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Department of Justice
Washington, D.C. 20530

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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



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
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