

Date of Hearing: January 13, 2022

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
SJR 7 (Bradford) – As Amended July 15, 2021

**SENATE VOTE:** 35-0

**SUBJECT:** DR. MARTIN LUTHER KING, JR.: FBI SURVEILLANCE TAPES

**KEY ISSUES:**

- 1) SHOULD THE CALIFORNIA LEGISLATURE URGE THE NATIONAL ARCHIVES TO DESTROY QUESTIONABLY OBTAINED TAPES RELATING TO THE FBI'S SURVEILLANCE OF DR. MARTIN LUTHER KING, JR.?
- 2) SHOULD THE CALIFORNIA LEGISLATURE URGE CONGRESS AND THE PRESIDENT TO TAKE STEPS TO PREVENT SUCH SURVEILLANCE FROM OCCURRING AGAIN?

**SYNOPSIS**

*This resolution urges the National Archives to destroy tapes produced as part of the FBI's surveillance of the Reverend Dr. Martin Luther King, Jr. in the 1960s. As is well-documented, the FBI conducted a relentless investigation of Dr. King under the guise of assessing his "communist" influence, but which in fact focused more on King's personal life in hopes of finding information that would discredit King and "neutralize" his influence as a civil rights leader. Although these tapes were placed under seal in 1977 for a period of 50 years, internal FBI memos purportedly describing the contents of the documents have long been available for inspection through the National Archives and in other published sources. Indeed, links to documents were made available in a 2019 article by historian and King's biographer, David Garrow. Some of the memos describing the content of the tapes make serious allegations against King's moral character. Whether or not the FBI memos accurately reflect the content of the tapes is uncertain, as the FBI might have exaggerated or lied about the content of the tapes, given their overriding purpose to discredit King. The author contends that the tapes were "immorally" and covertly obtained, and therefore should not be used to further invade King's privacy or tarnish his legacy. As such, the resolution urges the National Archives to destroy the surveillance tapes. It also calls upon Congress and the President to take steps to ensure that such "immoral and defaming" surveillance not occur again. As discussed in the analysis, destroying public records – even for the laudable purpose of protecting privacy and reputation – raises serious questions and sets a potentially dangerous precedent. Moreover, given that written documents describing the content of the tapes are available and have been widely disseminated, one could argue that the best way to rebut the allegations made in the FBI descriptions is to listen to the tapes. Nonetheless, given the questionable means and motives behind the FBI surveillance and creation of the tapes, the Committee may conclude that destruction of historical records in this narrow instance is justified.*

**SUMMARY:** Urges the National Archives to destroy surveillance tapes related to the investigation of Dr. Martin Luther King, Jr. Specifically, **this measure:**

1) Finds and declares that WHEREAS:

- a) Dr. Martin Luther King, Jr. walked into the heart of Jim Crow demanding change from those intransigent in their hatred. His courage was unquestioned, his method of nonviolence risky, and his unapologetic style dangerous, actions for which he received international recognition with the awarding of the Nobel Peace Prize.
- b) The United States Federal Bureau of Investigation (FBI) immorally recorded the life and conversations of Dr. Martin Luther King, Jr.
- c) The FBI began monitoring Dr. Martin Luther King, Jr. in December 1955 during his involvement with the Montgomery bus boycott, and engaged in covert operations against him throughout the 1960s.
- d) For the last four and one-half years of his life, from November 1963 until his death in April 1968, Dr. King lived without any semblance of privacy. His hotel rooms were bugged, his phones tapped, and his office and inner circle infiltrated by informants.
- e) On November 21, 1964, the FBI anonymously sent Dr. King a letter encouraging Dr. King to commit suicide to avoid public embarrassment.
- f) According to a United States Senate Committee convened in the 1970s to investigate the FBI's domestic intelligence operations, when Dr. King condemned the Vietnam War in a speech at Riverside Church on April 4, 1967, the FBI interpreted this position as proof he "has been influenced by Communist advisors" and stepped up their covert operations against him.
- g) In August 1967, the FBI created a Counterintelligence Program (COINTELPRO) which targeted Dr. King, the Black Panther Party, and other civil rights leaders.
- h) The FBI's surveillance tapes and the transcripts of them remain under seal until 2027.
- i) Dr. Martin Luther King, Jr. is critical to memorializing the Black experience in America. His mission, and unfortunately, the challenges he confronted, remain timeless, and no one has the right to feed on his legacy.

2) In light of above, RESOLVES that:

- a) By the Senate and the Assembly of the State of California, jointly, the Legislature urges the National Archives and Records Administration to destroy the FBI surveillance tapes that were obtained immorally on Reverend Dr. Martin Luther King, Jr.
- b) The Legislature urges the Congress of the United States to work with President Joseph R. Biden to prevent similar abuses of power from being perpetrated for immoral and defamatory reasons.
- c) Copies of this resolution be transmitted as specified.

**EXISTING LAW** provides, under the Freedom of Information Act, that any person has the right to request access to federal records or information held by any federal agency, except to the

extent the records are exempt from disclosure by a statute, an executive order, or a court order. (5 U.S.C. Section 552.)

**FISCAL EFFECT:** As currently in print this measure is keyed non-fiscal.

**COMMENTS:** According to the author:

In December 1955, during his involvement with the Montgomery bus boycott, the United States Federal Bureau of Investigation (FBI) began monitoring Martin Luther King, Jr., and engaged in immoral and defaming covert operations against him throughout the 1960s. For the last four and a half years of his life, from November 1963 until his death in April of 1968, Dr. King lived without any semblance of privacy. His hotel rooms were bugged, his phones tapped, and his office and inner circle were infiltrated by informants. This measure would call upon the removal and destruction of the immorally recorded F.B.I. surveillance tapes on Reverend Martin Luther King Jr.

**Background:** As has been well-documented, the FBI – especially under J. Edgar Hoover in the 1960s – conducted a relentless campaign against various activist groups, from the Black Panthers and the Students for Democratic Society (SDS), to hate groups like the Ku Klux Klan. Ostensibly, these investigations were justified on national security or public safety grounds. The FBI’s investigation of King and his Southern Christian Leadership Conference (SCLC) was initially part of a “counter intelligence program” (COINTELPRO) aimed at assessing communist influence in the civil rights movement. The surveillance of King and other SCLC leaders took various forms, including “bugging” King’s motel rooms as he travelled around the country. (The FBI apparently used planted microphones with FBI agents listening in adjoining motel rooms.) While the ostensible purpose of the surveillance was to address national security and public safety concerns, the FBI’s internal memos make clear that their primary obsession was to uncover damaging personal information (the more prurient, the better) to “disrupt” and “neutralize” the persons and groups who were targeted. In the 1970s, a U.S. Senate select committee investigating intelligence activities – known as the Church Committee for its Chairman Frank Church (D-Idaho) – took testimony and collected evidence suggesting that the FBI had abused its legitimate authority, becoming, in the words of the Committee’s final report, a “vigilante operation aimed at preventing the First Amendment rights of speech and association.” (U.S. Senate. *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities* [hereinafter, “Church Report.”] (Washington: Government Printing Office, 1976).) The Church Report made clear that while the FBI had broad authority to conduct its investigations – investigations beginning in 1963 were expressly requested and authorized by then Attorney General Robert F. Kennedy – many of their techniques were “intolerable in a democratic society.” (*Id.* pp. 3-8.) Moreover, even if the investigations had been legally authorized, the FBI was less motivated by legitimate national security concerns than by finding anything that they could use to discredit King. [For the FBI’s obsession with King’s personal life, see also the Church Report, David Garrow, *The FBI and Martin Luther King, Jr.* (1981) and *idem*, *Bearing the Cross: Martin Luther King, Jr. and the Southern Christian Leadership Conference* (1986).]

On January 31, 1977, shortly after the publication of the Church Report, a federal district judge for the District of Columbia issued an order sealing the FBI surveillance tapes relating to King for 50 years, ordering that the tapes be preserved, albeit under seal, until January 31, 2027. In the case giving rise to the order, several members of the SCLC (other than King, who was

assassinated in 1968), brought an action seeking (1) damages for reputational harm, and (2) an order to destroy the tapes. The court dismissed the claim for damages on statute of limitation grounds. It refused the request to destroy the tapes in favor of an order placing the tapes under seal for 50 years. Of relevance to this resolution, the order expressly states that the tapes should be “maintained” by the Archivist for the 50 year period and that it should “take such actions as are necessary to the preservation of said tapes.” (*Bernard Lee, et.al. v. Kelley, et.al*, Civil Action No. 76-1185, U.S. Dist. Ct. for the District of Columbia, January 31, 1977.) In light of this order, it is not clear that the Archivist could destroy the tapes without a subsequent court order. Certainly the tapes could not be destroyed before the expiration of the existing order. Although the resolution could be clarified to account for that, the resolution is written in sufficiently general language that urging the National Archives to take necessary action would include steps that take account of the existing court order.

In addition to calling upon the National Archives to destroy the tapes, this resolution also urges “the Congress of the United States to work with President Joseph R. Biden to prevent similar abuses of power from being perpetrated for immoral and defamatory reasons.” Presumably, the resolution is seeking either statutes or executive orders curtailing the investigative authority of the FBI and similar organizations. It is not entirely clear what the language of such a statute or executive order would look like, though presumably it would require agencies to show clear evidence of a *legitimate* national security or public safety purpose before engaging in surveillance, and it could presumably subject surveillance to periodic judicial or Congressional review so that federal agencies do not abuse their authority. As the author’s background material makes clear, while the FBI in the 1960s may have been particularly irresponsible, surveillance continues against protest groups to this day, thereby posing an ongoing threat to First Amendment rights of speech, petition, assembly, and association.

***Potential Unintended Consequences.*** This well-intended resolution seeks to curb abuses by federal intelligence agencies and, as important, to protect the privacy and reputational interests of persons subjected to immoral and covert government surveillance. While few would disagree with the resolution’s goal of preventing federal agencies from abusing their power for “immoral or defamatory purposes,” the part of the resolution calling for the destruction of existing public records raises a number of questions that the Committee may wish to consider. Two issues – one practical and one substantive – deserve serious consideration.

***Will the resolution defeat its purpose by drawing more attention to allegations made against King, while at the same time destroying evidence that might rebut those allegations?*** First, as a practical matter, if the purpose of this resolution is to protect the privacy and reputational interests of King and others by destroying the tapes, then there is a real danger that the resolution will only draw more attention to serious allegations in already available and widely disseminated FBI memoranda. As noted above, David Garrow, who wrote the standard biography of King in 1986, more recently published an article based on FBI memos long available in PDF format from the National Archives. (Garrow, “The Troubling Legacy of Martin Luther King,” *Standpoint*, June, 2019.) Garrow’s 1986 biography – as well as a 1981 book focused on the FBI investigations of King – had already documented the FBI’s relentless and single-minded efforts to discredit and “neutralize” King as a civil rights leader. These earlier works referenced allegations of King’s marital infidelity, which have already been widely noted in the existing literature. However, documents more recently examined by Garrow and discussed in his 2019 article, make much more serious allegations of wrongdoing. Some historians have criticized Garrow for publishing this article, in large part because the claims about what is in the tapes may

have been greatly exaggerated (and perhaps even fabricated) by the FBI. However, whether the FBI memos are accurate, exaggerated, or completely fabricated descriptions of the content of the tapes, those memos are already available from the National Archives, and Garrow's 2019 article even provides links to them. Thus far, the discussion about Garrow's article has been largely limited to historians questioning whether Garrow acted responsibly by writing an article based on FBI descriptions of the tapes, rather than on the tapes themselves. However, if the National Archives were to act on this resolution, it will simply draw more attention to the tapes and the memos that purportedly describe their content. If the tapes were destroyed, the memos would be the only evidence of what the tapes contain. However, if the tapes were preserved and unsealed in 2027, they could show that the claims made by the FBI were exaggerated or fabricated.

***Is it a dangerous precedent to destroy public records because they were questionably obtained and could be used to unfairly tarnish the legacy of a revered public figure?*** In addition to the practical considerations noted above – that the resolution will simply draw more attention to allegations while destroying evidence that might rebut them – the resolution also raises important policy, and even philosophical, questions. One of the documents submitted by the author's office in support of this resolution is a recent complaint filed by Color of Change and the Center for Constitutional Rights against the FBI and the Department of Homeland Security (DHS). The action is brought under the Freedom of Information Act (FOIA) and demands that the FBI and DHS produce agency records relating to their surveillance of the civil rights group, Movement for Black Lives. The author apparently submitted this document to show that surveillance of civil rights groups continues. However, while this document supports the part of the resolution urging Congress and the President to curtail such surveillance, the document at the same time shows why public records should *not* be destroyed. The records that the plaintiffs are seeking were also, according to the complaint, obtained by questionable means. The FOIA, enacted in 1967, is premised on the assumption that “any person” should have access to “any” records held by federal agencies. To state the obvious, if questionably obtained and potentially defamatory records were destroyed, there would have been no records for Color of Change and the Center for Constitutional Rights to request.

The Committee should also be wary of the unintended consequences of any precedent set by destroying the tapes related to King. For example, according to the Church Committee reports, the FBI also investigated the activities of the Ku Klux Klan and other white hate groups, using similar methods to infiltrate and obtain information on group members. This, of course, is *not* to equate King with the Ku Klux Klan, or to suggest that it was just as appropriate for the FBI to investigate the non-violent SCLC as it was to investigate the overtly violent Klan. The Klan, after all, presented a threat to public safety; the SCLC did not. Be that as it may, the appropriateness of the investigation may not always be so stark. No one would argue, for example, that tapes showing that a now-respected public figure -- who had, for example, been a member of the KKK in their youth – should be destroyed because they were covertly obtained and would damage the reputation of a respected public figure.

Relatedly, the resolution is not limited to evidence that was “illegally” obtained, but rather to evidence that was “immorally” or “covertly” obtained. However immoral FBI actions may have been, it is not clear that they were “illegal” or done without proper authority. The bugging of King's motel rooms in 1963 and 1964 was expressly authorized by Attorney General Robert F. Kennedy. Moreover, even if the tapes were obtained by unconstitutional means, that would only be grounds, under the exclusionary rule, for making them inadmissible in a court of law. However, that something might not be admissible at trial does not mean that it should be

eliminated from the public record and thus unavailable for those seeking their right of access under FOIA.

*In sum*, this resolution raises difficult questions that the Committee should consider. On the one hand, the historical record clearly shows that many of the FBI methods were highly irregular and improper, and perhaps even immoral, as the author asserts. It is also clear that the FBI sought to discredit and “neutralize” King as a civil rights leader, which has nothing to do with the national security and public safety concerns that typically justify such investigations. Moreover, the author is correct that there are those who will scrutinize every detail in the tapes in order to discredit King and the movement that he heroically led. Under such exceptional circumstances, perhaps a case could be made for destroying the tapes. On the other hand, the most outrageous allegations against King already exists in FBI memos that are not under seal and that have already been widely disseminated. If those memos describing the content of the tapes were false or inaccurate – which may well be the case given the FBI’s motives – then the preservation of the tapes could be the only way to rebut those allegations. Moreover, while the unique circumstances surrounding the FBI’s investigation of King may justify destruction of this particular set of tapes, destroying those tapes may serve as a precedent for the destruction of other public records that were covertly obtained, even when they contain information that the public has a legitimate interest in knowing.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

None on file

**Opposition**

None on file

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