was original classification only secret? Only 1 class. indicated. Two grades of class indicated

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington, D.C. 20530

8 APR 1976

TOP SECRET

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Martin Luther King Report

In November, 1975, at your direction, we undertook to review and investigate various matters pertaining to Dr. Martin Luther King. Specifically, we sought to determine whether the FBI harassed or committed other illegal or improper acts against Dr. King during his life, and whether the FBI was implicated in his death. Implicit in this review was an effort to determine whether the FBI's investigation of King's death was thorough and honest, or whether it was tainted by the earlier efforts to discredit King as discussed below. (U)

In conducting our review, we relied primarily upon the Martin Luther King files at the FBI headquarters in Washington. These files are voluminous, and we were unable to review them all. 1/ We reviewed none of the files in Atlanta or Memphis, and we did not undertake a program of interviewing key witnesses. We did cooperate with the staff of the Senate Select Committee on Intelligence, and they with us, and we have recently had the benefit of seeing the findings and conclusions in their upcoming report. (In general, they confirm our own views independently arrived at.) (U)

Based upon this selective review, we have found that the FBI undertook a systematic program of harassment of Martin Luther King, by means both legal and illegal, in order to discredit him and harm both him and the movement he led. (U)

We have not found a basis to believe that the FBI in any way caused the death of Martin Luther King. (U)

1/ See the attached memorandum, Murphy to Pottinger, March 31, 1976, pages 2 and 3, for description of files reviewed.

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We have also found no evidence that the FBI's investigation of the assassination of Martin Luther King was not thorough and honest. 2/(U)

Harassment of Dr. Martin Luther King

Our review confirms that from the late 1950's until Dr. King's death, the Director of the FBI and a group of his subordinates carried out a systematic campaign of harassment against Dr. King and, by indirection, several of his colleagues. The attached 51-page memorandum from Robert Murphy to me of March 31, 1976, documents in some detail the events which made up this campaign. A brief outline of our findings follows.(U)

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2/ Since the completion of the FBI's original investigation into King's death, there have been numerous allegations of the possible involvement of co-conspirators with James Earl Ray. Each of these has been promptly investigated by the FBI and the Civil Rights Division, including one which was completed only a few weeks ago, and another which is currently underway. In other words, the Martin Luther King file is still open, and has never been closed. In this sense, any further investigation, as recommended in this memorandum, should not be characterized as a "reopening" of the assassination case, but rather as an additional or continuing investigation into areas either already covered in some degree, or not covered at all.(U)

where records?

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In addition to this reason, however, the early files reveal that much of the King investigation was based upon a perception, real or imagined, that King was using his influence to discredit the FBI and cause Hoover to be replaced. To the extent that this was a cause for the FBI's investigation, plainly it was an extra-legal one which was not justified even by the somewhat different standards of operation and perceptions which prevailed in the Bureau at the time. (U)

The nature of the Bureau's investigation significantly changed when in 1964 Attorney General Kennedy authorized the wiretapping of Dr. King, and thereby gave official sanction to the Bureau to intensify its surveillance. Again, this authorization, when viewed by the law enforcement standards of the time, appears to have been within the authority of the Attorney General. While his judgment in authorizing it might now be questioned, one must conclude that at the time the authorization was technically legal. (U)

The wiretaps soon led the FBI to add a new dimension to its investigation, the collecting of personal information about Dr. King through microphone surveillances (misurs) of his hotel rooms. The evidence of [...(b)(7)(C).....] stems to have confirmed Hoover's belief that King was a dangerous [(b)(7)(C)] revolutionary who should be exposed and replaced as a leader in the civil rights movement. (U)

It is i. this ensuing long campaign to discredit King that the Bureau most clearly overstepped its investigative and law enforcement functions. This is not a judgment which rests upon the benefit of hindsight. As an investigative agency, the FBI had no legal authority to make such determinations nor to act upon them. For reasons beyond the scope of this analysis, the historical fact is that the Department did not control the FBI effectively in such matters. We have seen no records in the files that the Attorney General or other key department officials were advised of the actions taken to discredit King, although certainly the product of the microphone surveillances was known to Attorney General Kennedy and the White House. The Attorney General did retrieve the distribution of a "monograph" or memorandum outlining allegations of Communist connections and highly personal and derogatory information about King, but it is unclear whether this was done primarily to curb the Bureau's impropriety or to preserve the credibility of the Attorney General's earlier public conclusion that King was free from Communist Party influence. (U)

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Prosecution Potential

Based upon our present level of knowledge, most if not all of the FBI officials who participated in the King case at a decision-making level are as follows:

1) J. Edgar Hoover, Director (deceased)

2) Clyde Tolson, Associate Director (deceased)

3) Alan Belmont, Assistant to the Director (retired)

4) Cartha DeLoach, Assistant Director (retired)

5) Courtney Evans, Assistant Director (retired)

6) William Sullivan, Assistant Director (retired)

7) James Bland, Chief, Subversive Control Section (retired)

8) Joseph A. Sizoo, Assistant to the Assistant Director (retired)

9) Fred J. Baumgardner, Chief, Internal Security Section (retired)

The exchanges of memoranda among these men and others could establish the existence of a concert of action in which each participated. Most of the briefings of Congressmen, Senators, White House aides, press, and others were handled by Cartha DeLoach. William Sullivan apparently conceived and executed the mailing of the composite tape to Dr. King, processed and approved the microphone surveillances to gather information to be used against King, and was active in other Cointelpro-type activities. Belmont, Bland, Sizoo, and Baumgardner participated regularly in producing the various internal memoranda. We would have to know more about these men's actual roles in the Bureau's effort in order to estimate their culpability. Courtney Evans appears more as an honest broker between Hoover and Attorney General Kennedy than as a principal, although his actual role would have to be examined further to be understood.

The files reveal that Hoover and this relatively small group of Bureau officials made the critical decisions and authorized the critical actions which were then executed by a core of well-trained and disciplined agents. We have not attempted to identify each agent who participated at the direction of headquarters, nor to assess whether they also have died or retired, and if not, their culpability or exposure to formal discipline. (See Recommendations for further discussion on this point.)

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The major statutory violations to consider in this matter would be 18 U.S.C. §241 and §242. 3/ As a citizen, Dr. King had federally-protected rights to freedom of speech and association, to privacy, to interstate travel without interference, and from unreasonable searches and seizures. The FBI's program to discredit and neutralize King included deprivations of each of these rights, and perhaps others. (a)

An examination of the law reveals that any prosecution contemplated under these acts is now barred by the five-year statute of limitations (18 U.S.C. §3282). The only possible exception would be proof of a continuing conspiracy to violate rights which has continued into the statutory period. We do not know of any such proof at this time, although one can speculate that it is possible that more intensive investigation would disclose it. (w

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writing file

In conclusion, it is our opinion that there are identifiable violations of law against Dr. King that cannot now be prosecuted because of the statute of limitations and, in some cases, because of the death of the subjects. (a)

Death of Martin Luther King

As the Murphy memorandum indicates, we were unable to find any indication that the FBI actually caused Dr. King's assassination. On the contrary, if one can rely upon logic as helpful, indications are that the FBI probably did not want King's death because it would bring him the martyrdom and favorable image which the entire Bureau campaign was designed to prevent. Nevertheless, the long campaign of harassment fairly gives rise to the question whether it culminated in some action which caused his death, and logically raises the question whether the investigation by the Bureau into his death was tainted by its institutional dislike for King. (a)

Recommendation

While we have been able to ascertain a great deal about the relationship between the FBI and Dr. King through our review, and

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3/ Section 241 is violated when "two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the constitutional laws of the United States. . ." Section 242 prohibits essentially the same conduct by an individual acting under color of law, as the principals involved were. (a)

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can therefore make the qualified findings set forth here, we have not been able to complete this investigation in the time and with the resources we have had to date. Because of the extraordinary nature of this inquiry, I am therefore recommending that the Department complete this task by reviewing all materials and witnesses bearing on the questions posed in November, 1975. While it would be both legitimate and supportable for you to conclude that our four-month review and the Senate Committee's similar review are adequate to answer these questions, in my opinion we cannot allay concerns which tend to discredit the FBI and the Justice Department until we have examined all available information bearing on the questions posed in November. I would therefore recommend the following steps: (u)

not done

1) Legal Task Force

A Department Task Force should be created for the purpose of completing the review which we have begun. The Task Force would consist of an attorney director, approximately four staff attorneys, and an appropriate number of research analysts and clerical assistants. The attorneys chosen ought not to have worked on the Martin Luther King case before. The Task Force should report its findings and conclusions to you on or about January 1, 1977. (u)

had, though?

2) Advisory Committee

In addition, I would recommend the appointment of an Advisory Committee of between five and nine distinguished citizens whose primary task would be to review the work of the Task Force, to have total and unfettered access to all files, witnesses, and other information available to the Department and the Task Force, to advise you and the Task Force about the conduct and progress of the review and to make a final report of their findings and conclusions, either in conjunction with the Task Force or independent of it, also on or about January 1, 1977. The purpose of the Advisory Committee would be to have an outside, fresh perspective on the state of our present infonmation and the conduct of the investigation as it proceeds to its conclusion. Although I regard the Justice Department as serving the public interest as much as a citizens' committee serves it, having non-governmental persons monitoring a government review of governmental actions would provide an important additional dimension of public review and would add credibility to the findings, whatever they may be. (u)

preconception. Suppose they disagree?

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Task Force and Advisory Committee Charter

The general charter of both the Task Force and the Advisory Committee would, as indicated, be to complete an investigation of the file and witnesses as they bear upon the questions posed by your November, 1975, directive. The Task Force and Advisory Committee would have complete and total access to all files, information, data, memoranda, personnel, witnesses, and any other information, both in and out of government, relevant to their tasks. The Task Force would also have ordinary litigating Division access to current FBI assistance and other normal resources of the Department. (u)

In completing the King review, there are several specific tasks which the Task Force and Advisory Committee ought to address: (u)

A) Field Office Reviews

We have not read any of the files in the field. Although we have no basis to believe that these files will disclose new or significant additional information, the recent disclosures of the 92 surreptitious entries against the Socialist Workers Party in New York, which were apparently discovered only by a careful review of field office files, suggest that a review of such files concerning Dr. King is also in order. It is possible that these files would contain records of actions against Dr. King which had not been sanctioned by headquarters, although this is purely speculative. A complete review would require the Task Force to read the field office files on at least Dr. King, the SCLC, and other related subjects as they appear from those files. (u)

B) Headquarters Files

We have not read all headquarters files on Dr. King [(b)(7)(C)...] We have only spot-checked and followed cross-references to files on SCLC, CPUSA, Communist Influence on Racial Matters, Mrs. King, [...(b)(7)(C).....] and a few other related files. There has been no undertaking as yet to review files in order to determine whether similar counterintelligence campaigns were directed at other civil rights activists such as Dr. Ralph Abernathy, Dr. James Farmer, or others. The likelihood that a review of all such materials would lead to prosecutive or disciplinary actions seems to be remote in light of the passage of time and the adoption of the Attorney General's new guidelines. Nevertheless, few of us suspected the scope of the FBI's (u)

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activities as they have now been revealed in related matters, so a complete evaluation would necessarily require a total review of headquarters files. (u)

Findings of wrongdoing which may be the subject of possible criminal prosecution and are not time barred should be referred to the Criminal or Civil Rights Division as their interest may appear. (u)

C) SECRET-(b)(1) (S)

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(S)

D) Disposition of Martin Luther King Tapes

The FBI acquired tapes, produced transcripts, and placed information in the files through improper and illegal investigative activities. The question therefore arises as to the proper and legal disposition of those materials which were improperly obtained and which are scurrilous and immaterial to any proper law enforcement function or historic purpose. As you know, OLC has researched this issue in connection with the destruction of improperly acquired materials relating to (...(b)(7)(C)..) I would suggest that OLC, the Task Force, and the Advisory Committee jointly work out a procedure for reviewing these tapes and related materials for purposes of recommending which might be destroyed, taking into account the requirements of the Privacy Act, the Freedom of Information Act, and the Federal Records Act. 4/ It may also be appropriate to consult the King family concerning the destruction of some or all of these materials. (We have been informed that family representatives may have indicated such a preference during contacts with the staff of the Senate Select Committee.) In addition, because some of the information in

whiting ?

Stanley J. Levison?

4/ Deputy Assistant Attorney General Mary Lawton indicates preliminarily that this approach is plausible although there may be some requirements or information calling for consultation with the Archivist. (u)

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question would be treated in a sensational fashion if "leaked" to the public, procedural safeguards would have to be carefully followed. Needless to say, it would be highly improper if this effort to cleanse the files resulted in a compromise of privacy which the effort was designed to insure. (u)

E) Disciplinary Action

Other than principals, we have not identified agents who took illegal or improper action against King, or the extent of their culpability. In my opinion, the FBI should be directed to undertake this assessment itself, and report to you its findings and any disciplinary action proposed or taken. The Task Force and Advisory Committee should refer any information it discovers indicating a potential for discipline to the FBI for appropriate follow-up. Your office and the Bureau would, of course, also be free to consult the Task Force and Committee concerning the discipline issue generally or on a case-by-case basis. (u)

F) Potential Remedial Action

Assuming the validity of our conclusion that the FBI repeatedly violated Dr. King's federally-protected rights; that prosecutive action is time barred; that death and retirement prevent effective disciplinary action; and that the new guidelines preclude any recurrence of this kind of activity, the question arises whether the Department has an obligation to make any further effort to do justice in this matter. The question is especially relevant here because the King family will be unlikely to seek civil redress in damages for fear of further publicizing the scurrilous nature of the information acquired, and because the full extent of the violations are known only to the government. Moreover, the FBI files show that the campaign against King did succeed to the point of causing him serious and prolonged mental anguish. The files reflect that the Bureau's action, especially the mailing of the tape, occasioned [.....(b)(7)(C)..... .....] and professional discord--all injuries that could be compensable in a private damage action under 42 U.S.C. §1983. (u)

On the other hand, one can argue that in spite of the attempts to discredit Dr. King, his reputation in the community has not been damaged in any measurable way by these actions. On the contrary, it might be argued that damage will occur only by publicly raising the King file through a continuation of this investigation. 5/ (u)

5/ Primarily for this reason, the Chief of the Criminal Section, Robert A. Murphy, recommends against further inquiry by Task Force or Advisory Committee. (u)

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Under these circumstances, I suggest that it is proper for the Task Force and Advisory Committee to consider the feasibility and propriety of compensating King's survivors or, perhaps with their concurrence, the King Foundation. This could be accomplished either by direct payment or a private bill. Precedent for such compensation exists in the settlement of the CIA's case involving the LSD experiments, and in cases involving unauthorized dissemination of information by the Bureau. Contrary debate is also occurring with regard to a private bill to compensate victims of the Wounded Knee Massacre. If this issue is made a part of the Task Force's and Advisory Committee's charter, they should consider all factors, for and against, and recommend accordingly. (a)

JL Note

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

Attachment

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