the age of 79."

In Branch's view, the stakes in finding out the truth about Levison are high. "The truth or falsity of those charges," he said in a recent affidavit, "fundamentally affects any judgment about the patriotism of Levison, the competence of Director Hoover, the reputation of Dr. King and the political wisdom of the Kennedys."

Attorney General Robert F. Kennedy authorized the wiretapping of King in October 1963 in light of the FBI's representations about "King's communist connections." Both Robert Kennedy and President John F. Kennedy had personally warned King to stay away from Levison.

"In those days, we accepted pretty much what the FBI reported as being accurate," a former aide to Attorney General Kennedy testified in 1976.

The 1976 Senate report said FBI files contained information that Levison, whom it called "Adviser A," had been a member of the Communist Party at some point before the FBI opened a COMINFIL (com-

munist infiltration) investigation of King and his Southern Christian Leadership Conference in October 1962. But Senate investigators were denied access to documentation about Levison's connections in 1962 or at any time thereafter.

Levison denied in a 1975 Washington Post interview that he was ever a member of the Communist Party and said he was merely an FBI "scapegoat" used as an excuse for attacking King. He said the charges against him were a case of "guilt by association."

The FBI wiretapped Levison's home and office phones for almost 10 years, from 1962 to 1972, and bugged his office for several months in 1962, producing more than 10,000 pages of transcripts that Branch said he has reviewed in great detail. "In this vast, intercepted diary of Levison's life," Branch says, "there is not one indication that he acted on the ulterior motives of a communist, as the bureau alleged he did, or that he intended to harm the United States in any way."

That leaves 863 pages of documents "about Levison" that Branch, represented by Katherine A. Meyer of the Public Citizen Litigation Group, is trying to see. In files he has received, he said, only once was there an attempt to verify the informant reports of communist allegiance. In February 1963, the Justice Department ordered the FBI to prepare a summary of the evidence against Levison to determine if he should be prosecuted. Hoover ordered his New York office into action.

The New York office's censored response, marked "DO NOT DISSEMINATE," lists 12 security informants who had been canvassed and shown a photo of Levison. None of them knew who he was.

"Instead of forwarding the New York report to the Justice Department," Branch says, Hoover told the Justice Department that he was not furnishing the requested "prosecutive summary" because "the only information regarding Levison's affiliation with the Com-

... Communist Party, USA ... has been furnished by a highly sensitive source who is not available for interview or testimony."

Three months later, on May 13, 1963, the New York office of the FBI sent Hoover a report on a conversation that day between King and Levison about racial tensions in Birmingham and other matters—a report that would have routinely gone to Attorney General Kennedy. In a cover memo for Hoover, New York pointed out that "in accordance with instructions . . . no mention is being made [in the attached report of the conversation] of Levison's 'disenchantment' with the CP"

Argues Branch: "If the government can win in a case of this import—involving documents more than 30 years old, protecting sources already identified and

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dead—and do so without even bothering to address the plaintiff's arguments directly, then it seems to me that the FOI [Freedom of Information] law is far gone toward dead-letter status."

Under a Carter administration executive order governing classified information, the government could

have been required to justify continued secrecy under a "balancing test," weighing the public interest in disclosure against the need for withholding. But a 1982 order by President Reagan wiped out that test.

Branch tried to pierce the government's curtain last spring with a series of factual questions, such as whether one of the sources being protected is "Solo," but U.S. District Court Judge Charles R. Richey granted the government a protective order, holding that such interrogatories are beyond the pale in Freedom of Information Act cases.

Richey did order the government to come up with more specific information about the lawfulness of the Levison investigation and other matters, but the FBI took the position that most of the answers would disclose too much.

"To respond substantively and thereby satisfy the curiosity of the requester would reveal the information that we think is privileged," said Assistant U.S. Attorney Robert E.L. Eaton Jr.. His renewed motion for summary judgment in the government's favor is pending before Richey.