

November 30, 1977

MEMORANDUM FOR LYNNE ZUSMAN

RE: SUPPRESSION OF OPR RECORDS ON  
ASSASSINATION OF DR. KING

1. Memphis Police Department Records. The OPR contends that these records are exempt under 7(C) and (D). This is not legally sustainable, nor is it consistent with government practice.

With respect to 7(D), government practice has sanctioned the release of police department records. Thousands of Dallas Police Department records on the assassination of President Kennedy which were originally turned over to the Texas Court of Inquiry and then the Warren Commission were subsequently released to the public without excisions.

This applies also to Dr. King's assassination. During the course of *Weisberg v. Department of Justice* (C.A. No. 75-1996), the FBI has released dozens of Memphis Police Department records.

The Shaheen Report relied extensively on Memphis Police Department records and incorporated them in its Appendix C. Even the most rudimentary sense of fairness requires that these records be made public so that authorities on this subject can use them to evaluate the Shaheen Report and inform the public about this controversial subject.

The importance of this can be illustrated by an example from public materials. The Shaheen Report relies upon statements

by Raymond Curtis and other prisoners to argue that James Earl Ray is a racist and had a racial motive for killing Dr. King. It ignores the FBI reports which show Curtis was a pathological liar trying to cash in on the assassination and that a black lieutenant who guarded Ray at the Missouri Penitentiary said that Ray was not a racist.

The Shaheen Report abounds in such omissions and distortions. The OPR's motive in resisting disclosure is cover-up. It is trying to prevent critical scrutiny by authorities who would be able to establish from the OPR's own records that the Shaheen Report is a sham. Jobs are at stake here. If the Attorney General ever learns what a farce the Shaheen Report is, the proper response will be to sack those responsible for it.

2. Cointelpro records. The OPR claims that the records it examined on the FBI's Cointelpro operations against Dr. King, the SCLC and others are classified and therefore exempt under (b) (1). Under Executive Order 11652 even the lowest level of classification, "Confidential," is authorized only for "defense information or material the unauthorized disclosure of which could be prejudicial to the defense interests of the nation." The only basis for so classifying these documents at this level, much less higher levels, is the FBI's paranoid belief that King and/or his attorney-advisors Wachtel and Levison were communists. Even assuming this to be true, with King dead nearly nine years and the SCLC in shambles, there is no reasonable basis for asserting

that the release of these materials at this date could prejudice the defense interests of this country. What the release of these materials will do is to reveal further details about the illegalities committed by the FBI while acting as a political police force with a mission to suppress blacks who sought political change.

3. Political Considerations. The present Administration was elected, with the overwhelming support of blacks, on promises that it would be a clean broom sweeping away the past abuses of the federal government. It pledged openness in government and has made many fine speeches on this subject. It has not lived up to its promises and shows signs of becoming ensnarled in the same bureaucratic practices which led to the past abuses. As a result, its political support is quickly eroding in some vital areas.

To fight the release of King assassination records on a document-by-document basis, seeking always to litigate what can be litigated is, at the very least, politically stupid. It is sure to bring charges of cover-up which this administration cannot afford. It is sure to bring charges that the FBI and other government agencies are manipulating the Department of Justice as in the past, and that the current officers are not tough enough or knowledgeable enough or lack the will to correct tail-wagging-the-dog situation. The overwhelming majority of blacks believe there was a conspiracy to kill King and that the government has been covering up. By fighting King assassination

disclosures tooth-and-nail, this administration is going to get the same stonewall/cover-up reputation that previous administrations got and deserved. The willingness to risk this is all the more astonishing because it is absolutely unnecessary. By adopting a liberal disclosure policy the administration could separate itself from those which preceded it and get credit for doing so. It has nothing to lose by doing this and everything to gain. Instead, it evinces a willingness to acquiesce in the cover-up of the failures and deceptions of previous administrations.

The King assassination is an unsolved crime. The Attorney General is sorely in need of independent, knowledgeable advice on this subject. He cannot depend on the FBI or the OPR for it. The time may come when he will want to call on Harold Weisberg for assistance. There really is no one else in a position to be able to help him on this subject. But unless there is a drastic turnabout in the present policies, that opportunity for cooperation will be lost. While few will now believe it, the King assassination may some day present this administration with legal and political problems which could be highly embarrassing and damaging to it. The time to prevent that from occurring is now, with a tough-minded insistence that all records pertaining to the King assassination will be released unless a government agency can demonstrate a high degree of prejudice to legitimate government functions, such as endangering the lives of informants.

Jim Lesar

UNITED STATES GOVERNMENT

# Memorandum

TO : Mr. J. B. Adams

FROM : Legal Counsel *AM/ek*

SUBJECT: MARTIN LUTHER KING, JR.  
MEETING WITH ATTORNEY GENERAL, 7/2/76

DATE: 7/2/76

Assoc. Dir. \_\_\_\_\_  
 Dep. AD Adm. \_\_\_\_\_  
 Dep. AD Inv.   
 Asst. Dir.: \_\_\_\_\_  
 Adm. Serv. \_\_\_\_\_  
 Ext. Affairs \_\_\_\_\_  
 Fin. & Pers. \_\_\_\_\_  
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 Legal Coun.   
 Plan. & Eval. \_\_\_\_\_  
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 Spec. Inv. \_\_\_\_\_  
 Training \_\_\_\_\_  
 Telephone Rm. \_\_\_\_\_  
 Director Sec'y \_\_\_\_\_

### PURPOSE:

To set forth the results of a meeting 7/2/76 with Attorney General and other Departmental officials regarding access of King's attorneys to material in FBI files.

### SYNOPSIS:

On 7/2/76, meeting held in Department with Attorney General and others regarding access to file material maintained by FBI on the part of King's attorneys. Attorney General expressed strong desire that as many documents as possible should be made available in the King case and on an expeditious basis. Bureau's objections to this position set forth. In view of two pending suits by representatives of the Southern Christian Leadership Conference, the meeting terminated without any final decision as to releasability of documents.

### RECOMMENDATION: EX-111

For information.

APPROVED: *alzhizer*  
 Assoc. Dir. \_\_\_\_\_  
 Dep. AD Adm. \_\_\_\_\_  
 Dep. AD Inv. \_\_\_\_\_  
 Asst. Dir.: \_\_\_\_\_  
 Adm. Serv. \_\_\_\_\_

JUL 20 1976

Ext. Affairs \_\_\_\_\_  
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Laboratory \_\_\_\_\_  
 Legal Coun.   
 Plan. & Eval. \_\_\_\_\_  
 Rec. Mgnt. \_\_\_\_\_  
 Spec. Inv. \_\_\_\_\_  
 Training \_\_\_\_\_

- 1 - Mr. Leavitt (Attn: Mr. Phillips)
- 1 - Mr. Decker (Attn: Mr. Powers)
- 1 - Mr. Bassett
- 1 - Mr. Mogen
- 1 - Mr. Mintz
- 1 - Mr. Farrington

*Discussed with JCF:mfd Sect. on Chief (7) Powers 7/15 and will work toward a negotiable solution consistent with pending civil suits by SCLC. Director will be kept informed. JCF 7/16/76*

*On 7-6-76 the AG told me of his desire to release as much material as possible - Keep me informed as to progress - I hope we perhaps can work out a negotiable solution - keep this in mind*

LEGAL COUNSEL *POWERS*

CONTINUED - OVER

Bonds Regularly on the Payroll Savings Plan



Memorandum to Mr. Adams  
Re: MARTIN LUTHER KING, JR.

DETAILS:

By memorandum dated June 9, 1976, from Legal Counsel to Michael E. Shaheen, Jr., Counsel, Office of Professional Responsibility, captioned "Request for Access to Materials Relating to Martin Luther King, Jr.," the Bureau furnished its views in response to three requests made by attorneys representing both Mrs. Coretta King and the estate of the late Dr. King. Their request asked 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.

Pursuant to prior arrangements, a meeting was held in the Attorney General's office on July 2, 1976, for the purpose of discussing these requests. This meeting was attended by the Attorney General, Jack Fuller, Special Assistant to the Attorney General; Peter Taft, Assistant Attorney General, Land and Natural Resources Division; Michael E. Shaheen, Jr. and Steven Blackhurst of the Office of Professional Responsibility; Mary Lawton, Deputy Assistant Attorney General, Office of Legal Counsel; and James C. Farrington, Deputy Assistant Director, Legal Counsel Division.

The meeting opened with an observation by the Attorney General that he was very desirous of making as much material available to the King family attorneys as was possible and on an expeditious basis. It was his contention that this was a matter of national scope in which the FBI and the Department has been criticized in the past for not releasing documents and he was extremely concerned over the Department's present posture of possibly being interpreted as a cover-up of the findings resulting from the current inquiry being conducted by the Civil Rights Division.

Memorandum to Mr. Adams  
Re: MARTIN LUTHER KING, JR.

The Attorney General noted that his position as to releasing these documents would be based on the Attorney General's discretionary power as distinguished from releases being made under the Freedom of Information Act (FOIA) and of the Privacy Act. His contention is that in this way we would eliminate the potential for adverse criticism from already outstanding requesters for King material under the FOIA. He then turned to Mr. Farrington and asked if he agreed.

I advised Mr. Levi that I respectfully disagreed with this position and pointed out to him that although the nicety of this distinction between a discretionary release by the Attorney General as distinguished from a release under the FOIA would be readily discernible to those of us present, it would not be to the general public and I felt he would be subjecting himself and the Department to adverse criticism. In addition, it was pointed out to him that this would merely create another extremely burdensome condition on our FOIA employees who were already overly burdened as a result of a tremendous influx of requests for information as well as outstanding court orders in a number of cases to produce records in an expeditious manner.

He responded by recognizing that there is a potential for adverse criticism but in his judgment, it would be minimal as compared to the type of criticism which would be directed toward the Department concerning a possible "cover-up." He also stated he recognized and sympathized with the current FOIA workload being handled by the Bureau, particularly since Congress has not allocated funds for additional staffing. However, he felt that there would be minimal processing of those documents already made available to the Senate Select Committee (SSC).

At this point, Mr. Blackhurst indicated the possibility that the same people who scrutinized the original documents made available to the SSC and who made pertinent deletions, could be utilized in this particular project. It was explained to them that a great deal of the material that was made available to the SSC would not necessarily be made available to these requesters because that material contained classified documents which would not necessarily be releasable and also contained third party information which would necessitate the protection of third parties under provisions of the Privacy Act. He was also advised that the same people who processed the SSC documents are not assigned to our FOIA Section and would not handle the processing of this material.

Memorandum to Mr. Adams  
Re: MARTIN LUTHER KING, JR.

Further, argument was made that the preferential treatment being afforded the King attorneys could be misinterpreted not only by the general public, but by the courts and could possibly have an adverse effect of watering down the decision recently handed down in the Eldridge Cleaver case (U.S. District Court, D. D. C.), which supported the FBI practice of serving all FOIA - Privacy Act requests equitably by responding in chronological order. Mr. Levi then went back to his original argument that this would be a discretionary release and would involve a calculated risk of criticism, but felt it would not effect the court's decision in the Cleaver case.

Mr. Farrington also advised them that immediately prior to coming to this meeting this morning, he was advised that there are two suits just initiated by representatives of the Southern Christian Leadership Conference (SCLC) against Mr. Kelley and other individuals and the FBI. It was the Bureau's contention no decision regarding release of any documents in the King case should be made prior to the Department reviewing the summons and complaints in these two suits. The Attorney General readily agreed and advised that this put another element into their decision which they had not contemplated since every indication they had in their meetings with Dr. King's attorneys was that they did not intend to initiate suit prior to the completion of their current negotiations with the Department for access to the King records.

The Attorney General requested that Mr. Farrington obtain a copy of the summons and complaints in these two suits and furnish them as expeditiously as possible to Mr. Fuller in order that he in turn could make them available to the Civil Rights Division to determine what effect, if any, these suits will have on their determination to grant King's attorneys access to our files. (This has already been handled.)

In order that all present would have the same understanding regarding the processing procedures, Mr. Farrington indicated that although the Attorney General may make a discretionary release of these documents, they actually would be processed under the provisions of the FOIA and Privacy Act. The Attorney General indicated that he was interested in respecting other people's privacy and he, of course, did not intend that they should have access to documents properly classified, but he was most interested in having



Memorandum to Mr. Adams  
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The King attorneys furnished with all the documents that they could legally be furnished and on an expeditious basis. In response to that statement, Mr. Farrington inquired as to whether or not October of this year would fall within the Attorney General's definition of "expeditious," it being pointed out that this was the estimate Mr. Farrington had received as to when we would begin to process current outstanding FOIA requests for King material. The Attorney General responded by indicating that he did not feel this would be sufficiently expeditious since King's attorneys indicated that any delay they might receive from the Department under these negotiations would prompt them to initiate a suit which the Attorney General claims he strongly desires to avoid.

The Attorney General did agree with the Bureau's position that the King attorneys should not have the right to participate in the full Department and Bureau review of Dr. King's assassination and no position opposing that was made by any of the Department representatives.

The meeting concluded by the Attorney General stating that no firm decisions in this matter can be made prior to the Civil Rights Division reviewing the summons and complaints referred to above.