

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SJR 7 (Bradford)
Version: June 30, 2021
Hearing Date: July 13, 2021
Fiscal: No
Urgency: No
TSG

SUBJECT

Dr. Martin Luther King, Jr.: FBI surveillance tapes

DIGEST

This resolution calls for the destruction of recordings and transcripts of the Reverend Dr. Martin Luther King, Jr., which the Federal Bureau of Investigation obtained through unlawful surveillance and which are scheduled for public release by the National Archivist in 2027.

EXECUTIVE SUMMARY

Though now recognized internationally as a hero and icon of the non-violent movement for civil rights, during his lifetime, Dr. King was regarded with tremendous suspicion and fear by the United States government. As Dr. King became more prominent and the civil rights actions he led became more successful, the FBI, in particular, began to conduct a campaign of surveillance and harassment of Dr. King, his family, and his associates that became extensive between the years 1963 and 1968. Among other things, the FBI wiretapped Dr. King's phone lines and placed hidden recording devices in his home, offices, and hotel rooms. Through this surreptitious surveillance, the FBI obtained recordings and made transcripts that presumably capture many details of the private, personal lives of Dr. King, his family, and many of his associates. Owing to a 1977 court ruling, those tapes and transcripts are currently held by the National Archivist, with instructions not to release them publicly until 2027. In light of the immoral and almost certainly illegal way in which these recordings were obtained, this resolution calls for them to be destroyed instead.

The resolution is author-sponsored. There is no support or opposition on file.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (U.S. Const., amend IV.)
- 2) Establishes the National Archives and Records Administration and charges it with accepting for deposit, storing, and making available for public viewing records of a Federal agency, the Congress, the Architect of the Capitol, or the Supreme Court determined by the Archivist to have sufficient historical or other value to warrant their continued preservation by the United States Government. (44 U.S.C. 2101 *et seq.*)
- 3) Makes the Archivist responsible for the custody, use, and withdrawal of records transferred to the Archivist. (44 U.S.C. 2010(a).)
- 4) Specifies that when records subject to statutory limitations and restrictions are transferred to the Archivist, those restrictions are applicable to the Archivist and to the employees of the National Archives and Records Administration, respectively. (44 U.S.C. 2101(a).)

This resolution:

- 1) Lauds the life mission, courage, methods, and accomplishments of the Reverend Dr. Martin Luther King, Jr.
- 2) Describes the immoral campaign of surveillance and subterfuge to which Dr. King was subjected by the FBI.
- 3) Notes that the tapes and the transcripts from the FBI's surveillance of Dr. King remain under seal until 2027.
- 4) Finds that Dr. King is critical to memorializing the Black experience in America and that Dr. King's mission and challenges remain timeless.
- 5) Declares that no one has the right to feed on Dr. King's legacy.
- 6) Urges the National Archives and Records Administration to destroy the FBI surveillance tapes of Dr. King.

- 7) 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.
- 8) Directs the Secretary of the Senate to transmit copies of the resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to each Senator and Representative from California in the Congress of the United States, and to the Archivist of the United States.

COMMENTS

1. Background on the FBI's campaign of surveillance and harassment against Dr. King

The role of Dr. King in spearheading the civil rights movement of the 1950s and 1960s in the United States is well known and widely celebrated. Less often acknowledged is how viciously many elements of the United States' government fought to deter Dr. King and his vision. The FBI, in particular, waged a steady campaign of surveillance and harassment against Dr. King, beginning in the mid-1950s and escalating to its most intense between 1963 and 1968, when Dr. King was assassinated. During this time, the FBI apparently recorded much of Dr. King's private activities in his home, his office, and when he was traveling. The alleged basis for this surveillance was a suspicion that Dr. King, because of his advocacy for civil rights, his concern with economic inequality, and his eventual public opposition to the Vietnam War, must somehow be affiliated with the Communist Party. It seems clear that the FBI had more of a personal and political vendetta against Dr. King. In one particularly chilling incident, it is alleged that the FBI sent Dr. King a note urging him to commit suicide in order to avoid public revelation of what some of the FBI's recordings contained.

As the author of this resolution states, these tapes were obtained immorally. As a legal matter, the way in which the recordings were made was almost certainly unconstitutional, both as an unlawful search under the Fourth Amendment and as an invasion of privacy.

2. Current disposition of the recordings and transcripts

In 1976, one of Dr. King's associates, Bernard Lee, and the Southern Christian Leadership Conference sued the FBI for multiple violations of their civil rights related to the surveillance that they had endured. Ultimately, the court dismissed the case on the grounds that the statute of limitations had run. According to the court, the plaintiffs must have known that they were being bugged because it was widely reported in the newspapers, and they waited more than three years after that to file suit. (*Lee & SCLC v. Kelley* (D.D.C. Jan. 31, 1977, Civ. No. 76-1186).)

Then, with almost no legal explanation, the court went on to give precise instructions for the disposition of the surveillance tapes and transcripts themselves. The court ordered that:

With reference to the custody of the intercepted conversations, an inventory of all such records shall be presented to the Court, and the records themselves shall be turned over, under seal, to the Archivist of the United States. *See* 44 U.S.C. § 2101 *et seq.*

[...] [W]ithin ninety (90) days of the date of the entry of this Order, the Federal Bureau of Investigation shall assemble at its headquarters in Washington, D.C., all known copies of the recorded tapes, and transcripts thereof, resulting from the FBI's microphonic surveillance, between 1963 and 1968, of the plaintiffs' former president, Martin Luther King, Jr.; and all known copies of the tapes, transcripts and logs resulting from the FBI's telephone wiretapping, between 1963 and 1968, of the plaintiffs' offices in Atlanta, Georgia and New York, New York, the home of Martin Luther King, Jr., and places of public accommodation occupied by Martin Luther King, Jr.; and it is further

ORDERED that at the expiration of the said ninety (90) day period, the Federal Bureau of Investigation shall deliver to this Court under seal an inventory of said tapes and documents and shall deliver said tapes and documents to the custody of the National Archives and Records Service, to be maintained by the Archivist of the United States under seal for a period of fifty (50) years; and it is further ORDERED that the Archivist of the United States shall take such actions as are necessary to the preservation of said tapes and documents but shall not disclose the tapes or documents, or their contents, except pursuant to a specific Order from a court of competent jurisdiction requiring disclosure.¹

Apparently, this order was the result of a compromise agreement between the plaintiffs and the government about what should be done with these tapes, but it did not reflect the plaintiffs' original desire. As a subsequent ruling in the case summarized the outcome:

At this point discussion between the parties apparently resulted in a willingness on the part of plaintiffs to modify their demand for destruction to a sealing for 50 years, with any disclosure to be made only upon the order of the court - a solution apparently also

¹ Lee & SCLC v. Kelley (D.D.C. 1977).

acceptable to the defendants. In this posture of the case, the District Court, as it appears clearly to have had jurisdiction to do, entered the judgment sealing the records, which the parties did not appeal. (*SCLC v. Kelley* (D.C. Cir. 1984) 747 F.2d 777, 778.)

In effect, this resolution asks for the original will of the plaintiffs to be carried out. It would call upon the National Archivist to destroy the surveillance tapes of Dr. King. At the same time, the resolution calls upon Congress and the Biden Administration to work to ensure that similar abuses of power are not perpetrated for immoral and defamatory reasons in the future.

3. Proposed amendments

There is a typographical error in the subject line of the bill and in the body of the bill. The author proposes to incorporate amendments into the bill that would:

- Correct these typographical errors.

4. Arguments in support of the bill

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.

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SCR 6 (Bradford, 2021) honored the late civil rights pioneer and icon Reverend Dr. Martin Luther King, Jr. and commemorated Dr. Martin Luther King, Jr. Day.

ACR 8 (Weber, 2021) was substantially similar to SCR 6.
