# The Dangers of Domestic Spying by Federal Law Enforcement

## A Case Study on FBI Surveillance of Dr. Martin Luther King

Charles Moore/Black Star

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**Prepared by the Washington National Office of the American Civil Liberties Union**

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"The Dangers of Domestic Spying by Federal Law Enforcement" was written by Marvin Johnson, Legislative Counsel

On the cover : Photograph of Dr. Martin Luther King being arrested in 1958 for "loitering" in Montgomery, Alabama

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# THE DANGERS OF DOMESTIC SPYING BY FEDERAL LAW ENFORCEMENT

## A Case Study on FBI Surveillance of Dr. Martin Luther King

> "I have a dream ... that one day, my four little children will live in a nation where they will not be judged by the color of their skin, but by the content of their character."

Martin Luther King, Jr.'s "I Have a Dream" speech galvanized many Americans to fight against the injustice of racial inequality. That speech and his other activities to advocate for equality, for the rights of the poor and for peace not only changed the course of our history, but also unfortunately earned him the enmity of our own government. As Dr. King worked for social justice, the FBI engaged in an orchestrated campaign to ruin him.

The documented excesses of the FBI in targeting groups and individuals like Dr. King because of their beliefs led to Congressional hearings,[1] and, in 1976, guidelines adopted by Attorney General Edward Levi.[2] These guidelines regulated FBI activity in both foreign and domestic intelligence gathering, and made it clear that constitutionally protected advocacy of unpopular ideas or political dissent alone cannot serve as the basis for an investigation.

> ***In the wake of the horrifying terrorist attacks of September 11, however, Attorney General John Ashcroft is considering relaxing the guidelines to give the FBI a freer hand in investigating individuals and groups because of their beliefs.***[3]

This week, as we celebrate Martin Luther King Jr.'s birthday, we must remember the reasons for the initial guidelines and why they must not be relaxed.

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[1] Much of the information in this case study is gleaned from the report resulting from those hearings. *Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans, Book III, Final Report of the Select Committee to Study Governmental Operations With Respect to Intelligence Activities,* 94th Cong. (1976), hereinafter S. REP. No. 94-755 (1976). The Committee was chaired by Senator Frank Church.

[2] The Domestic Security Guidelines are posted at the Department of Justice website at: http://www.usdoj.gov/ag/readingroom/generalcrimea.htm. The latest addendum to them is at: http://www.usdoj.gov/ag/readingroom/generalcrime.htm. The Guidelines for FBI Foreign Intelligence Collection and Foreign Counter Intelligence Investigations are posted (with much information redacted) at: http://www.usdoj.gov/ag/readingroom/terrorismintel2.pdf.

[3] David Johnston and Don Van Natta Jr., "Ashcroft Seeking to Free FBI to Spy on Groups," *The New York Times,* December 1, 2001. For full text of article, see appendix.

## The Investigations Begin

The Federal Bureau of Investigation began its investigation into Dr. King's civil rights activities in the late 1950s under an FBI program entitled "Racial Matters." This program required the collection of "all pertinent information" about the "proposed or actual activities" of individuals and organizations "in the racial field." [4]

In 1957, Dr. King was a primary founder of the Southern Christian Leadership Conference (SCLC). At the time, FBI Director J. Edgar Hoover responded to its formation by reminding field agents of the need for vigilance, apparently because SCLC was planning a register-and-vote campaign among African Americans in the South:

> In the absence of any indication that the Communist Party has attempted, or is attempting, to infiltrate this organization you should conduct no investigation in this matter. However, in view of the stated purpose of the organization, you should remain alert for public source information concerning it in connection with the racial situation. [5]

The FBI formally opened another investigation of Dr. King and the SCLC in late 1962 under an FBI program called COMINFIL that permitted investigation of legitimate noncommunist organizations suspected by the FBI of having been infiltrated by communists. The charge was ludicrous. Dr. King repeatedly criticized Marxist philosophy in his writing and speeches and all evidence indicated the Communist Party had little, if any, influence on Dr. King or the SCLC.

Surveillance of Dr. King continued under both the "Racial Matters" inquiry and the COMINFIL investigation. The memorandum authorizing the COMINFIL investigation made it clear that COMINFIL and "Racial Matters" were parallel investigations, noting that "any information developed concerning the integration or racial activities of the SCLC must [also] be reported [under a] Racial Matters caption." [6]

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[4] S. REP. No. 94-755, at 88 (1976). Current guidelines would prohibit opening a domestic terrorism investigation based on this information since Dr. King's activities did not involve force or violence or violation of the criminal laws of the United States. Even though Dr. King's position on racial issues may have been unpopular in some segments of society and violence could have been anticipated, the Domestic Guidelines state: "In the absence of any information indicating planned violence by a group or enterprise, mere speculation that force or violence might occur during the course of an otherwise peaceable demonstration is not sufficient grounds for initiation of an investigation under this section." Domestic Guidelines, Section IIIB1c

[5] S. REP. No. 94-755, at 87 (1976)

[6] S. REP. No 94-755, at 88 (1976). The FBI's infamous Counterintelligence Program (COINTELPRO) later targeted Dr. King and his associates, labeling the SCLC as one of the "Black Nationalist – Hate Groups." Id. at 179. In February 1968, one of the goals of the Black Nationalist – Hate Groups COINTELPRO was to "[p]revent the rise of a 'messiah' who could unify and electrify the militant black nationalist movement." Id. at 180. Dr. King was mentioned as a candidate "should he abandon his supposed 'obedience' to 'white, liberal doctrines' (nonviolence) and embrace black nationalism. . ." Id.

Today, under the current domestic spying guidelines, a campaign like the FBI's investigation of Dr. King would not be permitted. Under today's guidelines, a criminal investigation may be initiated when "facts or circumstances reasonably indicate that a federal crime has been, is being, or will be committed ... The standard of 'reasonable indication' is substantially lower than probable cause." [7] The focus, therefore, in criminal investigations, is the detection and prosecution of criminal activity.

An investigation of Dr. King would not be permitted even under the necessarily broader scope of domestic security/terrorism investigations. Such investigations are concerned with an entire enterprise as opposed to individual participants and specific criminal acts. A domestic security/ terrorism investigation may be undertaken when there is a reasonable indication that "two or more persons are engaged in an enterprise for the purpose of furthering political or social goals wholly or in part through activities that involve force or violence and a violation of the criminal laws of the United States." [8]

Under the foreign guidelines, investigations of groups or organizations "should be directed toward acquiring information relating to the group or organization as a whole. It should focus on activities of foreign counterintelligence or international terrorism interest, ***not*** on unrelated First Amendment activities."[9] [Emphasis added.] Any investigation of individuals, beyond their group activities, must be authorized separately.[10]

Under current guidelines, activities such as those undertaken by either Dr. King or the SCLC could not be lawfully targeted for investigation. Neither advocated violence or criminal acts, and their activities were clearly protected under the First Amendment.

> ***The guidelines that now provide protection against FBI interference with First Amendment activities such as Dr. King practiced are the very guidelines the Attorney General now wishes to "relax."***

## Discrediting a National Leader

From January 1964 through November 1965, the FBI's interest in Dr. King increased. In addition to trying to find any information about potential communist influence, the FBI tried to discredit him as a leader of the civil rights movement.

Because Dr. King advocated non-violence, there was no legitimate law enforcement purpose for the FBI's behavior toward him. What drew the government's attention was Dr. King's growing political power and stature and his ever more effective advocacy for social justice. Although he started working for racial equality in the South, Dr. King was increasingly making strategic alliances with other advocates and gaining power to more broadly influence public opinion.

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[7] Domestic Guidelines, Section IIC

[8] Domestic Guidelines, Section IIIB1a

[9] Foreign Guidelines, p. 15. Investigations of United States Persons may be initiated under these guidelines when information indicates a foreign intelligence officer or agent or international terrorist group is seeking to infiltrate an organization in order to control it. Id. at 7. Investigations are also permitted where an organization or group substantially composed of U.S. persons is acting for or on behalf of a foreign power.

[10] Id.

As he became more influential, FBI officials became more obsessed with Dr. King, who was selected in December 1963 by Time Magazine as the "Man of the Year" as the "unchallenged voice of the Negro people ... [who] has infused the Negroes themselves with the fiber that gives their revolution its true stature."[11] (In response, Hoover scrawled across the memorandum informing him of this honor: "They had to dig deep in the garbage to come up with this one.")[12]

To discredit Dr. King, the FBI engaged in a mind-boggling smear campaign, most—if not all—of which would be illegal under the current guidelines that Attorney General Ashcroft seeks to relax. Among its tactics, the FBI:

- Prepared and distributed a report called "Communism and the Negro Movement – A Current Analysis." The report, which was sent to various high-ranking government officials, was described by an assistant attorney general as a "personal diatribe ... a personal attack without evidentiary support on the character, the moral character and person of Dr. Martin Luther King, and it was only peripherally related to anything substantive."[13]

- Tried to pit the religious community against Dr. King. In 1964, a FBI official spoke to the General Secretary of the National Council of Churches of Christ in hopes of tarnishing Dr. King's reputation. Although not representative of many of its members, the General Secretary at the time seemed to have bowed to the enormous pressure of the FBI and assured the agency that "steps have been taken by the National Council of the Churches of Christ to make certain from this time on that Martin Luther King will never get 'one single dollar' of financial support from the National Council."[14]

- Sought to derail a meeting it learned Dr. King planned with the Pope. In August 1964, a top FBI official ordered the agent in charge of the FBI's New York office to contact Cardinal Francis Spellman on a "highly confidential basis" and impress upon the Cardinal the "likely embarrassment that may result to the Pope should he grant King an audience and King is later discredited."[15] Despite the FBI's efforts, the Pope chose to meet with Dr. King. Hoover scrawled across the memorandum informing him of that meeting "astounding," and "I am amazed that the Pope gave an audience to such a [excised by FBI]."[16]

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[11] S. REP. No. 94-755, at 135 (1976)
[12] S. REP. No. 94-755, at 135 (1976)
[13] S. REP. No. 94-755, at 32 (1976)
[14] S. REP. No. 94-755, at 142
[15] Id.
[16] S. REP. No. 94-755, at 143 (1976)

- Did its best to spoil Dr. King's welcome, both at home and abroad, after he won the Nobel Peace Prize in 1964. Upon learning that Dr. King might meet with foreign leaders while he was in Europe to receive his Nobel Prize, FBI headquarters instructed FBI representatives abroad to brief the proper authorities about Dr. King.[17]

- Attempted to block his publications. After learning that Dr. King intended to publish an article in a major national publication, the FBI briefed an official of the magazine and received assurances that the magazine would "endeavor to assist" the FBI. While the magazine could not block publication because of a contractual agreement with Dr. King, the FBI's contact did apparently bear some fruit. Dr. King wished to soften some of his criticism of other civil rights groups in his article to avoid friction, but the magazine resisted his efforts to make those changes.[18]

- Tried to limit Dr. King's ability to raise funds for the SCLC. The FBI used covert operations to successfully block Dr. King from obtaining contributions from Teamster President James Hoffa. King wanted to avoid publicity for any of his meetings with Hoffa, but the Bureau notified reporters about the intended meeting. King decided it would be unwise to meet with Hoffa under those circumstances. A memorandum from field agent Robert Wick to Cartha DeLoach of the FBI's Internal Security Division in November 11, 1966 stated: "our counterintelligence aim to thwart King from receiving money from the Teamsters has been quite successful to date."[19] In another successful attempt to block King's ability to raise funds, the FBI used "friendly news sources" to criticize King's stance on the Vietnam War, publicizing "King as a traitor to his country and to his race." These articles proved successful in reducing money raised from a series of shows given by Harry Belafonte to earn funds for the SCLC.[20]

Finally, and perhaps most disturbingly, the FBI installed at least 15 hidden microphones in hotel rooms Dr. King occupied.[21] Arguing for the need for microphone coverage, the Chief of the FBI's Internal Security Section wrote that the FBI was "attempting" to obtain information about "the [private] activities of Dr. King and his associates" so that Dr. King could be "completely discredited."[22]

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[17] S. REP. No. 94-755, at 144 (1976)
[18] S. REP. No. 94-755, at 21 (1976)
[19] S. REP. No. 94-755, at 176 (1976)
[20] Memorandum from George Moore to William Sullivan, 10/18/67 marked "Handled"
[21] S. REP. No. 94-755, at 120-121 (1976)
[22] S. REP. No. 94-755, at 140 (1976)

More than 20 reels of tape were obtained during Dr. King's stay in Honolulu and Los Angeles. Director Hoover agreed to send a copy of a memorandum describing the contents of the tapes to Attorney General Kennedy to:

> remove all doubt from the Attorney General's mind as to the type of person King is. It will probably also eliminate King from any participation in [a memorial for President Kennedy which the Attorney General was helping to arrange].[23]

An FBI memorandum, for example, noted "[w]e are continuing to follow closely King's activities and giving consideration to every possibility for future similar coverage that will add to our record on King so that in the end he might be discredited and thus be removed from his position of great stature in the Negro community."[24]

In November 1964, the FBI mailed a composite tape from the coverage of hotel rooms in Washington, D.C., San Francisco and Los Angeles to Dr. King. Included with the tape was a letter stating the tape would be released in 34 days and threatening "there is only one thing you can do to prevent this from happening." Those who read the letter interpreted it as inviting Dr. King to commit suicide.[25]

At the time the microphones were placed to eavesdrop on Dr. King, no notification to, or permission from, the Attorney General was required.[26] Today, both the domestic and foreign guidelines require more active participation of the Attorney General or his designee, and a court of competent jurisdiction must grant authorization. Thus, while microphone surveillance is not currently prohibited, it cannot be the product of a unilateral decision by the FBI as happened with Dr. King.

## FBI Efforts to Discredit Dr. King After His Death

The long, intense FBI campaign against Martin Luther King did not end with his death in April 1968. In March 1969, the FBI learned that Congress was considering declaring Dr. King's birthday a national holiday. In a memo dated March 18, 1969, the Crime Records Division recommended briefing members of the House Committee on Internal Security because they were "in a position to keep the bill from being reported out of Committee if they realize King was a scoundrel."[27]

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[23] S. REP. No. 94-755, at 140 (1976)

[24] S. REP. No. 94-755, at 122 (1976)

[25] S. REP. No. 94-755, at 158-160 (1976)

[26] S. REP. No. 94-755, at 112 (1976). "In 'national security' cases, the FBI was free to carry out *microphone* surveillance *without* first seeking the approval of the Attorney General or informing him afterward." Id. That policy was changed on March 30, 1965, requiring approval of the Attorney General before either wiretaps or microphones were installed. Id. at 114.

[27] S. REP. No. 94-755, at 183 (1976)

In a later memo dated April 14, 1969, the Atlanta field office suggested a plan "in the event the Bureau is inclined to entertain counterintelligence against Coretta Scott King and/or continuous projection of the public image of Martin Luther King."[28]

Much of the effort to discredit Dr. King revolved around disseminating information about his personal life gleaned from the investigation. Current Domestic and Foreign Guidelines now more closely regulate the dissemination of such information.

## Conclusion

Throughout the FBI's long campaign to destroy Martin Luther King, Jr. by painting him as a communist provocateur there was no evidence that he either was a Communist or under the influence of communism. His "crime" was to challenge the laws enforcing segregation and preventing the right to vote. His "crime" was to protest the Vietnam war and to denounce policies that did not address widespread poverty in the country. Dr. King had the courage to say "no more," and take a stand for the cause of equality.

Because he had the courage to take that stand, the FBI decided his power and stature must be completely undermined. Enormous resources were expended in that effort.

When the sordid excesses of the FBI in punishing those who exercised their rights under the Constitution came to light, changes were made. The Attorney General established clear guidelines for initiating investigations, which recognize that Americans have freedoms protected by the First Amendment.

Now, Attorney General Ashcroft is considering relaxing those guidelines and returning to the days of allowing the FBI to investigate and harass those it perceives to be threats to the established order. If we ignore the history of the FBI's unfettered investigations, we will be doomed to repeat an ignominious chapter in America's past.

As a nation, we must make sure that we monitor the actions of the FBI and Attorney General Ashcroft to assure that what happened to Dr. King never happens again.

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[28] S. REP. No. 94-755, at 183 (1976)

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# APPENDIX

The New York Times
ON THE WEB

December 1, 2001

LIBERTY AND SECURITY

# Ashcroft Seeking to Free F.B.I. to Spy on Groups

By DAVID JOHNSTON and DON VAN NATTA Jr.

WASHINGTON, Nov. 30 — Attorney General John Ashcroft is considering a plan to relax restrictions on the F.B.I.'s spying on religious and political organizations in the United States, senior government officials said today.

The proposal would loosen one of the most fundamental restrictions on the conduct of the Federal Bureau of Investigation and would be another step by the Bush administration to modify civil-liberties protections as a means of defending the country against terrorists, the senior officials said.

The attorney general's surveillance guidelines were imposed on the F.B.I. in the 1970's after the death of J. Edgar Hoover and the disclosures that the F.B.I. had run a widespread domestic surveillance program, called Cointelpro, to monitor antiwar militants, the Ku Klux Klan, the Black Panthers and the Rev. Dr. Martin Luther King Jr., among others, while Mr. Hoover was director.

Since then, the guidelines have defined the F.B.I.'s operational conduct in investigations of domestic and overseas groups that operate in the United States.

Some officials who oppose the change said the rules had largely kept the F.B.I. out of politically motivated investigations, protecting the bureau from embarrassment and lawsuits. But others, including senior Justice Department officials, said the rules were outmoded and geared to obsolete investigative methods and had at times hobbled F.B.I. counterterrorism efforts.

Mr. Ashcroft and the F.B.I. director, Robert S. Mueller III, favor the change, the officials said. Most of the opposition comes from career officials at the F.B.I. and the Justice Department. A Justice Department spokeswoman said today that no final decision had been reached on the revised guidelines.

"As part of the attorney general's reorganization," said Susan Dryden, the spokeswoman, "we are conducting a comprehensive review of all guidelines, policies and procedures. All of these are still under review."

An F.B.I. spokesman said the bureau's approach to terrorism was also under review.

"Director Mueller's view is that everything should be on the table for review," the spokesman, John Collingwood, said. "He is more than willing to embrace change when doing so makes us a

more effective component. A healthy review process doesn't come at the expense of the historic protections inherent in our system."

The attorney general is free to revise the guidelines, but Justice Department officials said it was unclear how heavily they would be revised. There are two sets of guidelines, for domestic and foreign groups, and most of the discussion has centered on the largely classified rules for investigations of foreign groups.

The relaxation of the guidelines would follow administration measures to establish military tribunals to try foreigners accused of terrorism; to seek out and question 5,000 immigrants, most of them Muslims, who have entered the United States since January 2000; and to arrest more than 1,200 people, nearly all of whom are unconnected to the terrorist attacks of Sept. 11, and hold hundreds of them in jail.

Today, Mr. Ashcroft defended his initiatives in an impassioned speech to United States attorneys. "Our efforts have been deliberate, they've been coordinated, they've been carefully crafted to not only protect America but to respect the Constitution and the rights enshrined therein," Mr. Ashcroft said.

"Still," he added, "there have been a few voices who have criticized. Some have sought to condemn us with faulty facts or without facts at all. Others have simply rushed to judgment, almost eagerly assuming the worst of their government before they've had a chance to understand it at its best."

Under the current surveillance guidelines, the F.B.I. cannot send undercover agents to investigate groups that gather at places like mosques or churches unless investigators first find probable cause, or evidence leading them to believe that someone in the group may have broken the law. Full investigations of this sort cannot take place without the attorney general's consent.

Since Sept. 11, investigators have said, Islamic militants have sometimes met at mosques — apparently knowing that the religious institutions are usually off limits to F.B.I. surveillance squads. Some officials are now saying they need broader authority to conduct surveillance of potential terrorists, no matter where they are.

Senior career F.B.I. officials complained that they had not been consulted about the proposed change — a criticism they have expressed about other Bush administration counterterrorism measures. When the Justice Department decided to use military tribunals to try accused terrorists, and to interview thousands of Muslim men in the United States, the officials said they were not consulted.

Justice Department officials noted that Mr. Mueller had endorsed the administration's proposals, adding that the complaints were largely from older F.B.I. officials who were resistant to change and unwilling to take the aggressive steps needed to root out terror in the United States. Other officials said the Justice Department had consulted with F.B.I. lawyers and some operational managers about the change.

But in a series of recent interviews, several senior career officials at the F.B.I. said it would be a serious mistake to weaken the guidelines, and they were upset that the department had not clearly described the proposed changes.

"People are furious right now — very, very angry," one of them said. "They just assume they know everything. When you don't consult with anybody, it sends the message that you assume you know everything. And they don't know everything."

Still, some complaints seem to stem from the F.B.I.'s shifting status under Mr. Ashcroft. Weakened by a series of problems that predated the Sept. 11 attacks, the F.B.I. has been forced to follow orders from the Justice Department — a change that many law enforcement experts thought was long overdue. In the past, the bureau leadership had far more independence and authority to make its own decisions.

Several senior officials are leaving the F.B.I., including Thomas J. Pickard, the deputy director. He was the senior official in charge of the investigation of the attacks and was among top F.B.I. officials who were opposed to another decision of the Bush administration, the public announcements of Oct. 12 and Oct. 29 that placed the country on the highest state of alert in response to vague but credible threats of a possible second terrorist attack. Mr. Pickard is said to have been opposed to publicizing threats that were too vague to provide any precautionary advice.

Many F.B.I. officials regard the administration's plan to establish military tribunals as an extreme step that diminishes the F.B.I.'s role because it creates a separate prosecutorial system run by the military.

"The only thing I have seen about the tribunals is what I have seen in the newspapers," a senior official complained.

Another official said many senior law enforcement officials shared his concern about the tribunals. "I believe in the rule of law, and I believe if we have a case to make against someone, we should make it in a federal courtroom in the United States," he said.

Several senior F.B.I. officials said the tribunal system should be reserved for senior Al Qaeda members apprehended by the military in Afghanistan or other foreign countries.

Few were involved in deliberations that led to the directive Mr. Ashcroft issued this month to interview immigrant men living legally in the United States. F.B.I. officials have complained that the interview plan was begun before its ramifications were fully understood.

"None of this was thought through, a senior official said. "They just announced it, and left it to others to figure out how to do it."

The arrests and detentions of more than 1,200 people since Sept. 11 have also aroused concerns at the F.B.I. Officials noted that the investigations had found no conspirators in the United States who aided the hijackers in the Sept. 11 attacks and only a handful of people who were

considered Al Qaeda members.

"This came out of the White House, and Ashcroft's office," a senior official said. "There are tons of things coming out of there these days where there is absolutely no consultation with the bureau."

Some at the F.B.I. have been openly skeptical about claims that some of the 1,200 people arrested were Al Qaeda members and that the strategy of making widespread arrests had disrupted or thwarted planned attacks.

"It's just not the case," an official said. "We have 10 or 12 people we think are Al Qaeda people, and that's it. And for some of them, it's based only on conjecture and suspicion."